



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. STATE LANDS COMMISSION

DIVISION 3. STATE PROPERTY OPERATIONS

CHAPTER 1. STATE LANDS COMMISSION

ARTICLE 4.5. MARINE INVASIVE SPECIES CONTROL

NOTICE OF PROPOSED REGULATORY ACTION

The California State Lands Commission (the Commission) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to amend Sections 2270 and 2271 under Article 4.5 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). Section 2270 is being amended as a change without regulatory effect under Title 1, Division 1, Article 2, §100(a)(6). As of January 1, 2008, AB 740 (Chapter 370, Statutes of 2007) amended PRC Section 71200 (definitions) which renumbered the definition of "Voyage." This change to statute requires a change to the Reference citation at the end of Section 2270. The Reference cited is amended from 71200(m) to 71200(q). Section 2271 would amend the fee to be paid by vessels calling at California ports (the Fee). The Fee is to be used for the Marine Invasive Species Control Fund (the Fund) under Division 36 of the Public Resources Code (P.R.C.) entitled, "Marine Invasive Species Act," established under Chapter 491, Statutes of 2003 (the Act). The proposed regulation would set the fee at eight hundred fifty dollars (\$850) per vessel per voyage if the vessel has traveled outside of California.

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 June 15, 2009. All written comments must be received at the Commission by that time. Written comments should be submitted to:

Ravindra Varma
 Supervisor, Planning Branch
 California State Lands Commission
 Marine Facilities Division
 200 Oceangate, Suite 900
 Long Beach, CA 90802
 Telephone: (562) 499-6400
 Fax: (562) 499-6317
 E-mail: varmar@slc.ca.gov

PUBLIC HEARING

The Commission has not scheduled a public hearing for this proposed action. However, the Commission 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.

AUTHORITY AND REFERENCE

P.R.C. Section 71207 describes the State program to regulate discharges of ballast water in order to limit the introduction of nonindigenous species. In enforcing the provisions of the Act, the Commission is authorized to adopt the proposed regulations, which would implement, interpret or make specific P.R.C. Section 71215.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

P.R.C. Section 71215 created the Fund and requires the Commission to establish a reasonable and appropriate Fee to carry out the activities required by the Marine Invasive Species Act. It also mandates that the Fee may not exceed one thousand dollars (\$1,000) per vessel voyage. This amount may be adjusted for inflation every two years. Under P.R.C. Section 71215(c), the State Board of Equalization shall collect the fee from the owner or operator of each vessel that arrives at a California port of place from a port or place outside California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the U.S. Exclusive Economic Zone (EEZ) prior to arrival at the subsequent California port or place.

Accordingly, the proposed regulation would amend the Fee requirement under Section 71215(b)(1). The

Fee is required to fulfill the specific multi-agency tasks mandated by the Act. However, the current Fee amount (\$625 per vessel per voyage) is expected to produce revenues that will not meet the costs of the programs mandated under the Act. Section 2271(a) of the California Code of Regulations (C.C.R.) would set the fee to support the programs required under the Act at eight hundred fifty dollars (\$850) per vessel voyage.

DIFFERENCES FROM FEDERAL REGULATIONS

Recognizing the severity of the problem, the federal government implemented a voluntary national ballast water exchange and reporting program in July 1999 for vessels entering the United States. The program consisted of little more than information gathering. In September 2004, the United State Coast Guard adopted mandatory ballast water management regulations. The Federal program provides for review of shipboard ballast exchange records and selective ballast water sampling. The Federal program does not contain regulations requiring performance standards for the discharge of ballast water, controlling hull fouling, or mechanisms to research alternative methods of ballast water and hull fouling management. The state program established a mandatory, statewide, multi-agency ballast water management and control program. Responsible agencies include the Commission, Department of Fish and Game, Board of Equalization and the State Water Resources Control Board. Each agency is required to work in cooperation with the others in developing reports and conducting research on the extent of current invasions, and potential long-term solutions to the problem of nonindigenous species introductions. All the activities required by the Act are paid for through the Fund.

Small Business Determination

The Commission has determined that these regulations do not affect small businesses as defined in Government Code (Gov. C.) Section 11342.610 because all affected businesses are commercial maritime transport owners and operators, as specified under Gov. C. Section 11342.610(c)(7) and having annual gross receipts of more than \$1,500,000.

ESTIMATED COSTS TO THE STATE

No costs to the State would be incurred in implementing and enforcing these proposed regulations beyond those collected in the Fund. Since the regulation here proposed is limited to amending a fee to pay for programs already mandated by the Act, the regulations will not increase costs to the State. While the various programs mandated under the Act are estimated to cost

approximately \$4,784,000 each year. All of those programs are mandated by the Act; none can be singly attributed to the regulatory action here proposed. Under this proposal, the Fee would be set at a level that is expected to provide revenues equal to costs required to implement the Act. No costs will be incurred by the State in implementing any or all programs mandated by the Act beyond the amounts generated through collection of the Fee.

DISCLOSURES REGARDING THE PROPOSED ACTION

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

Cost to any local agency or school district which must be reimbursed in accordance with Part 7 (commencing with section 17500) of Division 4 of the Government Code: None.

Other non-discretionary cost or savings imposed upon local agencies: None.

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

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

Cost impact on private persons or directly affected businesses: All vessel owners or operators affected by the proposed amended regulation will be required to pay the fee of eight hundred fifty dollars (\$850) per vessel voyage. This is a two hundred twenty five dollar (\$225) increase per vessel voyage to directly affected businesses.

Creation or elimination of jobs within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of jobs within the State of California.

Creation of new businesses or the elimination of existing businesses within the State of California: The Commission has determined that the proposed regulations will not have a significant impact on the creation or elimination of businesses within the State of California.

Expansion of businesses currently doing business within the State of California: The Commission has determined that the proposed regulations would not have a significant impact upon expansion of businesses currently doing business within the State of California.

The Commission has made an initial determination that the 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.

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Maurya Falkner
Environmental Program Manager I
California State Lands Commission
Marine Facilities Division
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-2568
Fax: (916) 574-1950
E-mail: falknem@slc.ca.gov

Or to:

Mark A. Meier
Senior Staff Counsel
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-1853
Fax: (916) 574-1885
Email: meierm@slc.ca.gov

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Ravindra Varma
Supervisor, Planning Branch
California State Lands Commission
Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802
Telephone: (562) 499-6400
Fax: (562) 499-6317
E-mail: varmar@slc.ca.gov

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 offices at either of the above addresses. As of the date this notice is published in the California Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Ravindra Varma at the e-mail, address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the hearing, if requested, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Ravindra Varma 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 Ravindra Varma at the address or telephone number listed above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations, can be accessed through the Commission's website at http://www.slc.ca.gov/Spec_Pub/MFD/Ballast_Water/Ballast_Water_Default.html.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3417, subsection (b), of the regulations in Title 3 of the California Code of Regulations pertaining to Mexican Fruit Fly Interior Quarantine as an emergency action that was effective on December 18, 2008. The Department proposes to continue the regulation as amended and to

complete the amendment process by submission of a Certificate of Compliance no later than June 16, 2009.

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. 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 may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 180 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before June 15, 2009.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides the Secretary may establish, maintain, and enforce quarantine regulations, as he deems necessary, to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 5301, 5302 and 5322).

This amendment of Section 3417(b) established a quarantine area of approximately 70 square miles surrounding the infestation in the Azusa area of Los Angeles County. The effect of the change is to provide authority for the State to regulate movement of hosts of Mexican fruit fly from, into, and within that area under quarantine to prevent artificial spread of the fly to non-infested areas to protect California's agricultural industry. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3417(b) does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3417. No reimbursement is required for Section 3417 under Section 17561 of the Government Code because the Agricultural Commissioner of Los Angeles County requested the change in the regulation.

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

EFFECT ON HOUSING COSTS

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

EFFECT ON BUSINESSES

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

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost impact of the amended regulation on a representative private person or business is not expected to be significantly adverse. A representative person or business could incur costs of approximately \$87 per year in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine 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 or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department proposes to amend Section 3417(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

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

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

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 action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulation 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 amended 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 amendment. 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 3. FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (hereinafter referred to as “Department”) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period**. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person beginning **May 1, 2009 and ending at 5:00 p.m. on June 15, 2009**. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407, 18693, 18726, 18735, 18960, 18961 and 19014 of the Food and Agricultural Code, and to implement, interpret or make specific sections 18725, 18732, 18754, 18948, 18951, 18952, 18971, 18973, 19011, and 19017 of said Code, the Department proposes changes to Article 3 of Subchapter 1 of Chapter 4, Division 2, of Title 3 of the California Code of Regulations, to read as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Food and Agricultural Code, Division 9, Part 3, Chapter 4, Articles 2, 3 and 4, and Chapter 4.1, Articles 1, 2, 3, 4 and 8, authorize the Department’s Meat and Poultry Inspection Branch to license and inspect licensed meat processing establishments and cus-

tom livestock slaughter establishments. The Branch also trains and licenses industry personnel to become licensed Livestock Meat Inspectors and Processing Inspectors to perform meat inspection activities. Such meat processing establishments and inspection activities pertain to facilities that are exempt from inspection by the United States Department of Agriculture but require inspection in California.

To implement the above-referenced statutes the Department has in place existing regulations under Articles 1–30 of Subchapter 1, Chapter 4, Division 2 of Title 3 of the California Code of Regulations. The regulations specify the requirements for inspecting meat and poultry in California, the examination and licensure requirements for Livestock Meat Inspectors and Processing Inspectors, and the requirements for persons operating slaughter and meat processing establishments.

The Department is proposing to adopt new section 902.15 under Article 3 of Subchapter 1 of Chapter 4, Division 2, of Title 3 of the California Code of Regulations, to adopt standards for a Plant Improvement Program for each official establishment. The Department is incorporating by reference MPI Form 79–032 (Rev. 12/04) Plant Improvement Program, which is a form developed by the Department for use by each official establishment.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations relating to this proposal. The Department may adopt, by regulation, sanitation requirements for official establishments licensed by the Department in accordance with section 18726 of the Food and Agricultural Code.

FISCAL IMPACT STATEMENTS

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 7500–17630 Require Reimbursement: None

Business Impact: The Department has made an initial determination that this proposed regulatory action would not have any significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. This proposal pertains to meat processing establishments and custom livestock slaughterhouses that are exempt from federal

inspection. It also pertains to licensed Livestock Meat Inspectors and Processing Inspectors performing meat inspection activities. This proposal imposes the following paperwork, reporting and record keeping requirements upon businesses:

MPI Form 79–032 (Rev. 12/04) Plant Improvement Program, is required by the Department for plant management and inspectors to identify and record deficiencies in plant facilities and equipment, and to record the dates the problems were remedied. The Department provides this form free of charge to each official slaughter or processing plant in California. The use of this form does not adversely impact existing plant operations as paperwork and record keeping is a normal business practice in the meat and poultry industries.

In making the above determination the Department has not considered alternatives that would lessen any adverse economic impact on businesses and invites the public to submit such proposals during the written comment period. Submissions may include the following considerations:

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

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

Cost Impacts on Private Persons or Entities: 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. This proposal pertains to licensed meat processing establishments and custom livestock slaughter establishments that are exempt from federal inspection. It also pertains to licensed Livestock Meat Inspectors and Processing Inspectors performing meat inspection activities. The cost impacts that a private person or entity would necessarily incur in reasonable compliance with the proposed action are paperwork, reporting, and recordkeeping requirements as follows:

MPI Form 79–032 (Rev. 12/04) Plant Improvement Program, is required by the Department for plant management and inspectors to identify and record deficiencies in plant

facilities and equipment, and to record the dates the problems were remedied. The Department provides this form free of charge to each official slaughter or processing plant in California. The use of this form does not adversely impact existing plant operations as paperwork and record keeping is a normal business practice in the meat and poultry industries.

Effect on Housing Costs: None

Finding of Necessity for Report: The Department finds that it is necessary for the health, safety, and general welfare of the people of the state that this regulation requiring a report apply to businesses.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

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

INITIAL STATEMENT OF REASONS

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing (if a hearing is requested) or during the written public comment period upon request from the contact persons named below in this Notice.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file,

which is available for public inspection by contacting the persons named below.

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

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations are to be addressed to the following:

Alfred Aquino, DVM
 Department of Food and Agriculture
 Meat and Poultry Inspection Branch
 1220 N Street, Room A-125
 Sacramento, CA 95814
 Telephone: (916) 654-0504
 Fax: (916) 654-2608
 E-mail: AAquino@cdfa.ca.gov

Written comments regarding this proposal for inclusion in the Department's official rulemaking file are to be addressed to the following:

Nancy Grillo, Associate Analyst
 Regulation & Legislation Coordinator
 Department of Food and Agriculture
 Animal Health and Food Safety Services
 1220 N Street, Room A-116
 Sacramento, CA 95814
 Telephone: (916) 651-7280
 Fax: (916) 653-4249
 E-mail: NGrillo@cdfa.ca.gov

Website Access:

Materials regarding this proposal can be found at: www.cdfa.ca.gov/ahfss/regulations.html.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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

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

PUBLIC MEETING: On **June 18, 2009**, at 10:00 a.m. in The Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California 94612.

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

PUBLIC HEARING: On **June 18, 2009**, following the Public Meeting, in The Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California 94612.

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

BUSINESS

MEETING: On **June 18, 2009**, following the Public Hearing, in The Auditorium of the Harris State Building, 1515 Clay Street, Oakland, California 94612.

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

DISABILITY ACCOMMODATION NOTICE

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

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for

an ALS or CART should be made no later than five (5) days before the hearing.

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

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **June 18, 2009**.

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 4
Section 3277
Fixed Ladders
2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 116
Section 5306
Electric Blasting in Proximity to Radio, Television or Radar Transmitters

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 4
Section 3277
Fixed Ladders

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This proposed rulemaking is the result of a Division of Occupational Safety and Health (Division) Form 9, Request for New or Change in Existing Safety Order, which was prompted by a fatal accident in a mining operation where an employee fell from an elevated location. It is thought that the victim lost his grip and fell while descending a caged ladder, striking the landing and falling back over the guardrail to his death 30 feet below. The Division believes that a back guard at this location would have prevented this type of accident from occurring; however, it had not been provided due to a lack of clarity in General Industry Safety Orders (GISO), Section 3277.

Section 3277 addresses a variety of ladder safety issues, including, but not limited to, design of ladder cages, wells and landing platforms, counterweighted hatch covers, use of ladder safety devices, and contains a number of diagrams depicting fixed ladder installations.

The Division has requested clarification of Section 3277, including fall protection at caged ladder landings and maximum clearances for ladder wells.

This proposed rulemaking action contains nonsubstantive, editorial, reformatting of subsections, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Section 3277. Fixed Ladders.

Subsection (b). Definitions.

Existing subsection (b) defines terms specific for the application of Section 3277, Fixed Ladders. It is proposed to add definitions for two new terms: “Carrier” and “Safety Sleeve.” These definitions are taken from American National Standards Institute (ANSI) Standard A14.3–2002, American National Standard for Ladders — Fixed — Safety Requirements, and are necessary in order to clearly define the definition for “Ladder Safety System” which will replace the existing definition for “Ladder Safety Device.” The effect of these proposed additions and amendments will be to add clarity and to harmonize Section 3277 definitions with industry standard terminology.

Subsection (f)(7). Clearance.

The existing subsection prescribes requirements for counterweighted hatch covers and the relationship of a fixed ladder to a counterweighted hatch cover. A proposed modification will make these requirements applicable to all hatch covers. The effect of this modification will be to prescribe the same level of safety for all types of hatch covers thus increasing the level of safety afforded employees by these requirements.

Subsection (g)(2). Dimensions and Maximum Length (for cages and wells).

The existing subsection prescribes that “cages or wells (except as provided under (5)) conforming to the dimensions shown in Figs. 1, 10, and 11 shall be provided on ladders of more than 20 feet to a maximum unbroken length of 30 feet.” The cross-reference to subsection (5) is incorrect [it appears to be verbatim of the cross-reference in the federal standard 1910.27(d)(1)(ii)]. It is proposed to correct the cross-reference to subsection (m) which is the state subsection corresponding to the federal cross-reference. The

effect of this modification will be to clarify requirements for ladder safety systems.

Subsection (g)(2). Exception 2.

The existing exception pertains to fixed ladders on outdoor advertising structures, where employees wear and use approved safety belts and lanyards which can be utilized if a rest period is required. It is proposed to change the exception to apply to outdoor advertising structures covered by GISO Article 11. The effect of this modification will be to harmonize this exception with recently adopted changes to requirements for fall protection for outdoor advertising structures, Section 3416.

Subsection (g)(4). Bottom of Cage.

The existing subsection provides that “Cages shall extend down the ladder to a point not less than 7 feet nor more than 8 feet above the base of the ladder, with bottom flared not less than 4 inches, or portion of cage opposite ladder shall be carried to the base.” It is proposed to delete “or portion of cage opposite ladder shall be carried to the base” and to clarify that where the ladder base terminates on a landing platform or walkway at an elevation greater than 30 inches above the ground, a ladder cage extension shall be provided from the bottom of the cage to the guardrail when the distance from the plane of the ladder rungs to the guardrail is equal to or less than that shown in Figure 11, “Ladder Cages at Elevated Locations.” The effect of this modification will be to clarify the requirements for cage extensions to prevent workers from falling over a guardrail should they fall down a cage-enclosed ladder.

Subsection (g)(4)(A).

This new subsection is proposed in order to clarify that a ladder cage extension is not required when the guardrail is located at a distance greater than that shown in Figure 11.

Subsection (g)(4)(B).

This new subsection is proposed to describe construction criteria for a ladder cage extension or equivalent. The effect of these amendments will be to protect workers from the hazard of falling out of the cage and over the guardrail should they lose their footing and/or handhold on the ladder. These provisions will apply when the cage terminates on a platform more than 30 inches above the ground.

Subsection (g)(6). Ladder Wells.

The existing subsection specifies a 27 inch minimum dimension for ladder wells, but does not specify a maximum dimension. Thus, it is possible for a well to be so large and so high as to not provide fall protection equivalent to that provided by ladder cages. It is proposed to specify that wells shall not exceed 30 inches from the center line of the rungs to the well wall on the climbing side of the ladder. The effect of this amendment will be

to provide fall protection for wells equivalent to that for ladder cages.

Subsection (j)(1). Landing Platforms.

The existing subsection (j)(1) concerns the provisions of landing platforms. Modifications are proposed to clarify requirements as follows:

- The existing parenthetical clause “except on chimneys” is proposed to be relocated to Exception 2 for consistent formatting.
- The other parts of the existing subsection are relocated to new subsections (j)(1)(A), (C) and (D) with minor clarifications.
- A new subsection (j)(1)(B) is added to clarify where landing platforms are required when a cage or well is provided.

The effect of these amendments and modifications is to clarify requirements for ladder cages, wells, and landing platforms.

Subsection (j)(1). Exception 1.

Existing Exception 1 provides an exception from the provisions of subsection (j)(1) for ladders in underground mines, those used primarily in construction operations, fire escape ladders, and ladders equipped with treads. It is proposed to move the exception for underground mines to a new separate Exception 3 and clarify that the exception applies only to mines covered by the Mine Safety Orders. The effect of this change will be to clarify requirements for ladders in underground mines.

Subsection (j)(1). Exception 2.

Existing Exception 2 excludes from the provisions of subsection (j)(1) a number of types of ladders, which are used either infrequently or for emergency only provided the employee who uses the ladder is “supplied with and wears an approved belt, with safety straps attached”. It is proposed to relocate the exception for chimneys from (j)(1) for consistency. It is also proposed to change “approved belt, with safety straps attached” to “approved personal fall protection equipment.” The effect of these modifications will be to harmonize with changes that have taken place elsewhere in Title 8 requirements for fall protection equipment (Construction Safety Orders, Article 24).

Subsection (j)(1). Exception 3.

This new exception takes “underground mines” from existing Exception 1 and clarifies that the exception applies only to underground mines covered by the Mine Safety Orders. The effect of this change is to clarify the application of this exception to requirements for landing platforms for underground mines.

Subsection (m). Ladder Safety Devices.

The existing subsection uses the terminology “ladder safety devices.” It is proposed to update this to “ladder

safety systems.” The effect of this modification is to harmonize Title 8 terminology with industry standard ANSI A14.3–2002. It is also proposed to delete the phrase “such as those that incorporate life belts, friction brakes, and sliding attachments” from the existing subsection, since the phrase overlaps and is inconsistent with the definition of “ladder safety systems” in subsection 3277(b). The effect of this modification will be to eliminate inconsistencies and to clarify where and how ladder safety systems may be used.

Figure 11. Cages — Special Applications.

It is proposed to rename this figure “Ladder Cages at Elevated Locations.” The following changes are also proposed:

1. On the right-hand illustration of this diagram, change “4’ –0” or More” to “More than 4’ –0” .”
2. Right-hand diagram, make “Location” plural.

The effect of these modifications will be to clarify applicability of the diagrams to ladder cages and extensions as required by other parts of the standard.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

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

Impact on Housing Costs

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

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

Due to the large number of fixed ladders in-use in many industries in California the cost impact cannot be estimated with any degree of certainty, although anecdotal evidence indicates that most employers are already in compliance. However, some existing fixed ladders may pre-date the consensus standard (ASME A14.3–1956) upon which 29 CFR 1910.27 and Section 3277 are based. Furthermore, it is possible that some fixed ladders may have been installed without the required back guards due to lack of clarity in the current standards.

The petroleum production and refining industry is likely to be the most affected by this clarification due to a large number of fixed ladders at refineries, some of which date back to the turn of the 20th Century. Conversations with an industry representative, the Western States Petroleum Association (WSPA), indicate that

perhaps no more than 20% of ladders at each refinery might require retrofit. Costs for retrofitting should not be significant since the retrofit will usually consist of extending the existing ladder cage to the guardrail, thus attachments to pressure vessels are not anticipated.

Costs or Savings in Federal Funding to the State

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

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

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

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

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

DETERMINATION OF MANDATE

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

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

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

The proposed standard does not impose unique requirements on local governments. All state, local and

private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

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

ASSESSMENT

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

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**
 Division 1, Chapter 4, Subchapter 7,
 Article 116
 Section 5306
Electric Blasting in Proximity to Radio, Television or Radar Transmitters

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking is initiated by Board staff to update an outdated reference contained in a Note to Section 5306(a) which refers to the State of California, Department of Transportation, Manual of Traffic Controls for Construction and Maintenance Work Zones, published in 1996. The Note exists to inform employers where the electric blasting warning sign requirements for public roads and highways are located. Based on staff’s discussions with representatives from the California Department of Transportation, Division of Traffic Operations and the Division of Occupational Safety and Health, it has been ascertained that the warning sign requirements of Section 5306(a) are intended to apply to privately owned and maintained roads or commercial establishments where electric blasting operations are conducted.

This proposal deletes the Note and amends Section 5306 to address electric blasting signage requirements for roads that are subject to the requirements of the current California Manual on Uniform Traffic Control Devices for Streets and Highways (CA-MUTCD), Part 6, Temporary Traffic Control, published September 26, 2006, and those that are not (i.e., roads on private property). The CA-MUTCD addresses electric blasting signage requirements in Sections 6F.38 through 6F.41, which are proposed to be incorporated by reference. The CA-MUTCD is a public document available via the California Department of Transportation (CALTRANS) website or from any CALTRANS district office.

There is an editorial amendment proposed for clarity in Section 5306 title. The proposal also rearranges information currently contained in subsection (a), into subsection (b) as subsections (b)(1), (b)(2) and (b)(3) and places the requirements for signage for roads subject to the CA-MUTCD in subsection (a). The 1000 foot posting requirement currently contained in subsection (b) is relocated to new subsection (b)(1).

Section 5306. Electric Blasting in Proximity with Radio Transmitters.

This section contains standards addressing the design and posting of signs intended to warn persons of electric blasting activity and the need to turn off radios and cell phones at least 1000 feet in advance of any electric blasting zone. This section also contains standards prohibiting electric blasting operations in proximity to any operating mobile or fixed radio, television or radar transmitter.

Subsection (a) is proposed for amendment to remove existing regulatory text and the Note, replacing them with a new requirement that pertains to roads subject to the CA-MUTCD blasting warning signs posting requirements contained in Sections 6F.38 through 6F.41 at Part 6, Temporary Traffic Control, which are incorporated by reference. The employer may download a copy of the requirements from the CALTRANS website or obtain a hard copy from any CALTRANS district office. Public roads have been subject to the CA-MUTCD warning sign requirements since 2006.

A new subsection (b) is proposed for roads not subject to the CA-MUTCD. It contains the requirements for warning signs contained in existing subsection (a) (in addition to be relocated to subsection (b), those requirements are broken down into three subsections (1) through (3), addressing location of the signs, type of signs, and the design and color of signs).

The proposal provides needed clarification as to the signage requirements applicable to the roads subject to CA-MUTCD and the signage requirements for roads not subject to CA-MUTCD.

DOCUMENT INCORPORATED BY REFERENCE

1. The California Manual on Uniform Traffic Control Devices for Streets and Highways, Part 6, Temporary Traffic Control, September 26, 2006, published by the California Department of Transportation (CA-MUTCD), Sections 6F.38 through 6F.41.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. A copy of this document is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

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

Impact on Housing Costs

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

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

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

Costs or Savings in Federal Funding to the State

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

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

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

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

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

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does

not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

The proposed regulation does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

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

ASSESSMENT

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

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for

which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

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

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

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than June 12, 2009. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on June 18, 2009, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274–5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

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

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

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

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

website or by calling the telephone number listed above.

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations (Commissioner) proposes to make clean-up amendments to the regulations under the Corporate Securities Law of 1968, California Finance Lenders Law, California Residential Mortgage Lending Act and California Deferred Deposit Transaction Law. The Commissioner proposes to amend Sections 260.102.8(b), 260.103.6, 260.105.15, 260.113, 260.140.8(b)(4), 260.140.42(e), 260.140.71.2, 260.140.114.1(c), 260.151(a), 260.236(c)(3)(C), 260.608, 1457(d), 1950.122.1, 2020(c) and 2030; to amend the Note after Subchapter 6 of the California Finance Lenders Law; and to repeal Sections 250.50 and 250.51 of Title 10 of the California Code of Regulations.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' (Department) contact person, designated below, 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 regulatory action to the Department addressed to Karen Fong, Office of Legislation and Policy, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., June 15, 2009. Written comments may also be sent to Karen Fong via electronic mail at regulations@corp.ca.gov or via fax at (916) 322-5875. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

This rulemaking action makes various technical and clarifying amendments to the regulations administered by the California Corporations Commissioner. All references are to sections within Title 10 of the California Code of Regulations.

General Provisions:

Sections 260.50 and 250.51

The proposed amendments repeal Sections 250.50 and 250.51, which implemented the Permit Reform Act, as a result of the repeal of this act in 2003 by AB 1757 (Chapter 229, Statutes of 2003).

Corporate Securities Law of 1968:

Sections 260.140.114.1(c), 260.151(a), and 260.608

The proposed amendments to these sections make non-substantive, grammatical and typographical corrections.

Section 260.102.8

The proposed amendments to Section 260.102.8 incorporate the changes to the notarial acknowledgment under Civil Code Section 1185 as a result of AB 886 (Chap. 399, Stats. 2007), and make other clarifying changes to the form.

Section 260.103.6

The proposed amendments to Section 260.103.6 incorporate the changes to Corporations Code Section 25103(h) made by AB 1894 (Chap. 201, Stats. 2000), which recognized a securities exemption for entities converting to another organizational structure.

Section 260.105.15

The proposed amendments to Section 260.105.15 incorporate the qualification exemption in Section 25103(b) for securities issued by entities other than corporations.

Section 260.113

The proposed amendments to Section 260.113 provide that, in the application for qualification by permit, all prior securities issuances exempt from qualification under subdivisions (n) and (o) of Corporations Code Section 25102 must be described.

Section 260.140.8(b)(4)

The proposed amendments to Section 260.140.8(b)(4) provide greater flexibility to a securities issuer with respect to the right to repurchase securities under a compensatory benefit plan upon termination of employment, by permitting general partners and trustees to be subject to additional restrictions in the same manner as corporate officers and directors.

Section 260.140.42(e)

The proposed amendments to Section 260.140.42(e) provide that a compensatory benefit plan or agreement

may be approved 12 months after the issuance of a security under the plan.

Section 260.140.71.2

The proposed amendments to Section 260.140.71.2 add a requirement that mutual water company securities issuers agree to comply with Corporations Code Section 14300, which among other things provides that securities issued by mutual water companies are appurtenant to the land.

Section 260.23.6(c)(3)(C)

The proposed amendments to Section 260.236(c)(3)(C) capitalize CERTIFIED FINANCIAL PLANNER pursuant to a request by the Certified Financial Planner Board of Standards, Inc., which indicates that trademark usage regulations recommend that CERTIFIED FINANCIAL PLANNER be written in capital letters, as it denotes a special status as trademark and differentiates it from other designations that are merely titles.

California Finance Lenders Law:

Note after “Subchapter 6. California Finance Lenders Law (Finance Company Rules)”

The proposed amendments to the Note after Subchapter 6 of the Commissioner’s rules make technical corrections to the note. Two rules applicable to loans of more than \$5,000 under Section 1570 of the rules are missing from the note after Subchapter 6 of the California Finance Lenders Law. The proposed amendments fix this oversight.

Section 1457

The proposed amendments to Section 1457 add a reference to Civil Code Section 2948.5 in order to avoid a potential conflict between the rule and the Civil Code.

California Residential Mortgage Lending Act:

Section 1950.122.1

The proposed amendments to Sections 1950.122.1, make clarifying changes to the consent to service of process form and its instructions, and incorporate changes to the notarial acknowledgement in Civil Code Section 1189 made by AB 886 (Chap. 399, Stats. 2007).

California Deferred Deposit Transaction Law:

Sections 2020 and 2030

The proposed amendments to Sections 2020 and 2030 make clarifying changes to the verifications required under these rules, as a result of the amendments to Civil Code Section 1189 made by AB 886 (Chap. 399, Stats. 2007).

AUTHORITY

Sections 25102, 25102(h), 25102(o), 25105, 25113(b), 25140, 25165, 25236(a), 25237, 25608,

25610, 25612, 25612.5, and 35006, Corporations Code; Sections 123000, 17400, 22150, 23015, 30006 and 50304, Financial Code; Sections 15376 and 15378, Government Code; and Statutes of 1983, Chapter 859, Section 9.

REFERENCE

Sections 25102, 25102(h), 25102(o), 25103(h), 25105, 25110, 25113, 25140, 25151, 25160, 25165, 25230, 25230.1, 25236, 25237, 25608, 25608(y), 25608(z), 25610, 25612.5, 25613, 25620 and 35006, Corporations Code; Sections 1189 and 2948.5, Civil Code; Sections 12300, 17400, 22000, et seq., 22150, 22300, 22303, 22306, 22307, 22326, 23005(b), 23015, 23026, 30006 and 50122, Financial Code; Sections 15376 and 15378, Government Code; Section 11077.1, Penal Code; Chapter 40, Statutes 1990; Chapter 1035, Statutes 1990; and Chapter 201, Statutes 2000.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date that the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend, or repeal the foregoing proposal substantially as set forth above, without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 17/03 – B. An initial statement of reasons for the proposed action, containing all the information upon which the proposal is based, is available from the contact person designated below. Request Document PRO 17/03 – C. These documents are also available at the Department’s website at www.corp.ca.gov. As required by the Administrative Procedure Act, the Office of Legislation and Policy maintains the rulemaking file, which is available for public inspection at the Department of Corporations, Office of Legislation and Policy, 1515 K Street, Suite 200, Sacramento, California 95814-4052.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available. Copies may be requested from the contact person named in this notice or accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered, 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, or would be as effective and less burdensome to affected private persons, than the proposed action.

FISCAL IMPACT

- Cost or savings to any state agency: none.
- Direct or indirect costs or savings in federal funding to the state: none.
- Cost to local agencies and school districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: none.
- Other nondiscretionary costs/savings imposed on local agencies: none.
- Costs to private persons or businesses directly affected: insignificant or none.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not affect small businesses.
- Does not impose a mandate on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

- Does not significantly affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

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

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

EFFECT ON SMALL BUSINESSES

It has been determined that the amendments to the Corporate Securities Law of 1968 will not affect small businesses. The amendments to the rules make clarifying changes to various instructions and filings, and grammatical and typographical corrections.

It has been determined that the amendments to the California Finance Lenders Law will not affect small businesses. Finance lenders are excluded from the definition of small business in Government Code section 11342.610(b)(1).

It has been determined that the amendments to the California Residential Mortgage Lending Act will not affect small businesses. Residential mortgage lenders and residential mortgage loan servicers are excluded from the definition of small business in Government Code section 11342.610(b)(1).

It has been determined that the amendments to the California Deferred Deposit Transaction Law will not affect small businesses. Deferred deposit originators are excluded from the definition of small business in Government Code section 11342.610(b)(1).

CONTACT PERSON

Inquiries concerning this action may be directed to Karen Fong, Staff Services Analyst, Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814, (916) 322-3553. The backup contact person is Tanya Bosch at (916) 322-3553.

TITLE 14. DEPARTMENT OF CONSERVATION/DIVISION OF OIL, GAS, AND GEOTHERMAL RESOURCES

May 1, 2009

NOTICE OF PROPOSED RULEMAKING

**DEPARTMENT OF CONSERVATION
DIVISION OF OIL, GAS, AND
GEOTHERMAL RESOURCES**

**TITLE 14. Natural Resources
Division 2
Chapter 4
Subchapter 4**

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Oil, Gas, and Geothermal Resources (Division), pursuant to the authority in Section 3712 of the Public Resources Code (PRC), proposes to adopt, amend, and repeal existing regulations in Title 14 of the California Code of Regulations (CCR) after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Division proposes to amend Division 2, Chapter 4, Subchapter 4, starting with Section 1900, in Title 14 of the CCR. These sections pertain to statewide geothermal regulations.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Division.

The written comment period closes at 5:00 p.m. on June 15, 2009.

All comments must be received by that time at the Division office listed below. Comments received after 5:00 p.m. on June 15 may be reviewed, but the Division is not required to prepare a response.

PUBLIC HEARING

The Division does not at this time intend to conduct a public hearing, but shall do so if a request is received in

writing no later than 15 days before the end of the 45-day comment period.

Submit comments to:

Michael Woods
Department of Conservation
Division of Oil, Gas, and Geothermal Resources
605 Wake Avenue, Suite 7
El Centro, CA 92243
E-mail: mwoods@consrv.ca.gov

AUTHORITY AND REFERENCE

The Division proposes to implement, interpret, and make specific Sections 3700–3776 of the Public Resources Code (PRC) that gives authority to the State Oil and Gas Supervisor (Supervisor) to regulate geothermal wells. Section 3712 of the PRC provides that the Supervisor shall have all the powers that may be necessary, including the authority to adopt regulations, to supervise the drilling, operation, maintenance, and abandonment of geothermal resources wells. This supervision includes the permitting, surveillance, and utilization of methods and practices to prevent damage to life, health, property, and natural resources.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Revisions to existing regulations, repeal of several unnecessary or redundant regulations, and adoption of new regulations are proposed. Some of the proposed changes are substantive because of changes in technology or gaps in the existing regulations. However, some of the proposed changes simply clarify and correct regulatory text or re-organize sections for clarity.

Existing law requires the State Oil and Gas Supervisor to supervise the drilling, operation, maintenance, and abandonment of wells to prevent damage to life, health, property, and natural resources; damage to underground geothermal resources; loss of geothermal reservoir energy; and damage to underground and surface waters suitable for irrigation or domestic purposes by the infiltration of, or addition of, detrimental substances, by reason of the drilling, operation, maintenance, or abandonment of geothermal wells and facilities.

Observation wells are exempt from annual well fees. The new regulations will clarify wells that are used legitimately for observation purposes versus those that are simply non-productive wells an operator may classify as observation wells to avoid the assessment.

Current regulations do not require well and operator identification or spill contingency plans. These are significant omissions from current regulations. It is criti-

cally important that any spill or blowout be reported immediately to prevent loss to life, health and property, and that there be a plan for dealing with these contingencies.

CCR Section 3757 specifies that the surface location of a well may not be less than 100 feet from the outer boundary of the property that it is drilled on. However, no mention is made of where the producing interval of the well must be. A new regulation will specify this.

Current regulations require a minimum 50 foot overlap between the intermediate and production casings, and a positive pressure test to demonstrate integrity of the cement job. Current oil and gas regulations require a 100-foot overlap and a negative pressure test. The new regulation will not require a negative pressure test, but will increase the lap requirement to 100 feet. The additional cost to drill a well is negligible and it is current industry practice to overlap casings by at least 100 feet.

It is proposed to add a new section to require a mud log for all high temperature geothermal wells. It is an almost universal practice today that lithological information is assembled in this format. Current regulations require that this information be provided to the Division on the appropriate form, which is now obsolete.

No regulations currently exist for restoring well sites and leases to their original states after geothermal operations have ceased. It has always been the Division's policy to require restoration. A new regulation adds this requirement.

The purpose of the Division's subsidence regulations is to prevent damage to property caused by ground subsidence due to the withdrawal of geothermal fluids from the ground. New technologies for detecting and measuring subsidence have been developed, and changes to the regulations allow these new technologies to be used. The current regulations deal with subsidence only in the Imperial Valley. The new regulations are not specific to the Imperial Valley.

Current abandonment regulations are a little bit vague and not well organized. The revised Article 8 makes no substantive changes but reorganizes the requirements to make them clearer and more specific.

Finally, most sections of the geothermal regulations use section 3714 as the establishing authority. Section 3714, in part, requires the Supervisor to supervise the drilling, operation, maintenance and abandonment of geothermal resources wells. It is Section 3712 that actually gives the Director of the Department of Conservation and the Supervisor authority to create regulations. The proposed changes make Section 3712 the authority in all sections of these regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: *None*

Cost or savings to any state agency: *None*

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17500-17630: *None*

Other nondiscretionary cost or savings imposed upon local agencies: *None*

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

Cost impact on private persons or directly affected businesses: 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: *None*

Effect on small business: *None*

Significant effect on housing costs: *None*

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

IMPACT ON CALIFORNIA JOBS/BUSINESSES

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

CONFLICT WITH CODE OF FEDERAL REGULATIONS

The adoption of the proposed regulations and proposed amendments to the regulations will not duplicate nor conflict with any federal regulations contained in the Code of Federal Regulations.

SMALL BUSINESS IMPACT

The proposed regulations will have no significant adverse economic impact on small business because they will have no economic impacts on any business. Those few changes to the regulations which will have a very minor negative economic impact are balanced by those which will have a positive impact. Most of the changes are for the purpose of clarity and consistency, or merely codify current Division policies.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Division must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less

burdensome to affected private persons than the proposed action.

The Division invites interested persons to present statements or arguments with respect to the proposed regulations or alternatives during the written comment period or at any scheduled public hearing, if there is one.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Michael Woods
Department of Conservation
Division of Oil, Gas, and Geothermal Resources
605 Wake Avenue, Suite 7
El Centro, CA 92243
E-mail: mwoods@constrv.ca.gov
Telephone (760) 353-9900
Fax (760) 353-9594

Elizabeth Johnson (backup)
Department of Conservation
Division of Oil, Gas, and Geothermal Resources
801 K Street, MS 20-20
Sacramento, CA 95814
E-mail: ljohnson@constrv.ca.gov
Telephone (916) 323-1786
Fax (916) 323-0424

REQUESTS FOR DOCUMENTS AND ADDITIONAL INFORMATION

Requests for copies of the proposed text of the regulations, the initial statement of reasons, and questions concerning the proposed adoption of these regulations should be directed to:

Michael Woods
Department of Conservation
Division of Oil, Gas, and Geothermal Resources
605 Wake Avenue, Suite 7
El Centro, CA 92243
E-mail: mwoods@constrv.ca.gov
Telephone (760) 353-9900
Fax (760) 353-9594

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Division will have the entire rulemaking file available for inspection and copying throughout the ru-

lemaking process on its website (www.conservation.ca.gov) and at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy of the Final Statement of Reasons will be available once it has been prepared. Copies may be obtained by contacting the Division at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public review period and the hearing, the Division may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the original proposed text, the modified text will be made available to the public for at least 15 days prior to the date on which the Division adopts the regulations. Requests for the modified regulations, if any, can be made by contacting the Division at the address and phone number listed above. The Division will accept written comments on the modified text for 15 days after the date on which they are made available.

FINAL STATEMENT OF REASONS

Following the public review period, the Division will have the Final Statement of Reasons available for the public on its website (www.conservation.ca.gov) and at its office at the above address. Copies may be obtained by contacting the Division at the address or phone number listed above.

TITLE 14. FISH AND GAME COMMISSION

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203.1, 205(c), 219, 220, 1590, 1591, 2860, 2861, and 6750, Fish and Game Code; and sections 36725(a) and 36725(e), Public Resources Code and to implement, interpret or make specific sections 200, 202, 203.1, 205(c), 219, 220, 1580, 1583, 2861, 5521, 6653, 8420(e), and 8500, Fish and Game Code; and sections 36700(e), 36710(e), 36725(a) and 36725(e), Public Resources Code, proposes to amend Section 632, Title 14, California Code of Regulations, relating to Marine Protected Areas.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The Marine Life Management Act (MLMA, Stats. 1998, ch. 1052) created a broad programmatic framework for managing fisheries through a variety of conservation measures, including Marine Protected Areas (MPAs). The Marine Life Protection Act (MLPA, Stats. 1999, ch. 1015) established a programmatic framework for designating such MPAs in the form of a statewide network. AB 2800 (Stats. 2000, ch. 385) enacted the Marine Managed Areas Improvement Act (MMAIA), among other things, to standardize the designation of Marine Managed Areas (MMAs), which include MPAs. The overriding goal of these acts is to ensure the conservation, sustainable use, and restoration of California's marine resources. Unlike previous laws, which focused on individual species, the acts focus on maintaining the health of marine ecosystems and biodiversity in order to sustain resources.

The proposed regulation change is intended to meet the goals described in the Marine Life Protection Act (MLPA, Stats. 1999, ch. 1015) within a portion of California's State waters. The area covered in this proposal is the north central coast region, defined as State waters between Alder Creek, near Point Arena (Mendocino County) and Pigeon Point (San Mateo County). The MLPA goals address an overall concept of ecosystem-based management and the intent to improve upon California's existing array of marine protected areas (MPAs). The MLPA specifically requires that the Department of Fish and Game (Department) prepare a master plan and that the Fish and Game Commission (Commission) adopt regulations based on the plan to achieve the MLPA goals. These goals are:

- To protect the natural diversity and abundance of marine life, and the structure, function, and integrity of marine ecosystems.
- To help sustain, conserve, and protect marine life populations, including those of economic value, and rebuild those that are depleted.
- To improve recreational, educational, and study opportunities provided by marine ecosystems that are subject to minimal human disturbance, and to manage these uses in a manner consistent with protecting biodiversity.
- To protect marine natural heritage, including protection of representative and unique marine life habitats in California waters for their intrinsic value.
- To ensure that California's MPAs have clearly defined objectives, effective management measures, and adequate enforcement, and are based on sound scientific guidelines.

- To ensure that the State's MPAs are designed and managed, to the extent possible, as a network.

The Network Concept:

Important in developing the proposed regulation was the consideration for the north central coast MPAs to form a component of a statewide network. By definition in the MLPA, a network is applied to a biogeographical region. The revised draft Master Plan for MPAs adopted by the Commission recognizes two biogeographical regions in California, with a boundary at Point Conception. The biological network concept calls for connectivity between MPAs through adult movements and larval transport of the species most likely to benefit from establishing MPAs. This includes marine plants, sedentary fishes and invertebrates, and species which are not highly mobile or migratory. This approach is consistent with the guidance provided in the MLPA [Fish and Game Code subsection 2853(b)(6)]. Networks may also be connected through consistency in the method of establishment, goals, objectives, and management and enforcement measures.

The proposed regulation establishes a network component of MPAs designed to include all representative north central coast habitats and major oceanic conditions. Unique and critical habitats were considered separately to guarantee both representation and protection.

From an ecological perspective, the proposed regulation creates a network component of MPAs consistent with the goals of the MLPA. From an economic and social perspective, the proposed regulation attempts to minimize potential negative socio-economic impacts and optimize potential positive socio-economic impacts for all users, to the extent possible.

Implementation of the Marine Life Protection Act in the North Central Coast Region: Existing regulations (the no-project alternative) provide for 13 MPAs covering an area of approximately 26.8 square miles, representing approximately 3.5 percent of state waters within the north central coast region. Of this, less than one percent of the area is within no-take state marine reserves covering approximately 0.3 square miles or approximately 0.1 percent of state waters within the north central coast region.

The proposed regulations (the Commission preferred alternative, i.e., the Integrated Preferred Alternative), along with alternatives 2 and 3, include one or more areas recommended by stakeholders as new state marine parks. However, because the Commission does not have statutory authority to establish state marine parks, the proposed regulation designates these areas as state marine conservation areas. These areas can later be designated as marine parks at the discretion of the Parks and Recreation Commission. The proposed regulations also remove or retain, re-designate and redesign certain

MPAs previously classified as state marine parks to an appropriate MPA designation consistent with the MMAIA. These retained areas can later be designated as marine parks at the discretion of the Parks and Recreation Commission.

The Commission's preferred alternative includes a state marine recreational management area (SMRMA) in Russian River, Estero Americana, and Estero de San Antonio, to allow for continued waterfowl hunting where it traditionally occurred, while providing SMR-like protection subtidally. SMRMAs were recommended by the Department, to the NCCRSO and BRTF in its feasibility guidance and evaluations of MPA proposals, as the appropriate designation for proposed SMRs in estuarine areas where waterfowl hunting is currently allowed. This recommendation was to allow for continued waterfowl hunting while providing SMR-like protection subtidally. The BRTF, in its development of the Integrated Preferred Alternative (IPA), applied the Department's designation recommendation and used a SMRMA designation for Estero Americana and Estero de San Antonio, two estuaries where waterfowl hunting was known to occur. The BRTF did not use this designation for the proposed Russian River SMR due to Department understanding that development had precluded waterfowl hunting along the estuary. Subsequent to BRTF submission of the IPA to the Commission, the Department became aware that waterfowl hunting did occur in a portion of the proposed Russian River SMR. Therefore, for the proposed regulation contained herein, and consistent with BRTF intention to follow Department guidance, the designation was changed to a SMRMA for Russian River.

One of the three alternatives (alternative 2) to the proposed regulation includes proposed SMRMAs in three locations where waterfowl hunting traditionally occurs. This includes Russian River estuary, Estero Americana, and Estero de San Antonio. The remaining two alternatives to the proposed regulation propose SMRs where waterfowl hunting traditionally occurs. This includes Russian River estuary, Estero Americana and Estero de San Antonio in alternatives 1 and 3, and Tomales Bay in alternative 3. In Department feasibility guidance and evaluations of MPA proposals provided to the NCCRSO in crafting these alternatives, the Department recommended proposed SMRs in estuarine areas where waterfowl hunting is currently allowed to be re-designated as SMRMAs to account for waterfowl hunting while providing SMR-like protection subtidally. These

recommendations were applied by NCCRSO members to alternative 2. However, NCCRSO members that crafted alternatives 1 and 3 chose to focus only on MPA designations and to defer to the Commission for consideration of other MMA designations that account for existing activities outside MLPA. To facilitate the Commission's consideration of this deferred decision, an option is provided in alternatives 1 and 3 to assign a SMRMA designation in these locations.

Special closures were used in areas of significant importance to seabirds and marine mammals as part of the marine ecosystem. This special closure category works in conjunction with the MPA designation process and was used to provide further protections that would not otherwise be afforded by MPA designation within the same geographical location. This includes minimizing disturbance of seabirds and marine mammals at nesting, roosting, and haul-out sites, through special restrictions on boating and access in areas generally smaller than MPAs, either within an MPA or outside. Four to six special closures are proposed in the Commission's preferred proposal and alternatives (Attachment 11).

PROPOSED REGULATION

Integrated Preferred Alternative (IPA) — The proposed regulation, also known as the Integrated Preferred Alternative (IPA) includes a total of 21 MPAs, three marine managed areas (SMRMAs) for the north central coast region (Table 1, Figure 1, and Attachment 2) and seven special closures (four along mainland; cluster of three at Farallon Islands; Attachment 11). Ten existing MPAs are included and/or have been expanded. Although the proposed regulation contains 21 new MPAs, 15 are directly adjacent to, or include portions of, existing MPAs and can be considered expansions of the area. In these 15 cases, the incorporation and/or additional expansion are within a marine protected area with some allowed take. Thus, the proposed regulation includes 9 MPAs that are in geographical areas previously not designated as MPAs. One proposed SMR provides sub-options for alternate names: Option 1) "Montara" refers to the adjacent geography, and Option 2) "Fitzgerald" is the locally-popular historic name of the existing intertidal MPA proposed for expansion in the IPA. There is no other difference between the sub-options.

Table 1. Proposed regulation (Integrated Preferred Alternative) for marine protected areas, marine managed areas and special closures in the north central coast, including proposed allowed take and Science Advisory Team (SAT) assigned level of protection. Areas arranged geographically from north to south.

MPA Name	Proposed Allowed Take	SAT level of protection¹
*Point Arena State Marine Reserve	Take of all living marine resources is prohibited	Very High
*Point Arena State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT the recreational take of salmon by trolling and the commercial take of salmon with troll fishing gear	High
*Sea Lion Cove State Marine Conservation Area	The recreational and commercial take of all marine invertebrates and marine aquatic plants is prohibited. Take of all other species is allowed	Mod–low
Saunders Reef State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of salmon by trolling 2. The commercial take of salmon with troll fishing gear, and urchin	Mod–low
Del Mar Landing State Marine Reserve	Take of all living marine resources is prohibited	Very High
*Stewarts Point State Marine Reserve	Take of all living marine resources is prohibited	Very High
Salt Point State Marine Conservation Area ²	Take of all living marine resources is prohibited EXCEPT: the recreational take of abalone and finfish ⁴	Moderate–low
Gerstle Cove State Marine Reserve	Take of all living marine resources is prohibited	Very High
*Russian River State Marine Recreational Management Area	Take of all living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
*Russian River State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of Dungeness crab by trap, and surf smelt by hand–held dip net or beach net. 2. The commercial take of Dungeness crab by trap	Moderate
Bodega Head State Marine Reserve	Take of all living marine resources is prohibited	Very High
Bodega Head State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of pelagic finfish ³ by trolling, Dungeness crab by trap and market squid by hand–held dip net 2. The commercial take of pelagic finfish ³ with troll fishing gear or round haul net, Dungeness crab by trap, and market squid by round haul net	Mod–high
*Estero Americano State Marine Recreational Management Area	Take of all living marine resources is prohibited EXCEPT: the recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
*Estero de San Antonio State	Take of all living marine resources is prohibited EXCEPT: the recreational hunting of waterfowl	Very High

MPA Name	Proposed Allowed Take	SAT level of protection ¹
Marine Recreational Management Area Point Reyes State Marine Reserve	is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552) Take of all living marine resources is prohibited	Very High
Point Reyes State Marine Conservation Area	Take of all living marine resources is prohibited, EXCEPT: 1. The recreational take of salmon by trolling, and Dungeness crab by trap 2. The commercial take of salmon with trolling gear, and Dungeness crab by trap	Mod-high
*Estero de Limantour State Marine Reserve	Take of all living marine resources is prohibited	Very High
Drakes Estero State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of clams 2. The commercial aquaculture of shellfish pursuant to a valid State Water Bottom Lease and stocking permit	Low
Duxbury Reef State Marine Conservation Area ²	Take of all living marine resources is prohibited EXCEPT: the recreational take of finfish ⁴ from shore only, and the recreational take of abalone	Moderate
^Option 1: Montara State Marine Reserve	Take of all living marine resources is prohibited	Very High
^Option 2: Fitzgerald State Marine Reserve	Take of all living marine resources is prohibited	Very High
Pillar Point State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of pelagic finfish ³ by trolling, Dungeness crab by trap and market squid by hand-held dip net 2. The commercial take of pelagic finfish ³ with troll fishing gear or round haul net, Dungeness crab by trap and market squid by round haul net	Mod-high
North Farallon Islands State Marine Reserve	Take of all living marine resources is prohibited	Very high
Southeast Farallon Island State Marine Reserve	Take of all living marine resources is prohibited	Very high
Southeast Farallon Island State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of salmon by trolling and the commercial take of salmon with troll fishing gear	High
Special Closures		
Point Reyes Headlands Special Closure	1000 ft closure; year round	
Point Resistance Rock Special Closure	300 ft closure; year round	
Double Point/	300 ft closure; year round	

MPA Name	Proposed Allowed Take	SAT level of protection ¹
Stormy Stack Rock Special Closure North Farallon Islands Special Closure	1000 ft closure at North Farallon Island and 300 ft closure at the southern islets including the isle of St. James; year round.	
Southeast Farallon Island Special Closure	Boating restrictions and fishing activity modifications to reduce noise within 1 mile of all islands: 5 mph speed limit within 1000 feet of all islands; year round 300 ft closure at Southeast Farallon Island, except Fisherman’s Bay and East Landing; year round except for a seasonal closure on the southeast side of Saddle (Seal) Rock, from Dec 1 to Sep 14. Boating restrictions within 1 mile of all islands; 5 mph speed limit within 1000 feet of Southeast Farallon Island, fishing activity modifications to reduce noise; year round	
Egg (Devil’s Slide) Rock to Devil’s Slide Special Closure	300 ft closure around island rocks and no transit in area between Egg (Devil’s Slide) Rock and mainland; year round	

*New MPAs that are not direct expansion of an existing area.

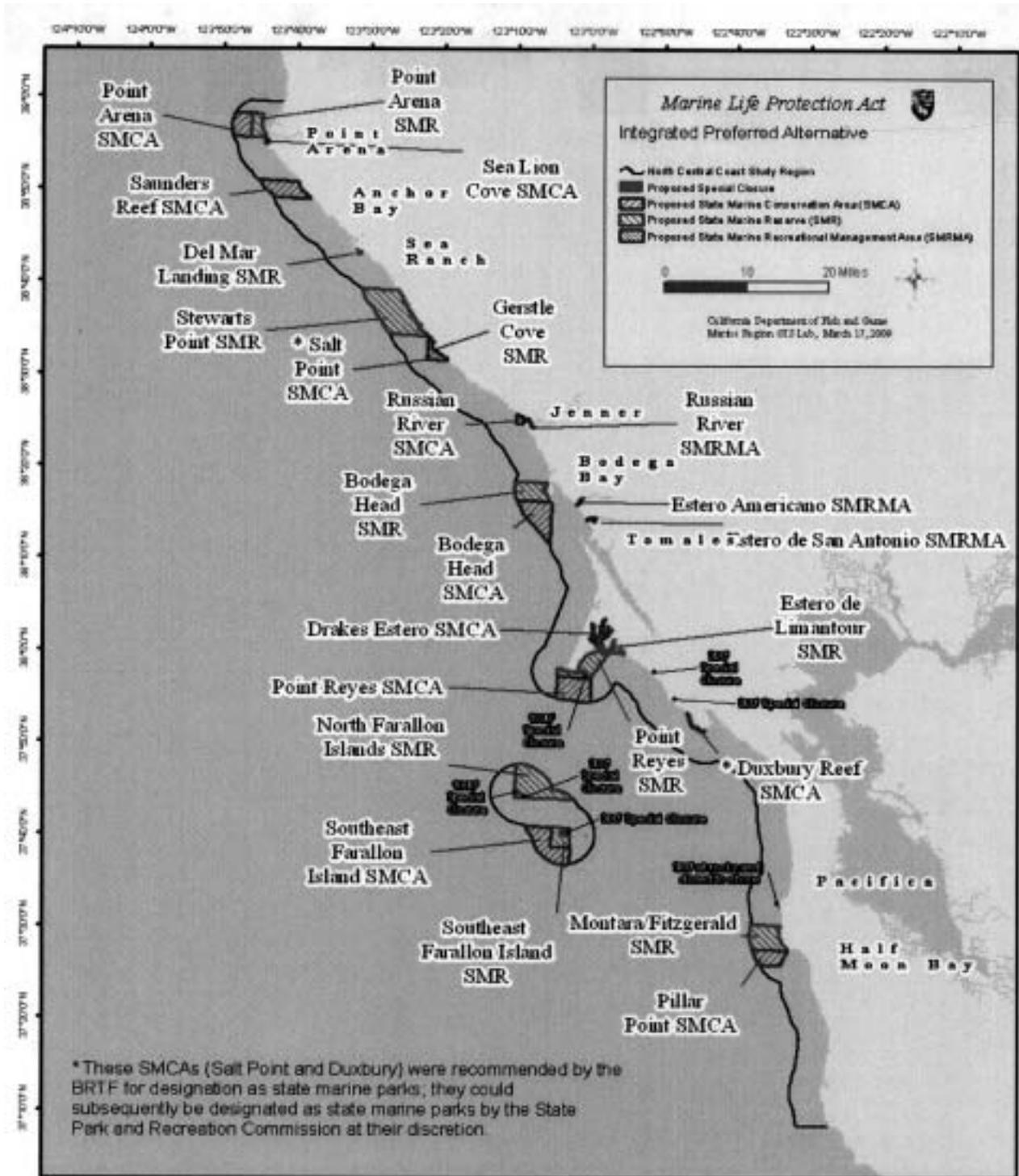
[^] Sub-option exists for retaining the historic name of Fitzgerald, or the geographic reference of Montara.

¹ In order to analyze the differences between no-take reserves and limited take conservation areas and recommended parks, the SAT developed a ranking for level of protection described in the Master Plan based on impact of allowed uses on ecological and ecosystem structure. Levels of protection are modified for each study region for evaluation purposes; and are appended to the Master Plan upon adoption of MPA proposals (Attachment 10).

² These areas, recommended by stakeholders to become state marine parks, will be designated as state marine conservation areas, and could subsequently be designated as state marine parks at the discretion of the State Park and Recreation Commission.

³ Pelagic Finfish are defined in subsection 632(a)(3) as: northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena* spp.), billfishes* (family Istiophoridae), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasii*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus* spp.), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias* spp.), swordfish (*Xiphias glathus*), tunas (family Scombridae), and yellowtail (*Seriola lalandi*). *Marlin is not allowed for commercial take.

⁴ Finfish are defined in subsection 632(a)(2) as: any species of bony fish or cartilaginous fish (sharks, skates and rays). Finfish do not include amphibians, invertebrates, plants or algae. The definition of finfish provided in Section 159 does not apply to this Section.



North Central Coast Study Region

California Fish and Game Commission Preferred Alternative

This marine protected area (MPA) proposal was selected on June 11, 2008 by the California Fish and Game Commission (CFG) as its preferred alternative. This proposal integrates elements from three proposals developed by the North Central Coast Regional Stakeholder Group (NCCSRG) (proposals 1-3, 2-XA, and 4). These NCCSRG proposals were selected in their entirety as CFG alternatives 1, 2, and 3. Further information on each MPA proposal can be found in the associated text document with the same MPA proposal name.



Figure 1. Marine protected areas in the proposed regulation (Integrated Preferred Alternative)

The 21 MPAs and three marine managed areas in the proposed regulation cover an area of approximately 153.3 square miles, representing approximately 20.1 percent of state waters within the north central coast region (Figure 2, Attachment 3). Of this, more than half the area is within no-take state marine reserves covering approximately 85.8 square miles or approximately 11.2 percent of state waters within the north central coast region (Figure 2). The remaining areas are primarily state marine conservation areas. Two of these SMCAs (Salt Point and Duxbury) were recommended for designation as state marine parks with restrictions

consistent with this designation, and could subsequently be designated as state marine parks at the discretion of the State Park and Recreation Commission. Many of the SMCAs allow the take of either all pelagic finfish (defined above) or salmon and were considered by the SAT to offer high ecosystem protection (Figure 3). In some state marine conservation areas, take of other species such as squid, abalone and urchin, are also allowed. With a few exceptions, the state marine conservation areas protect benthic fishes and invertebrates most likely to benefit from area protection.

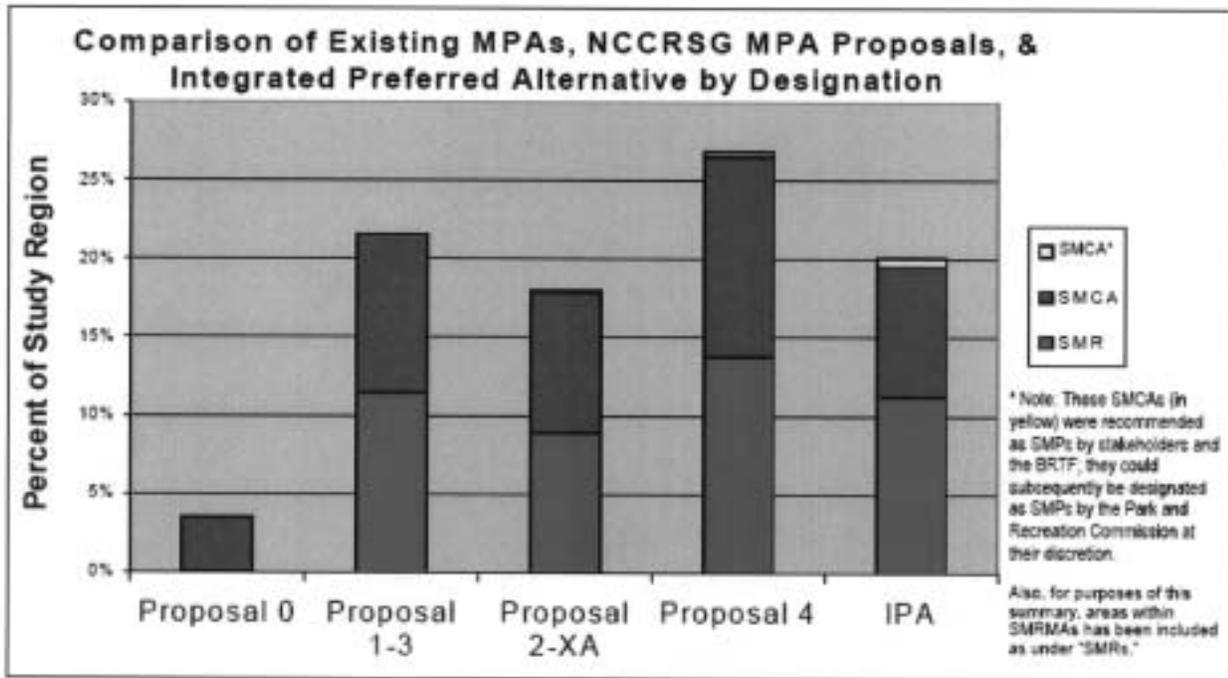


Figure 2. Percent of the north central coast study region included in the proposed regulation (Integrated Preferred Alternative) as compared to existing MPAs in the No-Project Alternative (Proposal 0) and alternative proposals [alternative 1 (Proposals 1-3), alternative 2 (Proposal 2-XA), alternative 3 (Proposal 4) and the IPA]. SMP = state marine park, SMCA = state marine conservation area, and SMR = state marine reserve. Note that two state recreational management areas (Estero Americano and Estero de San Antonio) are included in the calculations as SMRs based on their relative level of protection. Note that SMCAs represented in yellow were recommended as SMPs by stakeholders and the BRTF. While they would be adopted as SMCAs, they could be subsequently designated also as SMPs by the Park and Recreation Commission at their discretion.

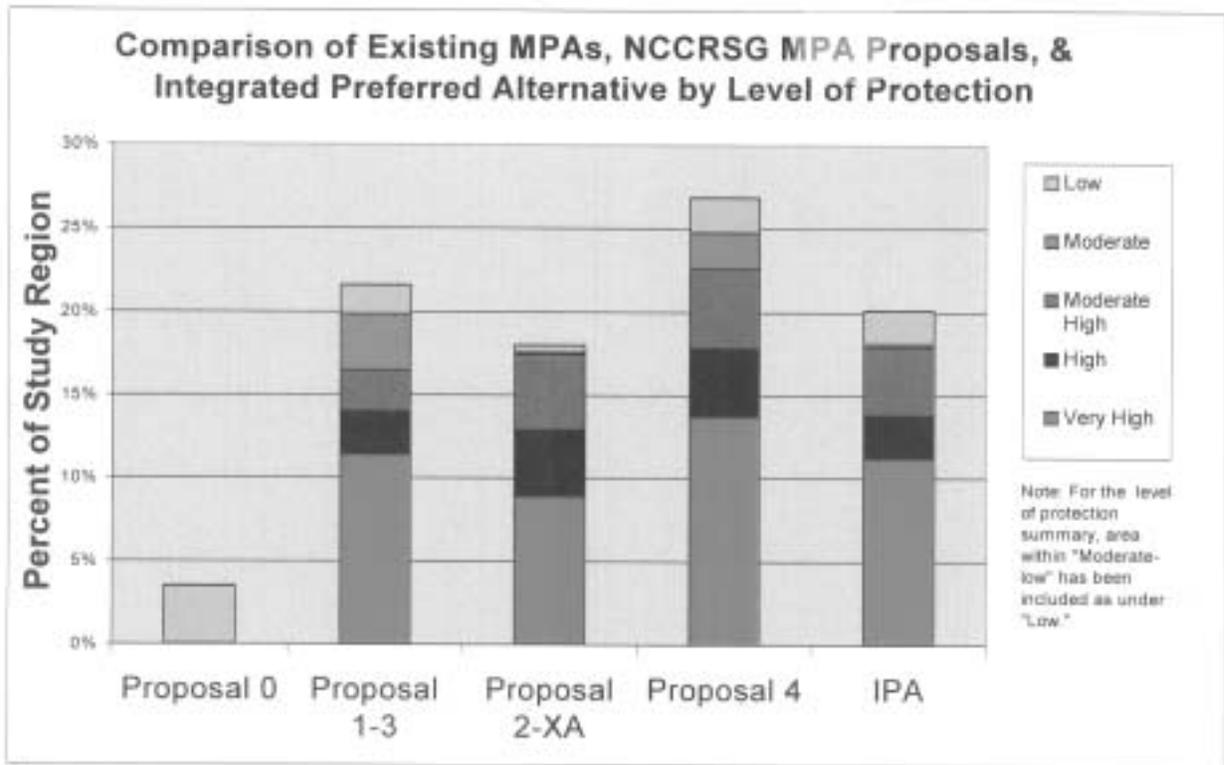


Figure 3. Percent of the north central coast study region included in the proposed regulation (Integrated Preferred Alternative) as compared to existing MPAs in the No-Project Alternative (Proposal 0) and alternative proposals [alternative 1 (Proposals 1-3), alternative 2 (Proposal 2-XA), alternative 3 (Proposal 4) and the IPA]. Level of protection (LOP) is noted as defined by the SAT in the Master Plan as modified by the SAT for refined evaluations of north central coast proposals. LOP rankings used for the north central coast will be appended to the Master Plan upon adoption of regulations. Note that two state marine recreational management areas (Estero Americano and Estero de San Antonio) are included in the calculations as SMRs based on their relative level of protection.

ALTERNATIVES

Alternative 1 — This is the North Central Coast Regional Stakeholder Group (NCCRSO) “Proposal 1-3”, developed within RSG workgroups by constituents representing a variety of consumptive, non-consumptive, and environmental interests. It consists of 23 MPAs, with the sub-option three MPAs become marine management areas (SMRMAs) covering an area of approxi-

mately 164.6 square miles, representing approximately 21.6 percent of state waters within the north central coast region (Table 3 and attachments 3, 4, and 5) and seven special closures. Of this, over one half of the area is within no-take state marine reserves covering approximately 87.2 square miles or approximately 11.4 percent of state waters within the north central coast region (Figure 2).

Table 3. Alternative 1 proposal for marine protected areas, marine managed areas and special closures in the north central coast, including proposed allowed take and SAT assigned level of protection. Areas arranged geographically from north to south.

MPA Name	Proposed Allowed Take	SAT level of protection¹
Point Arena State Marine Reserve	Take of all living marine resources is prohibited	Very High
Point Arena State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of salmon by trolling and commercial take of salmon with troll fishing gear	High
Saunders Reef State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of salmon by trolling, abalone, and finfish ² by hook and line or by spear from shore only 2. The commercial take of salmon with troll fishing gear, and urchin	Mod–low
Del Mar Landing State Marine Conservation Area ⁵	Take of all living marine resources is prohibited EXCEPT: the recreational take of finfish ² by hook and line or spear	Mod–low
Rocky Pt to Horseshoe Pt State Marine Reserve	Take of all living marine resources is prohibited	Very High
Gerstle Cove State Marine Reserve	Take of all living marine resources is prohibited	Very High
^Russian River Option 1: State Marine Reserve	Take of all living marine resources is prohibited	Very High
^Russian River Option 2: State Marine Recreational Management Area	Take of all living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
Russian River State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of Dungeness crab by trap, and surf smelt by hand–held dip net or beach net 2. The commercial take of Dungeness crab by trap	Moderate
Bodega Head State Marine Reserve	Take of all living marine resources is prohibited	Very High
Bodega Head State Marine Conservation Area	Take of all living marine resources is prohibited, EXCEPT: the recreational take of pelagic finfish ³ by hook and line except for recreational salmon take by trolling, and Dungeness crab by trap; and the commercial take of pelagic finfish ³ by troll fishing gear and Dungeness crab by trap.	Mod–high
^Estero Americano Option 1: State Marine Reserve	Take of all living marine resources is prohibited	Very High
^Estero Americano Option 2: State Marine Recreational Management Area	Take of all living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High

MPA Name	Proposed Allowed Take	SAT level of protection ¹
^Estero de San Antonio Option 1: State Marine Reserve	Take of all living marine resources is prohibited	Very High
^Estero de San Antonio Option 2: State Marine Recreational Management Area	Take of all living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
Point Reyes State Marine Reserve	Take of all living marine resources is prohibited	Very High
Point Reyes State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of salmon by trolling, and Dungeness crab by trap 2. The commercial take of salmon with troll fishing gear, and Dungeness crab by trap	Mod-high
Drakes Estero/Estero de Limantour State Marine Reserve	Take of all living marine resources is prohibited	Very High
Drakes Estero State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of clams 2. The commercial aquaculture of shellfish pursuant to a valid State Water Bottom Lease and stocking permit	Low
Double Point State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational and commercial take of salmon, Dungeness crab by trap, halibut by hook and line, and coastal pelagic species ⁴ except market squid by hook and line	Moderate
Duxbury Reef State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of finfish ² by hook and line from shore only	Moderate
Fitzgerald State Marine Reserve	Take of all living marine resources is prohibited	Very High
Montara State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of salmon by trolling, Dungeness crab by trap, coastal pelagic species and halibut by hook and line 2. The commercial take of salmon with troll fishing gear, Dungeness crab by trap, and coastal pelagic species and halibut by hook and line	Moderate
North Farallon Islands State Marine Reserve	Take of all living marine resources is prohibited	Very High
Southeast Farallon Island State Marine Reserve	Take of all living marine resources is prohibited	Very High
Southeast Farallon Island State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of salmon by trolling and commercial take of salmon with troll fishing gear	High

MPA Name	Proposed Allowed Take	SAT level of protection ¹
Special Closures		
Point Reyes Headlands Special Closure	1000 ft closure; year round	
Point Resistance Rock Special Closure	500 ft closure; year round	
Double Point/ Stormy Stack Rock Special Closure	300 ft closure; year round	
North Farallon Islands Special Closure	1000 ft closure at North Farallon Island and 300 ft closure at the southern islets including the Isle of St. James; year round.	
Southeast Farallon Island Special Closure	Boating restrictions and fishing activity modifications to reduce noise within 1 mile of all islands: 5 mph speed limit within 1000 feet of all islands; year round 300 ft closure at Southeast Farallon Island, except Fisherman’s Bay and East Landing; year round except for a seasonal closure on the southeast side of Saddle (Seal) Rock, from Dec 1 to Sep 14.	
Egg (Devil’s Slide) Rock Special Closure Bean Hollow Special Closure	Boating restrictions within one mile of all islands; five mph speed limit within 1000 feet of Southeast Farallon Island, fishing activity modifications to reduce noise; year round 1000 ft closure from any shoreline of the three rocks; year round 300 ft closure; seasonal (Feb–Aug)	

¹ Options exist for designation as a state marine reserve, or as a state marine recreational management area to allow recreational hunting of waterfowl to continue (sections 502, 550, 551, and 552).

² In order to analyze the differences between no-take reserves and limited take conservation areas and recommended parks, the SAT developed a ranking for level of protection described in the Master Plan based on impact of allowed uses on ecological and ecosystem structure. Levels of protection are modified for each study region for evaluation purposes; and are appended to the Master Plan upon adoption of MPA proposals (Attachment 10).

³ Pelagic Finfish are defined in subsection 632(a)(3) as: northern anchovy (*Engraulis mordax*), barracudas (*Sphyrna* spp.), billfishes* (family Istiophoridae), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasii*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus* spp.), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias* spp.), swordfish (*Xiphias gladius*), tunas (family Scombridae), and yellowtail (*Seriola lalandi*). *Marlin is not allowed for commercial take.

⁴ Finfish are defined in subsection 632(a)(2) as: any species of bony fish or cartilaginous fish (sharks, skates and rays). Finfish do not include amphibians, invertebrates, plants or algae. The definition of finfish provided in Section 159 does not apply to this Section.

⁵ Coastal Pelagic Species are defined in Section 1.39 as: northern anchovy (*Engraulis mordax*), Pacific sardine (*Sardinops sagax*), Pacific mackerel (*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*).

⁶ These areas, recommended by stakeholders as state marine parks, will be designated as state marine conservation areas, and could subsequently be designated as state marine parks at the discretion of the State Park and Recreation Commission.

Alternative 2 — This is the “NCCRSR Proposal 2–XA”, developed both in RSG workgroups and groups external to the RSG process, by constituents representing commercial and recreational fishing interests along the north central coast. It consists of 18 MPAs and three marine managed areas (SMRMAs) covering an area of approximately 137.2 square miles, representing

approximately 18.0 percent of state waters within the north central coast region (Table 4 and attachments 3, 4, and 6), and five special closures. Of this, approximately half of the area is within no-take state marine reserves covering approximately 68.1 square miles or approximately 8.9 percent of state waters within the north central coast region (Figure 2).

Table 4. Alternative 2 proposal for marine protected areas, marine managed areas and special closures in the north central coast, including proposed allowed take and SAT assigned level of protection. Areas arranged geographically from north to south.

MPA Name	Proposed Allowed Take	SAT level of protection¹
Pt Arena State Marine Reserve	Take of all living marine resources is prohibited	Very High
Pt Arena State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of pelagic finfish ³ by hook and line (salmon by trolling only) and commercial take of pelagic finfish ³ by hook and line (salmon by troll fishing gear only), and coastal pelagic species ⁴ except market squid, by round haul net	High
Black Point State Marine Reserve	Take of all living marine resources is prohibited	Very High
Black Point State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of pelagic finfish ³ by hook and line (salmon by trolling only), and commercial take of pelagic finfish ³ by hook and line (salmon by troll fishing gear only), and coastal pelagic species ⁴ except market squid, by round haul net	High
Gerstle Cove State Marine Reserve	Take of all living marine resources is prohibited	Very High
Russian River Estuary State Marine Recreational Management Area	Take of all living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
Russian River State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of marine invertebrates and finfish ⁵ except for Chinook salmon 2. The commercial take of marine invertebrates except for abalone, and finfish ⁵ except for Chinook salmon	Low
Bodega Head State Marine Reserve	Take of all living marine resources is prohibited	Very High
Bodega Head State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of pelagic finfish ³ by trolling, Dungeness crab by trap, and market squid by hand-held dip net 2. The commercial take of pelagic finfish ³ by troll fishing gear or round haul net, Dungeness crab by trap, and market squid by round haul net	Mod-high
Estero Americano State Marine Recreational Management Area	Take of all living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
Estero de San Antonio State Marine Recreational Management Area	All take of living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
Point Reyes Headlands State Marine Reserve	Take of all living marine resources is prohibited	Very High

MPA Name	Proposed Allowed Take	SAT level of protection ¹
Point Reyes Headlands State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of pelagic finfish ³ by hook and line (salmon by trolling only), and Dungeness crab by trap 2. The commercial take of pelagic finfish ³ by hook and line (salmon with troll fishing gear only), coastal pelagic species ⁴ by round haul net, and Dungeness crab by trap	Mod-high
Estero de Limantour State Maine Reserve	Take of all living marine resources is prohibited	Very High
Drakes Estero State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of clams 2. The commercial aquaculture of shellfish pursuant to a valid State Water Bottom Lease and stocking permit	Low
Duxbury State Marine Conservation Area ²	Take of all living marine resources is prohibited EXCEPT: the recreational take of finfish ⁵ from shore only, and the recreational take of abalone	Moderate
Montara State Marine Reserve	Take of all living marine resources is prohibited	Very High
Pillar Point State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of pelagic finfish ³ by trolling, Dungeness crab by trap, and market squid by hand-held dip net 2. The commercial take of pelagic finfish ³ with troll fishing gear or round haul net, Dungeness crab by trap and market squid by round haul net	Mod-high
North Farallon Islands State Marine Reserve	Take of all living marine resources is prohibited	Very High
Southeast Farallon Island State Marine Reserve	Take of all living marine resources is prohibited	Very High
Southeast Farallon Island State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of pelagic finfish ³ by hook and line (except for salmon by trolling only) and coastal pelagic species ⁴ except for market squid by hook and line 2. The commercial take of pelagic finfish ³ by hook and line (except for salmon with troll fishing gear only) and coastal pelagic species ⁴ except market squid, by round haul net	High
Special Closures Point Resistance Rock Special Closure Double Point/Stormy Stack Rock Special Closure	300 ft closure; year round 300 ft closure; year round	

MPA Name	Proposed Allowed Take	SAT level of protection ¹
North Farallon Islands Special Closure	300 ft closure at North Farallon Island, and southern islets including the Isle of St. James; year round.	
	Boating restrictions and fishing activity modifications to reduce noise within 1 mile of all islands: 5 mph speed limit within 1000 feet of all islands; year round 300 ft closure at Southeast Farallon Island, except between Fisherman’s Bay and East Landing; year-round.	
Southeast Farallon Island Special Closure	Boating restrictions within one mile of all islands; five mph speed limit within 1000 feet of Southeast Farallon Island, fishing activity modifications to reduce noise; year round	
Egg (Devil’s Slide) Rock Special Closure	300 ft closure from any shoreline of the three rocks; year round	

¹ In order to analyze the differences between no-take reserves and limited take conservation areas and recommended parks, the SAT developed a ranking for level of protection described in the Master Plan based on impact of allowed uses on ecological and ecosystem structure. Levels of protection are modified for each study region for evaluation purposes; and are appended to the Master Plan upon adoption of MPA proposals (Attachment 10).

² These areas, recommended by stakeholders to become state marine parks, will be designated as state marine conservation areas, and could subsequently be designated as state marine parks at the discretion of the State Park and Recreation Commission.

³ Pelagic Finfish are defined in subsection 632(a)(3) as: northern anchovy (*Engraulis mordax*), barracudas (*Sphyraena* spp.), billfishes* (family Istiophoridae), dolphinfish (*Coryphaena hippurus*), Pacific herring (*Clupea pallasii*), jack mackerel (*Trachurus symmetricus*), Pacific mackerel (*Scomber japonicus*), salmon (*Oncorhynchus* spp.), Pacific sardine (*Sardinops sagax*), blue shark (*Prionace glauca*), salmon shark (*Lamna ditropis*), shortfin mako shark (*Isurus oxyrinchus*), thresher sharks (*Alopias* spp.), swordfish (*Xiphias gladius*), tunas (family Scombridae), and yellowtail (*Seriola lalandi*). *Marlin is not allowed for commercial take.

⁴ Coastal Pelagic Species are defined in Section 1.39 as: northern anchovy (*Engraulis mordax*), Pacific sardine (*Sardinops sagax*), Pacific mackerel (*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*).

⁵ Finfish are defined in subsection 632(a)(2) as: any species of bony fish or cartilaginous fish (sharks, skates and rays). Finfish do not include amphibians, invertebrates, plants or algae. The definition of Finfish provided in Section 159 does not apply to this Section.

Alternative 3 — This is the NCCRSR “Proposal 4,” developed within RSG workgroups by constituents primarily representing non-consumptive and environmental interests along the north central coast. It consists of 28 MPAs with the sub-option that three MPAs become marine managed areas (SMRMAs) covering an area of approximately 204.9 square miles, representing

approximately 26.9 percent of state waters within the north central coast region (Table 5 and attachments 3, 4, and 7) and seven special closures. Of this, more than half of the area is within no-take state marine reserves covering approximately 105.0 square miles or approximately 13.8 percent of state waters within the north central coast region (Figure 2).

Table 5. Alternative 3 proposal for marine protected areas, marine managed areas, and special closures in the north central coast, including proposed allowed take and Science Advisory Team (SAT) assigned level of protection. Areas arranged geographically from north to south.

MPA Name	Proposed Allowed Take	SAT level of protection ¹
Point Arena State Marine Reserve	Take of all living marine resources is prohibited	Very High
Point Arena State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of salmon by trolling only, and the commercial take of salmon with troll fishing gear only	High
Sea Lion Cove State Marine Conservation Area	Commercial and recreational take of marine invertebrates and marine aquatic plants is prohibited. Take of all other species is allowed	Mod-low

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MPA Name	Proposed Allowed Take	SAT level of protection ¹
Saunders Reef State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of salmon by trolling 2. The commercial take of salmon with troll fishing gear, and urchin	Mod–low
Del Mar Landing State Marine Reserve	Take of all living marine resources is prohibited	Very High
Stewarts Point State Marine Reserve	Take of all living marine resources is prohibited	Very High
Salt Point State Marine Conservation Area ²	Take of all living marine resources is prohibited EXCEPT: the recreational take of finfish ³ and abalone	Moderate–low
Gerstle Cove State Marine Reserve	Take of all living marine resources is prohibited	Very High
^Russian River Estuary Option 1: State Marine Reserve	Take of all living marine resources is prohibited	Very High
^Russian River Estuary Option 2: State Marine Recreational Management Area	Take of all living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
Russian River State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of Dungeness crab by trap, and surf smelt by hand–held dip net or beach net from shore only 2. The commercial take of Dungeness crab by trap	Very High
Bodega Head State Marine Reserve	Take of all living marine resources is prohibited	Very High
Bodega Head State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of salmon by trolling only and the commercial take of salmon with troll fishing gear only	High
^Estero Americano Option 1: State Marine Reserve	Take of all living marine resources is prohibited	Very High
^Estero Americano Option 2: State Marine Recreational Management Area	Take of all living marine resources is prohibited EXCEPT: recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
^Estero de San Antonio Option 1: State Marine Reserve	Take of all living marine resources is prohibited	Very High
^Estero de San Antonio Option 2: State Marine Recreational Management Area	Take of all living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
^Tomales Bay State Marine Reserve	Take of all living marine resources is prohibited	Very High

MPA Name	Proposed Allowed Take	SAT level of protection ¹
^Tomales Bay State Option 2: Marine Recreational Management Area	Take of all living marine resources is prohibited except recreational hunting of waterfowl is allowed unless otherwise restricted by hunting regulations (sections 502, 550, 551, and 552)	Very High
Point Reyes State Marine Reserve	Take of all living marine resources is prohibited	Very High
Point Reyes State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of salmon by trolling, and Dungeness crab by trap 2. The commercial take of salmon with troll fishing gear, and Dungeness crab by trap	Mod-High
Drakes Estero State Marine Reserve	Take of all living marine resources is prohibited	Very High
Drakes Estero State Marine Conservation Area	Take of all living marine resources is prohibited, EXCEPT: The commercial aquaculture of shellfish pursuant to a valid State Water Bottom Lease and stocking permit	Low
Double Point State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of salmon by trolling and the commercial take of salmon with troll fishing gear	Mod-High
Duxbury State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of salmon by trolling, Dungeness crab by trap, and finfish by hook and line from shore only 2. The commercial take of salmon with troll fishing gear, Dungeness crab by trap, and halibut	Moderate
Agate Beach Intertidal State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: 1. The recreational take of salmon by trolling, Dungeness crab by trap, and finfish by hook and line from shore only 2. The commercial take of salmon with troll fishing gear, Dungeness crab by trap, and halibut	Moderate
Devil's Slide State Marine Conservation Area	Take of all living marine resources is prohibited, EXCEPT: 1. The recreational take of salmon by trolling, Dungeness crab by trap, and coastal pelagic species by hook and line 2. The commercial take of salmon with troll fishing gear, Dungeness crab by trap, and coastal pelagic species by round haul net	Mod-High
Fitzgerald State Marine Reserve	Take of all living marine resources is prohibited	Very High
San Gregorio State Marine Reserve	Take of all living marine resources is prohibited	Very High
North Farallon Islands State Marine Reserve	Take of all living marine resources is prohibited	Very High
Southeast Farallon Island State Marine Reserve	Take of all living marine resources is prohibited	Very High

MPA Name	Proposed Allowed Take	SAT level of protection ¹
Southeast Farallon Island State Marine Conservation Area	Take of all living marine resources is prohibited EXCEPT: the recreational take of salmon by trolling and the commercial take of salmon with troll fishing gear	High
Special Closures		
Arched Rock Special Closure	300 ft closure; year round	
Gull Rock Special Closure	300 ft closure; year round	
Point Reyes Headlands Special Closure	1000 ft closure; year round	
Double Point/ Stormy Stack Rock Special Closure	300 ft closure; year round	
North Farallon Islands Special Closure	1000 ft closure around North Farallon Island and 300 ft closure around the southern islets including the Isle of St. James; year round.	
	Boating restrictions and fishing activity modifications to reduce noise within 1 mile of all islands: 5 mph speed limit within 1000 feet of all islands; year round 300 ft closure at Southeast Farallon Island, except Fisherman’s Bay and East Landing; year round except for a seasonal closure on the southeast side of Saddle (Seal) Rock, from Dec 1 to Sep 14.	
Southeast Farallon Island Special Closure	Boating restrictions within one mile of all islands; five mph speed limit within 1000 feet of Southeast Farallon Island, fishing activity modifications to reduce noise; year round	
Egg (Devil’s Slide) Rock Special Closure	1000 ft closure from any shoreline of the three rocks; year round	

¹ Sub-option exists for designation as a state marine reserve, or a state marine recreational management area to allow recreational hunting of waterfowl to continue (sections 502, 550, 551, and 552).

² In order to analyze the differences between no-take reserves and limited take conservation areas and recommended parks, the SAT developed a ranking for level of protection described in the Master Plan based on impact of allowed uses on ecological and ecosystem structure. Levels of protection are modified for each study region for evaluation purposes; and are appended to the Master Plan upon adoption of MPA proposals (Attachment 10).

³ These areas, recommended by stakeholders to become state marine parks, will be designated as state marine conservation areas, and could subsequently be designated as state marine parks at the discretion of the State Park and Recreation Commission.

⁴ Finfish are defined in subsection 632(a)(2) as: any species of bony fish or cartilaginous fish (sharks, skates and rays). Finfish do not include amphibians, invertebrates, plants or algae. The definition of finfish provided in Section 159 does not apply to this Section.

⁵ Coastal Pelagic Species are defined in Section 1.39 as: northern anchovy (*Engraulis mordax*), Pacific sardine (*Sardinops sagax*), Pacific mackerel (*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalescens*).

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 Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Thursday, May 14, 2009, at 8:30 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, relevant to this action at a hearing to be held in the Yolo Fli-

ers Club Ballroom, 17980 County Road 94B, Woodland, California, on Wednesday, August 5, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before July 31, 2009 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on August 3, 2009.** All com-

ments must be received no later than August 5, 2009, at the hearing in Woodland, CA. 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, John Carlson, Jr., 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 John Carlson, Jr., or Sherri Fonbuena at the preceding address or phone number. **Ms. Marija Vojkovich, Regional Manager, Department of Fish and Game, phone (805) 568–1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall 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. 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

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 regulation 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. Each alternative may have negative short–term impacts on commercial and recreational fishing businesses. The impacts presented here do not represent a complete socioeconomic impact analysis, but rather what is generally re-

ferred to as a Step 1 analysis or “maximum potential loss.” This analysis simply sums up the activity that currently takes place within a given alternative and translates these activities into corresponding economic values. Maximum potential loss does not take into account other management strategies/regulations and human behavioral changes, such as moving to other areas or changing fishing gear, that may mitigate, offset, or make matters better or worse. In addition, maximum potential loss does not consider possible future benefits.

The estimates of maximum potential impact shown here rely on the survey work and subsequent geographic information system (GIS) data analysis conducted by Ecotrust and reported in various documents to the SAT, RSG, and BRTE. Ecotrust interviewed fishermen to determine both location of fishing activities and the relative importance of each location. Ecotrust’s importance indices were combined with cost share information from secondary sources to measure the maximum potential impacts of prospective closures on expected net economic values from commercial fishing. The methodology used to determine maximum potential impacts for Alternatives 1, 2 and 3 as well as for the Proposed Regulation (IPA) are described in Attachment 8. The estimates of the maximum potential annual losses for the four alternatives considered here (in real 2006 dollars) are approximately: \$465,153 (Alternative 1); \$396,583 (Alternative 2); \$696,094 (Alternative 3) and \$525,865 (Proposed Regulation) (Table 6). These are relative to average annual real 2000–2006 baseline gross revenues of approximately \$15,889,359 and net economic values of about \$8,336,602. They represent maximum potential percentage reductions in net pre-MPA economic values of: 5.6 percent (Alternative 1); 4.8 percent (Alternative 2); 8.3 percent (Alternative 3) and 6.3 percent (Proposed Regulation) (Table 7).

It should be noted, however, that due to the methodology and need to maintain confidentiality of individual fishermen’s financial data, the average impacts across fisheries may not be representative of the true maximum potential impact to an individual and may underestimate the maximum potential impact to individuals.

That said, Ecotrust, as part of their assessment, was asked to provide summary information on any disproportionate impacts on individuals and/or particular fisheries. This was based on lessons learned in the central coast study region, where significant disproportionate impacts were only discovered in the implementation phase, leaving limited options to lessen these impacts.

Of note in the North Central Coast Study region proposed regulations are potential disproportionate impacts to fishing areas of stated importance for one fishery and three individual fishermen.

In Bodega Bay, the proposed regulation may experience a disproportionate impact on that fishery’s closest

and most valuable fishing grounds. Proposal IPA has a projected annual net economic impact there of \$64,000, or a 43 percent reduction in profits. By contrast, the overall estimated net economic impact for the entire study region was only 6.3 percent. However, it should be noted that sea urchin landings in Bodega Bay have dropped dramatically due to market conditions, though they appear to be improving. Average landings over the last 5 years (2004–2008) have dropped to just 2.7 percent of the average landings from the 5 preceding years. Projected impacts from the Ecotrust evaluation assume a fully recovered market and landings at past levels.

Regarding potential individual impacts, Ecotrust evaluation results also show that there are three commercial fishermen who may be substantially and disproportionately impacted.

One fisherman may be disproportionately impacted by all four proposals being considered. One hundred percent of the fisherman’s income comes from fishing and the estimated annual impact is:

- Proposal IPA: between 20–40% loss of ex–vessel revenue and > \$20K loss
- Alternative 1: between 20–40% loss of ex–vessel revenue and \$15K–\$20K loss
- Alternative 2: between 20–40% loss of ex–vessel revenue and \$15K–\$20K loss
- Alternative 3: between 40–60% loss of ex–vessel revenue and > \$20K loss

Additionally, two other individuals are estimated to be potentially disproportionately impacted by two proposals each.

Individual 1 (100% of income from fishing):

- Proposal 4: between 20–40% loss of ex–vessel revenue and > \$20K loss
- Proposal IPA: between 20–40% loss of ex–vessel revenue and > \$20K loss

Individual 2 (75% of income from fishing):

- Proposal 4: between 20–40% loss of ex–vessel revenue and \$15–20K loss
- Proposal IPA: between 20–40% loss of ex–vessel revenue and \$15–20K loss

For the commercial deeper nearshore and nearshore rockfish fisheries, Ecotrust also evaluated the additional impacts that potentially occur when considering the existing fishery management area closures and/or fishery exclusion zones, specifically the 2007 and 2008 Non–Trawl Rockfish Conservation Area (RCA) persistent closure (30 fm–150 fm) and the closure between the shoreline and 10 fm around the Farallon Islands (South-east Farallon Island, Middle Farallon Island, North Farallon Island, and Noon Day Rock). Ecotrust also considered the proposed 2009 Non–Trawl RCA persistent closure (20 fm–150 fm).

Of particular note is the estimated impact on Salinas deeper nearshore rockfish fishing grounds. Based on the 2008 RCA, 72.3 percent of the existing value (fishing grounds) was not available to the Bolinas rockfish fishermen and 81.8 percent is not available in 2009. Due to RCAs, just 20 percent of the original fishery value is available. Of the remaining 18.2 percent of their original deeper nearshore rockfish fishing grounds area, Proposal IPA will have an estimated 24 percent impact.

Table 6. Estimated annual maximum potential net economic value losses¹ relative to base scenario. NCCRSR proposal names are reflected in parentheses

Fishery	Alternative 1 (1–3) ²	Alternative 2 (2–XA) ²	Alternative 3 (4) ²	Proposed Regulation (IPA)
California Halibut	\$4,744	\$5,750	\$13,224	\$5,749
Coastal Pelagics	\$64	\$40	\$63	\$59
Squid	\$865	\$736	\$22,876	\$653
Deep Nearshore Rockfish	\$15,638	\$11,292	\$18,796	\$12,200
Nearshore Rockfish	\$21,510	\$11,285	\$26,703	\$22,514
Urchin	\$68,950	\$62,109	\$136,040	\$118,307
Dungeness Crab	\$218,139	\$193,574	\$331,896	\$232,494
Salmon	\$135,242	\$111,798	\$146,497	\$133,888
Total	\$465,153	\$396,583	\$696,094	\$525,865

¹ Losses are calculated in 2006 dollars.

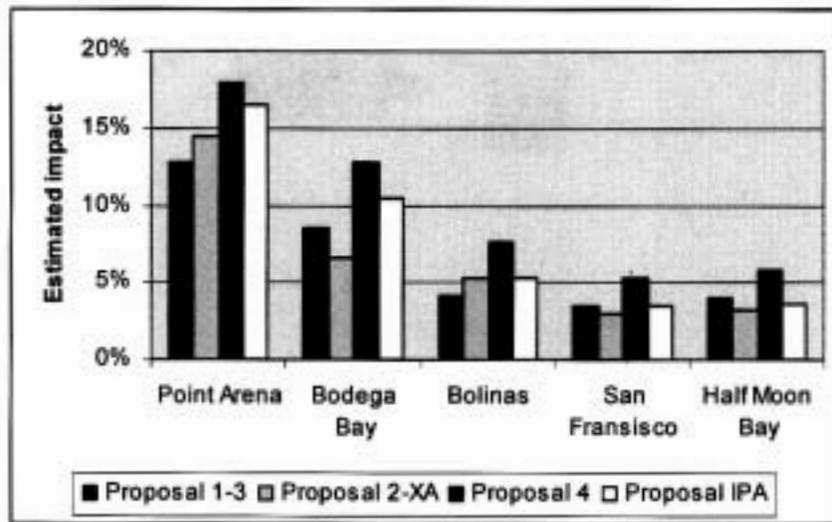
² NCCRSR proposal names are reflected in parentheses.

Table 7. Estimated annual maximum potential net value losses in percentage terms.

Fishery	Alternative 1 (1-3) ²	Alternative 2 (2-XA) ²	Alternative 3 (4) ²	Proposed Regulation (IPA)
California Halibut	3.1%	3.8%	8.7%	3.8%
Coastal Pelagics	0.5%	0.3%	0.5%	0.5%
Squid	0.7%	0.6%	18.8%	0.5%
Deep Nearshore Rockfish	29.5%	21.3%	35.5%	23.0%
Nearshore Rockfish	28.7%	15.1%	35.6%	30.1%
Urchin	13.2%	11.9%	26.0%	22.6%
Dungeness Crab	5.0%	4.5%	7.7%	5.4%
Salmon	4.4%	3.6%	4.8%	4.4%
Total	5.6%	4.8%	8.3%	6.3%

It should also be noted, that, on average, the estimated percentage impact is greatest in Point Arena, the north-

ernmost port and decreases as one moves north to south through the study region (see Figure 1).



Ecotrust also analyzed the maximum potential loss to recreational fishing area in terms of percentage of the fishing grounds within the study region, and percentage of stated importance values of the fishing grounds within the study region. Estimates represent areas of stated importance and not level of effort. Similar to the commercial estimates of maximum potential loss, these estimates assume all fishing activity that previously occurred in a closed area is “lost” and not replaced by movement to another location. Little or no data was collected from recreational fishermen north of Bodega Bay. Subregions surveyed include Region 1 (Ocean Beach in San Francisco County), Region 2 (San Fran-

cisco Bay access points to Point Reyes), and Region 3 (Point Reyes north to Alter Creek).

Among the three sub-regions surveyed for recreational fishing grounds within the study region, none of the alternatives had greater than a 32.5 percent impact for rockfish, 17.9 percent impact for salmon, 21.5 percent impact for Dungeness crab, or greater than a 22.6 percent impact for California halibut for the fishing modes surveyed (CPFV, private vessels, kayak anglers and pier/shore). None of the estimated impacts to areas of value to recreational fisheries grounds within the study region exceeded 35 percent among all modes and sub-regions surveyed. While not economic losses, if

realized, the loss in recreational fishing activity could lead to decreases in revenues to recreational fishing dependent businesses.

In the long term, the potential negative impacts are expected to be balanced by the positive impacts of sustainable fisheries, non-consumptive benefits, and ecosystem function in the reserve areas. In addition, potential benefits may be realized through adult fish spillover to areas adjacent to marine reserves and state marine conservation areas which prohibit bottom fishing for finfish, as well as through transport to distant sites.

(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:

Each alternative has potential impacts on the creation and elimination of jobs related to commercial and recreational fishing and non-consumptive activities. Estimates of the numbers of jobs eliminated as a direct result of the proposed action are difficult to determine. Commercial fishing operations are generally small businesses employing few individuals and, like all small businesses are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed action is to increase sustainability in fishable stocks and subsequently the long-term viability of these same small businesses. Jobs related to the non-consumptive tourism and recreational industries would be expected to increase over time by some unknown factor based on expected improvements in site quality and increased visitation to certain locations.

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

The Commission 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) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Additional costs to State agencies for enforcement, monitoring, and management of MPAs are difficult to estimate and are dependent on not only the impacts of the proposed regulation, but also other regulations and processes. Funding for the Department of Fish and Game (Department) has already been impacted due to a state budget crisis and prospects for additional impacts are unknown. However, partnerships with state and federal agencies, academic institutions and non-profit organizations are likely to continue to play an important role in assisting with MLPA implementation in coming years.

Current cooperative efforts with the Monterey Bay National Marine Sanctuary and Gulf of the Farallones National Marine Sanctuary have provided funding for

some existing State costs, and contributions are expected to increase with the adoption of this regulation. In addition to agency partnerships, during planning and implementation of the first MLPA study region (i.e., central coast study region), substantial funding (in the millions) was contributed by private fund sources including MLPA Initiative partners, and through bond money distributed through the Ocean Protection Council (OPC). These contributions supported costs for baseline science and socioeconomic data collection, signage, and outreach and education, among other things, and allowed for a greater outcome than may have been possible with Department funding alone. While it is difficult to quantify the level of support that will be provided by partnerships in future years, the Department will continue to actively pursue and maximize such assistance.

While the actual costs to the Department to implement the proposed regulations in the north central coast are unknown, experience in implementing MPAs in the northern Channel Islands and the MLPA central coast region can inform prospective near-term expenditures using existing Department funds, and contributions from partners:

- For the Northern Channel Islands, which was the first portion of the MLPA South Coast Study Region to adopt MPAs, the Department spent approximately \$3.6 million on post-design one-time costs, and an additional \$0.9 million per year since 2004 for implementation, management, and enforcement of the central coast MPAs. Partners contributed approximately \$2.2 million in one-time costs, and \$2.7 annually since the design phase was completed.
- In the MLPA central coast study region, the Department spent approximately \$4.5 million on post-design one-time costs, and an additional \$0.4 million per year since 2007 for implementation, management, and enforcement of the central coast MPAs. Partners have contributed approximately \$2.4 million since the design phase was completed.

The Department costs referenced above utilized available funds to the Department at that time. Certainly, changes requiring additional enforcement, monitoring or management will increase the recurring costs to the Department as compared to the current efforts, and total state costs would increase as new study regions are designated and become operational. For the north central coast, the near-term cost to implement the proposed MPAs will include both one-time startup and baseline data collection costs, and recurring annual costs. A baseline data collection program methodology is currently being developed through the MPA Monitoring

Enterprise. The costs associated with baseline data collection and future monitoring will be determined through that process and therefore cannot be estimated at this time. In light of uncertainty regarding the cost for monitoring, and the level of future funding from external partners, the estimated new funding requirements by the state for MLPA in the north central coast are unknown at this time.

- (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 or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 15 DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF PROPOSED REGULATIONS

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation**

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to

amend Section 3349 and to adopt 22 new Sections under Subchapter 4, Article 7.5 in the California Code of Regulations (CCR), Title 15 concerning the lethal injection process.

PUBLIC HEARING

- Date and Time: **June 30, 2009, 9:00 a.m. to 3:00 p.m.**
- Place: Department of Health Services
1500 Capitol Avenue
The Auditorium
Sacramento, CA 95814
- Purpose: To receive comments about this action.
- Verbal Commentors: The CDCR reserves the right under Government Code 11346.8 to set reasonable time limits. Attendees are encouraged to provide a written transcript of their comments.

PUBLIC COMMENT PERIOD

The public comment period will close **June 30, 2009, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 255-5601; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

SPECIAL NOTE REGARDING THE CONTENT OF THIS PROPOSED REGULATION

These proposed regulations have been developed to satisfy the requirements of the Administrative Procedure Act for inclusion of the lethal injection process into the California Code of Regulations, Title 15. Any comments received that are not related specifically to the lethal injection process itself as presented in the text, such as the constitutionality, legality, or morality of the death penalty itself, will not receive a specific response from the Department.

CONTACT PERSON

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883,
Sacramento, CA 94283-0001
Telephone (916) 255-5500**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**John McClure
Regulation and Policy Management Branch
Telephone (916) 255-5500**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Scott Kernan
Undersecretary, Operations
Telephone (916) 323-6001**

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17500 through 17630.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district that is required to be reimbursed: *None.*
- Cost or savings to any state agency: *None.*
- Other nondiscretionary cost or savings imposed on local agencies: *None.*
- Cost or savings in federal funding to the state: *None.*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has initially determined that the proposed regulations 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.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Department must determine 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, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available free of charge on the Department's website at:

<http://www.cdcr.ca.gov/Regulations/AdultOperations/index.html>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's website at:

<http://www.cdcr.ca.gov/Regulations/AdultOperations/index.html>.

or the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department 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 Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action:

- amends three existing forms, specifically the California Department of Corrections (CDC) Forms 1801, 1801-A, and 1801-B, for the purpose of update. In addition, the revised forms will now reference the current CDCR acronym instead of CDC. A total of twelve new forms were created for inclusion into the new regulation text, numbered from CDCR 2172 through CDCR 2183.

- addresses the specific deficiencies noted by the Court in the *Morales v. Tilton* case to ensure that the condemned inmate is rendered unconscious and remains unconscious during the lethal injection process. The revisions to California's lethal injection protocol will result in the dignified end of life for the condemned inmate.
- has been developed to satisfy the procedural requirements designated by the Administrative Procedures Act for administrative regulation inclusion of the lethal injection protocol into the California Code of Regulations, Title 15.

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the University of St. Augustine, 700 Windy Point Drive, Bldg. A, Conference Room, San Marcos, CA, 92069 at 10:00 a.m., on June 18, 2009. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on June 15, 2009, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action 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 action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code, and to implement, interpret or make specific section 2570.10, the Board is proposing revising Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Code sections 2570.2 specifies those persons who provide supportive services to an occupational therapist, under appropriate supervision, delegated, selected client and nonclient-related tasks for which the aide has demonstrated com-

petency. Section 2570.3(j) relates to the “Supervision of an occupational therapy assistant”.

Existing regulations specifies certain terms as they are used throughout the Supervision Parameters set forth in CCR 4181.

The proposed regulation would add a “Level II field-work educator” and specify and clarify the qualifications of such to make consistent with the standards established by the Accreditation Council for Occupational Therapy Education (ACOTE), the organization that accredits all occupational therapy education programs within the United States.

Existing law, Business and Professions Code Section 2570.2(b), allows an “aide” to perform selected client and non-client related tasks for which the aide has demonstrated competency. The proposed amendment would amend the existing regulation defining “Non-client related tasks” to remove administrative activities in order to clarify the meaning of “Non-client related tasks.”

The proposed amendment will also re-number former Section 4180(d) to Section 4180(e) and renumber former Section 4180(e) to Section 4180(f), to accommodate the addition of the new Section 4180(d) to maintain numerical consistency.

FISCAL IMPACT ESTIMATES

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

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17500-17630 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

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

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts

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

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not have a significant economic impact on small businesses. Only the individual recipients of occupational services are affected, not small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it 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 as and less burdensome to affected private persons than the proposal described in this Notice.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

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

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

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

All the information upon which the proposed regulation is 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 Board’s website as listed below.

CONTACT PERSON

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

Jim Schenk
 California Board of Occupational Therapy
 2005 Evergreen Street, Suite 2050
 Sacramento, CA 95815
 (916) 263-2294
 (916) 263-2701 (FAX)
 cbot@dca.ca.gov

The backup contact person is:

Heather Martin
 California Board of Occupational Therapy
 2005 Evergreen Street, Suite 2050
 Sacramento, CA 95815
 (916) 263-2294
 (916) 263-2701 (FAX)
 cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > **Laws and Regulations** > **Proposed Regulations**.

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the University of St. Augustine, 700 Windy Point Drive, Bldg. A, Conference Room, San Marcos, CA, 92069 at 10:00 a.m., on June 18, 2009. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on June 15, 2009, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action 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 action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code, and to implement, interpret or make specific section 2570.10, the Board is proposing revising Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Code (BPC) Sections 2570.26 and 2570.27, allow the Board to deny, suspend, revoke or place on probation, a license or certificate. Section 2570.28 specifies the grounds for disciplinary action, including conviction of a crime or of any offense substantially related to the qualifications, functions, or duties of a licensee; and Section 2570.29 specifies acts that constitute unprofessional conduct.

Existing regulations do not define “incompetence,” “negligence,” or “gross negligence” nor do the regulations specify what crimes, acts, or offenses are substantially related to the qualifications, functions, or duties of a licensee.

This amendment would define the terms incompetence, negligence and gross negligence relating to the performance of the activities of occupational therapists and occupational therapy assistants and establishes the substantial relationship between crimes and offenses committed to the qualifications, functions or duties of an occupational therapy practitioner.

The proposed regulation would:

- Add Section 4100(f) to specify and define incompetence when providing occupational therapy services in a manner inconsistent with the public health, safety or welfare.
- Add Section 4100(g) to specify and define negligence when providing occupational therapy services in a manner inconsistent with the public health, safety or welfare.
- Add Section 4100(h) to specify and define gross negligence when providing occupational therapy services in a manner inconsistent with the public health, safety or welfare.
- Add Sections 4100(i)(1)(A) through (H) to specify crimes, acts, or offenses which are substantially related to the qualifications, functions or duties of an occupational therapy practitioner by establishing a present or potential unfitness of a licensed occupational therapist or certified occupational therapy assistant or as an applicant for an occupational therapist license or occupational therapy assistant certificate.
- Add Section 4100(i)(2) that defines the term “significant other” as specified in Sections 4100(i)(1)(D) and (E).

FISCAL IMPACT ESTIMATES

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

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

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

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

There is no impact on private business or representative private persons, except to identify licensees that demonstrate their present or potential unprofessional conduct evidences that performance the functions of an occupational therapy practitioner(s) to be in a manner inconsistent with the public health, safety or welfare. The only impact on private business or representative private persons is beneficial.

EFFECT ON HOUSING COSTS

None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not have a significant economic impact on small businesses. Only the individual recipients of occupational services are potentially affected, not small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it 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 burden-

some to affected private persons than the proposal described in this Notice.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

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

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

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

All the information upon which the proposed regulation is 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 Board's website as listed below.

CONTACT PERSON

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

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
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Heather Martin
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TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the University of St. Augustine, 700 Windy Point Drive, Bldg. A, Conference Room, San Marcos, CA, 92069 at 10:00 a.m., on June 18, 2009. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on June 15, 2009, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action 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 action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code, and to implement, interpret or make specific section 2570.10, the Board is proposing to amend Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, Business and Professions Code (BPC) Section 2570.10, authorizes the Board to determine the requirements for renewal of any certificate or license issued. BPC Sections 490 and 2570.28 also authorizes the Board to suspend or revoke a license for conviction of a crime.

Existing regulation, California Code of Regulations Section 4120, sets forth the terms for the renewal of a license or certificate.

This amendment would require all applicants for renewal of a license or certificate, not previously fingerprinted by the Board, or for whom a record of submission of fingerprints no longer exists, to furnish a full set of fingerprints to the Department of Justice (DOJ) for a criminal history record check at both the state and federal levels.

The proposed amendment would:

- Require all applicants for renewal, who do not have a record of submission of fingerprints to DOJ, to submit their fingerprints to DOJ no later than the date required for the renewal of their occupational therapy licenses.
- Allow the Board to declare that if all the information required to be submitted is either not, or timely, submitted that the renewal application is incomplete and the applicant is not eligible for renewal of his or her license.
- Allow that this requirement is waived if the license to be renewed is in inactive status, or if the licensee at the date for renewal is outside the country actively serving in the military.

FISCAL IMPACT ESTIMATES

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

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have a 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.

Cost Impact on Representative Private Person or Business:

The current fees charged by the DOJ for processing fingerprints is \$54.00.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not have a significant economic impact on small businesses because the regulations relate to fingerprinting and disclosure requirements of individual licensees.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it 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 proposal described in this Notice.

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

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

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

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing, from our website as listed below, or upon written request from the contact person listed below.

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

All the information upon which the proposed regulation is 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:

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > **Laws and Regulations** > **Proposed Regulations**.

TITLE 22. DEPARTMENT OF SOCIAL SERVICES

ORD #0908-06

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM # 1 Foster Family Homes Regulations

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held June 17, 2009, as follows:

June 17, 2009
Office Building # 8
744 P St., Room 105
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on June 17, 2009.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or

submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Office of Regulations Development
 California Department of Social Services
 714 P Street, MS 8-4-192
 Sacramento, California 95814
 TELEPHONE: (916) 657-2586
 FACSIMILE: (916) 654-3286
 E-MAIL: ord@dss.ca.gov

CHAPTERS

California Code of Regulations (CCR), Title 22, Division 6, Chapter 9.5 (Foster Family Homes), Sections 89200 through 89587.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Community Care Facilities Act provides for the licensure and regulation of community care facilities which includes Foster Family Homes (FFH). FFH are regarded by statute as private residences pursuant to section 1530.5 of the Health and Safety Code. As specified in this statute, CDSS was authorized to develop regulations for FFH as an entirely separate regulation package from regulations that govern all other community care facilities.

In enacting Senate Bill (SB) 1641 (Chapter 388, Statutes of 2006 [amended Health and Safety Code section 1536.2 and Welfare and Institutions Code section 361.2]), the Legislature observed that many of the state's foster care licensing regulations have been de-

veloped with the objective of protecting the health and safety of children and youth in foster care, but are inadequate in providing a normal childhood experience or for creating a foster home environment that resembles a nonfoster care home environment. Further, existing FFH regulations are not user-friendly and difficult for current or prospective foster parents to follow. SB 1641 provided the California Department of Social Services (CDSS) with broad authority to establish updated FFH regulations to normalize the lives and to promote the well being of children in foster care.

CDSS convened a workgroup called the Children's Residential Regulations Review Workgroup (CRRRW) whose purpose was to review and revise the FFH regulations. The CRRRW met from May 2006 to November 2007. The CRRRW was comprised of experts in the field of foster care and included such organizations as the California Youth Connection (CYC), County Welfare Directors Association (CWDA), Legal Advocates for Permanent Parenting (LAPP), National Center for Lesbian Rights (NCLR), Youth Law Center (YLC), as well as current and former foster parents, foster parent associations and former foster youth. In developing the updated FFH regulations, the CRRRW created and relied on four guiding principles:

- Provide for the health, safety, and well-being of children
- Be clear, concise, user-friendly, and simple
- Promote a "normal" childhood experience
- Prepare foster youth for adulthood

These updated FFH regulations also implement several pieces of legislation that are folded into the regulations. This legislation includes:

- Assembly Bill (AB) 408 (Chapter 813, Statutes of 2003 [added Welfare and Institutions Code section 362.05]), which entitled children in foster care to participate in age-appropriate extracurricular, enrichment, and social activities and required the caregiver to use the prudent parent standard in allowing children to participate in these activities.
- AB 1116 (Chapter 637, Statutes of 2005 [added Health and Safety Code section 1507.25]), which authorized designated, trained caregivers who are not licensed health care providers to administer emergency medical assistance and/or injections for specific reasons to a child in foster care.
- AB 1514 (Chapter 120, Statutes of 2007 [added Welfare and Institutions Code section 739.5]), which specified that psychotropic medication may be administered to a child who is a ward of the court only with a court order.

- AB 2096 (Chapter 483, Statutes of 2008 [amended Welfare and Institutions Code sections 362.05 and 727]), which entitled children in foster care who are dependents of the court and wards of the court to participate in age-appropriate extracurricular, enrichment, and social activities and required the caregiver to use the prudent parent standard in allowing children to participate in these activities.
- SB 358 (Chapter 628, Statutes of 2005 [added Welfare and Institutions Code section 362.04]), which required the caregiver to use the reasonable and prudent parent standard in selecting occasional short-term babysitters and exempted these babysitters from regulatory requirements for criminal background check, health screening, and CPR training.
- SB 500 (Chapter 630, Statutes of 2005 [amended Welfare and Institutions Code sections 11400 and 16501.25]), which defined a “Whole Family Foster Home” and required a “Shared Responsibility Plan” for a minor parent and caregiver with regard to the minor parent’s child.

At CDSS discretion, changes were made to the regulations in consultation with internal stakeholders and colleague State departments consistent with the authority, clarity, consistency, necessity, nonduplication, and reference standards of the Administrative Procedure Act, section 11349 of the Government Code.

COST ESTIMATE

1. Costs or Savings to State Agencies: The Governor’s Budget includes the following: in Fiscal Year (FY) 2008–09 there would be an increased admin. cost of \$825,000 and a foster care payment savings in the amount of \$180,000 resulting in net increased costs of \$645,000. In FY 2009–10 there would be an increased admin. cost of \$781,000 and a foster care payment savings in the amount of \$180,000 resulting in net increased costs of \$601,000.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500–17630: The Governor’s Budget includes the following: in FY 2008–09 there would be an increased admin. cost of \$353,000 and a foster care payment savings in the amount of \$272,000 resulting in net increased costs of \$81,000. In FY 2009–10 there would be an increased admin. cost of \$335,000 and a foster care payment savings in the amount of \$272,000 resulting in net increased costs of \$63,000.
3. Nondiscretionary Costs or Savings to Local Agencies: None

4. Federal Funding to State Agencies: The Governor’s Budget includes the following: in FY 2008–09 there would be an increased admin. cost of \$677,000 and a foster care payment savings in the amount of \$257,000 resulting in net increased costs of \$420,000. In FY 2009–10 there would be an increased admin. cost of \$642,000 and a foster care payment savings in the amount of \$257,000 resulting in net increased costs of \$385,000.

LOCAL MANDATE STATEMENT

These regulations do not impose a mandate on local agencies or school districts. There are no state-mandated local costs in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action 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.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that the proposed regulations will not affect small businesses. The proposed regulations establish requirements for foster family homes and do not require compliance from business. Foster family homes are considered private residences pursuant to sections 1502 and 1530.5 of the Health and Safety Code.

ASSESSMENT OF JOB CREATION OR ELIMINATION

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

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Health and Safety Code sections 1530, 1530.5, and 1531. Subject regulations implement and make specific Welfare and Institutions Code sections 309, 361.2, 362.04, 362.05, 362.7, 366.26, 369.5, 727, 739.5, 827, 4646, 11400, 11403, 11403.2, 11460, 11461, 11465, 16001.9, 16002.5, 16010, 16501, 16501.25, 16518, 16522, 17710, 17731, and 17732; Health and Safety Code sections 1501, 1501.1, 1502, 1503, 1505.2, 1507.25, 1508, 1520, 1521.5, 1521.6, 1522, 1522.1, 1529.2, 1530.91, 1533, 1534, 1549, 1559.110, 1596.750, 1596.78, 13113, 13131, 13143, 13143.6, 115921, and 115922; Penal Code sections 11165.6, 11165.7, 11165.9, and 11166; Education Code section 51931; Vehicle Code section 15620; Unruh Civil Rights Act, Civil Code section 51; California Fair Employment and Housing Act sections 12926 and 12926.1; California Constitution, Article 1, Section 13; AB 1695 (Chapter 653, Statutes of 2001) Section 21; Commercial Practices, 16 C.F.R. sections 1500.18 and 1513.6; and 42 U.S.C.A. section 1305.

CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION

Contact Person: Everardo Vaca (916) 657-2586
Backup: Sandra Ortega (916) 657-2586

GENERAL PUBLIC INTEREST

**TITLE 13. CALIFORNIA AIR
RESOURCES BOARD**

NOTICE OF CONTINUATION

**NOTICE OF PUBLIC HEARING TO
CONSIDER PLUG-IN HYBRID ELECTRIC
VEHICLE TEST PROCEDURE AMENDMENTS
AND AFTERMARKET PARTS
CERTIFICATION REQUIREMENTS
ADOPTION**

The Air Resources Board (the Board or ARB) will conduct a continuation of a public hearing at the time and place noted below to consider amendments to motor vehicle test procedures for exhaust emissions, evaporative emissions, and refueling emissions, and new requirements for certification of aftermarket conversion systems for plug-in hybrid electric vehicles.

This item was considered by the Board at its January 22-23, 2009, hearing at which time the Board received all timely written comments and heard oral testimony from all witnesses. At the January hearing, the Board approved the test procedures for the exhaust, evaporative, and refueling emissions with the modifications proposed by staff, subject to a 15-day supplemental comment period. The Board also directed staff to engage in additional review of the new requirements for certification of aftermarket conversion systems for plug-in hybrid electric vehicles (conversion regulation) and to report back to the Board at a future hearing. Although the public comment period was closed at the end of the January hearing, the record will be reopened and the Board will accept written comments and public testimony on the conversion regulation. After considering the staff's supplemental report and presentation, and public testimony and written comments, the Board plans to take appropriate action on the conversion regulation. The Board's continued hearing will be conducted at the date, time, and place listed below.

DATE: May 28, 2009

TIME: 9:00 a.m.

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

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m. on Thursday, May 28, 2009, and may continue at 8:30 a.m., May 29, 2009. This item may not be considered until May 29, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before May 28, 2009, to determine the day on which this item will be considered.

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

THE CONTINUED HEARING

The continued hearing will be conducted as described in the original notice, California Regulatory Notice Register 2008, Vol. No. 49-Z, Notice File No. Z2008-1125-06 (December 5, 2008), except that the public comment period will be reopened on May 12, 2009 for written comments on the staff's supplemental report. To be considered by the Board, written submissions not physically submitted at the meeting must be received **no later than 12:00 noon, May 27, 2009**, and addressed to the following:

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

Electronic submittal: <http://www.arb.ca.gov/lis-pub/comm/bclist.php>

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

All comments submitted for the hearing on January 22-23, 2009, will remain part of the rulemaking record. The original notice, the ISOR, the supplemental report, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/2008/phev09/phev09.htm>. If the Board decides to approve the originally noticed conversion regulation

with modifications, staff will prepare the modified regulatory text and a supplemental comment period of at least 15 days will be opened during which the public will have the opportunity to submit written comments on the modifications to the Executive Officer before final action.

The public may request a copy of the supplemental report and the modified regulatory text when released from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Lesley Crowell, Air Resources Engineer, by email to lcrowell@arb.ca.gov or by phone at (916) 323-2913, or to Ms. Elise Keddie, Manager, ZEV Implementation Section, by email to ekeddie@arb.ca.gov or by phone at (916) 323-8974.

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

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE TO INTERESTED PARTIES

May 1, 2009

Availability of Hazard Identification Materials for Bisphenol A for the July 15, 2009 Developmental and Reproductive Toxicant Identification Committee Meeting

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment

(OEHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986¹ (Proposition 65). The Developmental and Reproductive Toxicant Identification Committee (DARTIC) of OEHHA's Science Advisory Board advises and assists OEHHA in compiling the list of chemicals known to the State to cause reproductive toxicity as required by Health and Safety Code Section 25249.8. The Committee serves as the State's qualified experts for determining whether a chemical has been clearly shown through scientifically valid testing according to generally accepted principles to cause reproductive toxicity.

The DARTIC will consider the listing of bisphenol A at its next meeting on **Wednesday, July 15, 2009**. The meeting will be held in the Auditorium of the Elihu Harris State Building, 1515 Clay Street, Oakland, California. The meeting will begin at 10:00 a.m. and will last until all business is conducted or until 5:00 p.m. The agenda for the meeting will be published in advance of the meeting.

On January 18, 2008, OEHHA requested information relevant to the assessment of the evidence of developmental and reproductive toxicity for bisphenol A. The initial 60-day data call-in period was extended an additional 60 days and closed on April 17, 2008. OEHHA staff evaluated the significant volume of information that was received. OEHHA has completed the hazard identification materials for bisphenol A and announces the availability of the document entitled: "Evidence on the Developmental and Reproductive Toxicity of Bisphenol A." The DARTIC will use this document at its July 15 meeting to consider whether bisphenol A should be added to the Proposition 65 list as a chemical known to cause reproductive toxicity.

This notice marks the beginning of a 60-day public comment period. Copies of the document are available on OEHHA's web site at <http://www.oehha.ca.gov/prop65.html>, or may be requested by calling (916) 445-6900. Hard-copy comments may be delivered in person or by courier to:

Cynthia Oshita
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation
P.O. Box 4010
1001 I Street, 19th floor
Sacramento, California 95812-4010
FAX (916) 323-8803
Or via e-mail: coshita@oehha.ca.gov

In order to be considered by the DARTIC Members, written comments must be received at OEHHA by 5:00 p.m. on Tuesday, June 30, 2009.

¹ Health and Safety Code section 25249.5 et seq.

PETITION DECISIONS

DEPARTMENT OF CONSERVATION

April 13, 2009

Mr. Leonard Lang
Upper Room Consulting
4103 Larwin Avenue
Cypress, CA 90630-4128

Dear Mr. Lang:

PETITION CONCERNING THE ALLOWABLE SHRINKAGE PERCENTAGE

Thank you for your petition dated March 16, 2009 requesting a change to the allowable weight variance of loads of recyclables presented for California Refund Value (CRV) payment.

Your proposal is to allow the processor to pay the refund value on the redemption weight shown on the shipping report if the redemption weight does not exceed the received weight by more than 4.0 percent. If the redemption weight exceeds the received weight by more than 4.0 percent then the processor would pay for a weight that is 2.0 percent above the received weight. You are basing this request on the fact that there are more containers per pound (CPP) now than when the program began. Aluminum and glass CPP has increased by approximately 10 percent since the beginning of the program. There has been an increase in PET CPP of approximately 90 percent.

Currently, when processors purchase material from recycling centers, if the redemption weight does not exceed the received weight by more than 2.5 percent, then the processor shall reimburse the recycler the refund value claimed. Otherwise, the processor shall multiply the received weight by the segregated rate per pound and record that amount as the refund value paid.

To substantiate the payment of redemption weight to recyclers, the processor is required to inspect the materials and to compare the redemption weight to the total weight received as documented on the Shipping Report (DR-6). A shrinkage allowance has been incorporated into the accounting system to permit a reduction in received weight, without decreasing refund payments (California Code of Regulations (CCR) §2430). The shrinkage rate (or allowance), as calculated by the Division, is limited to a difference of 2.5 percent **or less**, between the total redeemed weight and the received weight. Should the difference exceed this percentage amount, a reduction must be made in the redemption value and payment commensurate with the received weight (CCR §2430(a)(1)).

Under the regulations which have been adopted, the Department has made allowance for a reasonable amount of shrinkage in the accounting procedures. Although only one subsection of the regulations specify a definite percentage as an “allowance” for shrinkage (CCR §2430(a)), the issue is addressed throughout the accounting system. Studies have been (and are) conducted to determine the weight of materials as returned by consumers (“dirty” weight).

Under CCR §2920 and CCR §2930, the Division calculates the number of containers per pound and the commingled rate of containers per material type. In both of these calculations, which are the standard for any payments made from the Fund, the weight of contaminants (including residual moisture) is a prime factor. These rates take into account that a reasonable quantity of moisture will initially enter the system.

Although a certain amount of moisture is expected, efforts have been made to minimize it. In order to ensure an effective program, a degree of effort is required on the part of each recycling entity to restrict the entry of extraneous materials. The prime preventive measure consists of properly inspecting loads of material prior to payment of CRV. Should there be excess contamination discovered, the buying party has the option of refusing the load entirely or reducing the rate paid. Since inspection of materials has been standard operating procedure in the industry long before promulgation of the Beverage Container Recycling and Litter Reduction Act (Act), this approach has also been incorporated into the recycling program, and is mandated under regulation (CCR §2401; CCR §2430; CCR §2501; CCR §2535).

The current regulations restricting the shrinkage rate to 2.5 percent, safeguards the requirement of on-going inspections. Should the variance be increased from 2.5 percent, it would promote a disregard for the regulations in place, as well as the standard business practice of inspecting goods prior to purchase, and could jeopardize the solvency of the Beverage Container Recycling Fund (Fund). Incidental materials must be prevented from entering the recycling stream. Therefore, a reasonable shrinkage factor coupled with the motivation to conduct inspections is beneficial to the operation of the Program.

To increase the variance above 2.5 percent would be unnecessary and simply encourage lax inspections of materials resulting in increased contamination and added costs. Giving recyclers an automatic 2 percent bonus for every load that is presented over 4 percent contamination is not justifiable. Allowing a minimum 2 percent contamination on every load relieves the recycling center of a critical inspection responsibility. Changing the allowable limit from 2.5 percent to 4 percent would mean that the Department could potentially pay mil-

lions of dollars in refund value for contamination that recyclers should have deducted at the time of purchase.

Pursuant to Government Code Section 11340.7 of the California Administrative Procedures Act, your petition to amend Section 2430 of Chapter 5 of Division 2 of Title 14 of the California Code of Regulations is denied.

If you have any questions regarding the rulemaking process, please contact Kent Harris, Manager, Office of Policy and Legislation, at (916) 324-3209.

Sincerely,

/s/
Stephen MBantillo
Assistant Director
for Recycling

DEPARTMENT OF MANAGED HEALTH CARE

ACTION: Notice of Decision on Petition for Rulemaking Action

SUBJECT: Petition by the California Association of Physician Groups requesting amendment or repeal of subdivision (a)(3)(B) of section 1300.71 of title 28, California Code of Regulations (Rule 1300.71).

PETITIONER

The California Association of Physician Groups’ (CAPG) petition for rulemaking action (Petition) was received by the Department of Managed Health Care (Department) on March 19, 2009. Pursuant to the requirements of Government Code section 11340.7, the Department provides this response to the Petition.

CONTACT PERSON

Inquiries concerning this decision may be directed to Emilie Alvarez, Regulations Coordinator, Department of Managed Health Care, Office of Legal Services, by mail at: 980 9th Street, Suite 500, Sacramento, CA 95814, by telephone at: (916) 322-6727, or by e-mail at: ealvarez@dmhc.ca.gov or regulations@dmhc.ca.gov.

AVAILABILITY OF PETITION

The Petition for the amendment or repeal of regulations is available upon request directed to the Department’s Contact Person.

AUTHORITY

Under authority established in the Knox–Keene Act¹, including but not limited to Health and Safety Code sections 1343, 1344 and 1346, the Department may adopt, amend and rescind regulations as necessary to carry out the provisions of the Act.

DETERMINATION ON THE PETITION

Rule 1300.71,² subdivision (a)(3)(B), which defines “reimbursement of claim,” was noticed and adopted by the Department pursuant to the Administrative Procedure Act (APA) and approved by the Office of Administrative Law (OAL) on July 24, 2003.

The actions requested to be taken in the Petition specifically concern the considerations relevant to the determination of reasonable and customary value for services performed by non–contracted providers, which are detailed in subdivision (a)(3)(B) of Rule 1300.71, and are referred to as the six “*Gould*” criteria.³

The Petition requests two alternative rulemaking actions:

1. Repeal subdivision (a)(3)(B) of Rule 1300.71; or
2. Amend subdivision (a)(3)(B) of Rule 1300.71 to include the following three additional factors:
 - (vi) average contract rates for the service of payors and providers in the general geographic area in which the service was provided;
 - (vii) rates paid pursuant to established fee schedules by governmental payors (e.g., Medicare, MediCal, Healthy Families Programs) for the service;
 - (viii) average amount for the service paid to and accepted by non–contracted providers in the general geographic area in which the service was provided;

The Petition proposes that adding the above–referenced factors to the six factors already set forth in subdivision (a)(3)(B) “will make the Regulation consistent with prevailing law, and will provide appropriate guidance to payors, providers, and dispute resolvers in this area.”

The Petition cites recent legal developments as a reason for amending Rule 1300.71:

Since the Regulation was adopted the Governor promulgated Executive Order S–13–06, the courts

¹ Health and Safety Code section 1340 *et seq.* References to the “Act” are to the sections of the Knox–Keene Act.

² California Code of Regulations, title 28, section 1300.71 subdivision (a)(3)(B), concerns claims settlement practices.

³ *Gould v. Workers’ Compensation Appeals Board, City of Los Angeles (Gould)* (1992) 4 Cal.App.4th 1059, 1071.

decided the *Bell* and *Prospect* case and the Workers Compensation Appeals Board has had an opportunity to apply the *Gould* case itself. As set forth below, these developments require the Regulation to be reexamined.

However, these legal developments do not require the Department to initiate rulemaking to amend or repeal subdivision (a)(3)(B). First, Executive Order S–13–06 directs the Department’s Director to conduct a review of the criteria included in subdivision (a)(3)(B), but does not require changing the regulation.⁴ Second, the holdings in *Bell v. Blue Cross of California*⁵ and *Prospect Medical Group v. Northridge Emergency Medical Group*⁶ do not address the validity of factors used in determining reasonable payment of noncontracted providers, the subject matter of subdivision (a)(3)(B). Third, the Petition’s reference to the application of the *Gould* case in a 2002 Workers’ Compensation Appeals Board (WCAB) decision,⁷ and the workers’ compensation context of the *Gould* case itself, are not legal developments that occurred after the regulation was enacted, but, rather, reflect California law in existence when Rule 1300.71 was adopted, which remains current law.⁸ Finally, Rule 1300.71 was reviewed for consistency with existing statutes, court decisions, or other provisions of law by OAL in 2003.

For the reasons stated above, the Department declines to initiate rulemaking to amend or repeal subdivision (a)(3)(B) of Rule 1300.71 based on legal developments since the regulation was adopted.

The Petition also states that subdivision (a)(3)(B) violates the APA’s consistency requirement:

The considerations relevant to the determinations of “reasonable and customary value” detailed in the Regulation are not an accurate reflection of the “reasonable value” standard under California law. Specifically, the references to “the fees charged by the provider” and the “prevailing provider rates charged in the general geographic area in which the services were rendered” are not supported by either statute or case law. Accordingly, CAPG believes that the Regulation violates the consistency requirement under the APA. [Italics in Petition.]

The Department declines to initiate a rulemaking action to amend or repeal subdivision (a)(3)(B), since that subdivision is consistent with existing law. First, the *Gould* factors are supported by, and are consistent with

⁴ Governor’s Executive Order No. S–13–06 (July 25, 2006).

⁵ (2005) 131 Cal.App.4th 211.

⁶ (2009) 45 Cal. 4th 497.

⁷ *Kunz v. Patterson Floor Coverings, Inc. (Kunz)* (2002) 67 Cal. Comp. Cas. 1588.

⁸ Claims Settlement Practices and Dispute Resolution Mechanisms, Final Statement of Reasons, 2002–REG–10.

California case law.⁹ Second, while the Petition refers to case law from other states, such law is not controlling as to the Department's determinations regarding rule-making actions. Third, the 2002 WCAB decision cited in the Petition is consistent with the *Gould* criteria.¹⁰ Finally, OAL conducted a review of the regulation and made a determination concerning the consistency of subdivision (a)(3)(B) with existing statutes, court decisions, or other provisions of law when it approved the regulation in 2003.¹¹

The Department has determined that the factors and criteria set forth in subdivision (a)(3)(B) of Rule 1300.71 are consistent with existing statutory and case law, and that legal developments since the approval of subdivision (a)(3)(B) do not require that the regulation be reexamined.

For the reasons set forth above, the Department has determined not to initiate a rulemaking action to amend or repeal the regulation as requested in the Petition.

Petitioner's interest in the Department's rulemaking process is appreciated.

**ACCEPTANCE OF PETITION
TO REVIEW ALLEGED
UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**ACCEPTANCE OF PETITION TO REVIEW
ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the
California Code of Regulations)**

DEPARTMENT OF MENTAL HEALTH

Agency being challenged:

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel
Office of Administrative Law
300 Capitol Mall, Ste. 1250
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Michael St. Martin
446 Alta Road, Ste. 5300
San Diego, CA 92158

Agency contact:

Hon Chan, Senior Staff Counsel
Dept. of Mental Health
1600 9th Street, Ste. 151
Sacramento, CA 95814

Please note the following timelines:

- Publication of Petition in Notice Register: May 1, 2009
- Deadline for Public Comments: June 1, 2009
- Deadline for Agency Response: June 15, 2009
- Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response
- Deadline for OAL Decision: August 31, 2009

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

**PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW**

RE: **ALLEGED UNDERGROUND
REGULATION**

**Department of Mental Health
Special Order No.: 239.02 "Contraband"**

FROM: MICHAEL GEORGE ST.MARTIN,
Petitioner

DATE: February 17, 2009

This is a computer generated petition based on the optional OAL form supplying the information required by Title 1, California Code of Regulations, §280, for a petition challenging an alleged underground regulation.

1. Identifying Information: Petitioner

Your Name: **MICHAEL GEORGE ST.MARTIN
CO-000414-3, RRU-10**
Your Address: **P.O. Box 5003, Coalinga, CA 93210**
Your Telephone
Number: **(559) 935-0493 or (559) 935-0638**
Your E-Mail
(if you have one): **michaelstmartin@hotmail.com**

2. State Agency or Department being challenged:

**California Department of Mental Health
("DMH")**

**3. Provide a complete description of the pur-
ported underground regulation. Attach a written**

⁹ *Gould, supra*, 4 Cal.App.4th 1059.

¹⁰ *Kunz, supra*, 67 Cal. Comp. Cas. 1588.

¹¹ Government Code section 11349.1, subdivision (a).

copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible.

Description of alleged Underground Regulation

Petitioner alleges the ENTIRE California Department of Mental Health (“DMH”) Operation Manual is an Underground Regulation, as there is no evidence that any portion of the DMH Operation Manual has been promulgated pursuant to the Administrative Procedures Act.

By this action, Petitioner specifically alleges the section of the DMH Operation Manual known as *Special Order No.: 239.02 “Contraband”* is an underground regulation, as there is no evidence that this Special Order has been promulgated pursuant to the Administrative Procedures Act.

Department of Mental Health Special Orders are written Orders which are issued by the Deputy Director, Long Term Care Services, Department of Mental Health. Special Orders are mandatory and direct each State Hospital within the Department of Mental Health system to take specific actions. Because these mandated specific actions are required of all State Hospitals, they affect all persons in California detained at State Hospitals operated by the Department of Mental Health.

Special Order No.: 239.02 states:

“Each Executive Director [of each State Hospital in California] shall establish directives, procedures, and report forms consistent with this Special Order.”

““Consistent with this Special Order, each Executive Director shall either develop a list of items that are considered contraband, or a list of items that are considered allowable, . . .”

Special Order No.: 239.02 also requires the development of Directives [Administrative Directives] and procedures by each State Hospital to implement the mandates of the Special Order.

A true and correct copy of
Special Order No.: 239.02
is attached hereto as EXHIBIT A.

4. Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation.

Special Order No.: 239.02 is applied to all persons, no matter what their classification who are detained at each State Hospital in California by the Department of

Mental Health. Its existence and use are not in controversy.

As a result of *Special Order No.: 239.02*, each State Hospital has a Contraband Administrative Directive, along with a Contraband List and/or Allowables List, and various related procedures and directives.

Petitioner alleges that the DMH can not justify or legitimize the use of one *Special Order* or *Administrative Directive* which has not been legally promulgated pursuant to the Administrative Procedures Act by citing as its authority some other Rule, Regulation, Manual, Instructions, Administrative Directive, or Special Order, which itself is also an underground regulation which has not been legally promulgated pursuant to the Administrative Procedures Act.

It should be noted that the Office of Administrative Law found the Contraband Administrative Directive, *AD-818*, for Coalinga State Hospital to be an underground regulation in 2008 OAL Determination 23, on August 27, 2008. *AD-818* was one of those Administrative Directives developed and implemented pursuant to *Special Order No.: 239.02*.

The DMH has taken the firm position that none of its Manuals, Instructions, Administrative Directives, or Special Orders are regulations subject to the provisions of the APA.

Petitioner alleges that *Special Order No.: 239.02* is a regulation within the meaning of the APA.

5. State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code that no express statutory exemption to the requirements of the APA is applicable.

***SPECIAL ORDER NO.: 239.02*
IS A REGULATION WITHIN THE
MEANING OF THE APA**

Prior to implementation, or revision thereof, the Department was required to adopt *Special Order No.: 239.02*, or any revision thereof, but failed to do so, and thus, pursuant to the law the current version now being utilized is invalid and an “Underground Regulation.”

Though the Director may prescribe rules and regulations such as *Special Order No.: 239.02*, they must be promulgated and filed per Chapter 3.5 of art. 1 of Division 3 of Title 2 of the Administrative Procedures Act, government Code, section 11340 et seq. There is no evidence that DMH has ever promulgated any version of *Special Order No.: 239.02*.

Special Order No.: 239.02 is a regulation. Chapter 3.5, article 5, of the Administrative Procedure Act, Govt. Code sections 11346 et seq., governs adoption,

amendment and repeal of regulations by administrative agencies known as rulemaking. Govt. Code section 11342.600 provides that:

“[A regulation is] every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret or make specific the law enforced or administered by it or to govern its procedure.”

Syngenta Crop Protection, Inc. v. Helliker (2d Dist. 2006) 138 Cal.App. 4th 1135, 1175–77, 42 Cal.Rptr.3d 191, 221–222, quotes *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th, 557, 59 Cal.Rptr.2d 186, which explains:

“[The APA] establishes ‘minimum procedural requirements’ for rulemaking. ([Govt. C.] § 11346(a).) The agency must provide notice of the proposed action (*Id.* §§ 11346.4, 11346.5), the complete text of the proposal (§ 11346.2(a)), and an initial statement of reasons for the proposal (§ 11346.2(b)), and a final statement of reasons (§ 11346.9(a)). The agency must provide a public hearing if an interested person timely requests a hearing (§ 11346.8(a)), provide an opportunity for interested persons to submit written comments if no hearing is held (*ibid.*), and respond in writing to comments in the final statement of reasons (§ 11346.9(a)(3)). The agency must submit the entire rulemaking file to the Office of Administrative Law (§§ 11347.3(c), 11342.550), which reviews the regulation for compliance with the law and other criteria and approves or disapproves the regulatory action. (§§ 11349.1, 11349.3 . . .)” (14 Cal. 4th 557, 59 Cal.Rptr.2d 186.)

“No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.” (Govt. Code § 11340.5(a).)

“A substantial failure to comply with chapter 3.5 of the APA renders the regulation invalid. § 11350(a); *Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4th at 576, 59 Cal.Rptr.2d 186.”

“A regulation subject to the APA thus has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided . . . Second, the rule must ‘implement, interpret, or make specific, the law enforced or administered by [the agency], or . . . govern [the agency’s] procedure.’ ([Former] Govt. Code § 11342(g) [now § 11342.601].) Of course, interpretations that arise in the course of case-specific adjudication are not regulations, though they may be persuasive as precedents in similar subsequent cases . . . Similarly, agencies may provide private parties with advice letters, which are not subject to the rulemaking provisions of the APA. ([Former] Govt. Code § 11343(a)(3), 11346.1(a) [now § 11340.9(I)].) Thus, if an agency prepares a policy manual that is no more than a summary, without commentary, of the agency’s prior decisions in specific cases and its prior advice letters, the agency is not adopting regulations . . . A policy manual of this kind would of course be no more binding on the agency in subsequent agency proceedings or on the courts when reviewing agency proceedings than are the decisions and advice letters that it summarizes.”(Emphasis added.) (*Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4th at 571, 59 Cal.Rptr.2d 186.)”

Morning Star Co. v. State Bd. Of Equalization (2006), 38 Cal. 4th 324, 333–334, 42 Cal.Rptr.3d 47, 53–54, confirms the *Syngenta/Tidewater* analysis, especially that a regulation must be intended to apply generally, and that it must implement, interpret or make specific the law administered by the agency, or govern the agency’s procedure.

Special Order No.: 239.02 is a regulation. It is applied to all persons proposed or adjudicated to be mentally ill or have a mental abnormality in California who are detained by Department of Mental Health. Its use is mandatory. Thus the mandate of **Special Order No.: 239.02** implements, enforces or otherwise makes specific various provisions of the Welfare and Institutions Code, the Health and Safety Code, and the Penal Code. Specifically, **Special Order No.: 239.02** attempts to implement, interpret and/or make specific almost every Health and Safety and Penal Code section that deals with controlled substances, and **Special Order No.: 239.02** is vague and overbroad in its attempt to implement, interpret and/or make specific provisions of Welfare and Institutions Code, sections 5325 and 5325.1.

NO EXCEPTION EXCLUDES *SPECIAL ORDER NO.: 239.02* FROM THE APA PROCEDURES.

Clearly inapplicable are the provisions of Govt. Code § 11340.9 excluding:

“(d) A regulation that relates only to the internal management of the state agency. . . .”

“(f) A regulation that embodies the only legally tenable interpretation of a provision of law. . . .”

“(I) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.”

Armistead v. State Personnel Bd. (1978) 22 Cal.3d 198, 204–205, 149 Cal.Rptr. 1, 4 quoting from the First Report of the Senate Interim Committee on Administrative Regulations to the 1955 Legislature, documents the necessity for strict adherence to the APA. The court found this necessary so as to prevent state agencies from avoiding obedience to the APA by denominating rules as “‘policies,’ ‘interpretations,’ ‘instructions,’ ‘guides,’ ‘standards,’ or the like,” and by containing them “in internal organs of the agency such as manuals, memoranda, bulletins, or [directing them] to the public in the form of circulars or bulletins.”

Armistead underlined that “[R]ules that interpret and implement other rules have no legal effect unless they have been promulgated in substantial compliance with the APA” (emphasis added), thus provision of state personnel transactions manual governing withdrawal of resignation by state employee merited no weight as agency interpretation where such provision had not been duly promulgated and published.

The Special Order in question here fits the above description perfectly. It is referred to as “Special Order,” and is replete with mandatory words such as “shall” and “will” in regard to actions to be taken. It contains mandatory language thus making it much more than simple policies, interpretations, instructions, guides, standards, or the like. Instead, it is a forbidden underground regulation which has not been adopted pursuant to the Administrative Procedures Act.

The authority for issuing *Special Order No.: 239.02* is stated in that document as, “By order of the Deputy Director, Long Term Care Services.”

Petitioner alleges that no authority exists in statutory law, or in the Constitutions of California or the United States, which would grant the Deputy Director, Long Term Care Services, of the Department of Mental Health the autocratic authority to issue, utilize, enforce, or attempt to enforce any rule or regulation by denominating it a *Special Order*, unless it has first been promulgated pursuant to the Administrative Procedures Act.

Special Orders apply statewide to all DMH facilities. These *Special Orders* mandate what each facility must mandate in its own version of an *Administrative Directive*. Having each DMH facility issue its own mandated version of a *Special Order* under the label of an *Administrative Directive* is just the sort of “avoiding obedience to the APA” that is discussed in *Armistead v. State Personnel Bd.*

***SPECIAL ORDER NO.: 239.02*
APPLIES GENERALLY
TO ALL PERSONS DETAINED BY THE
DEPARTMENT OF MENTAL HEALTH**

Modesto City Schools v. Education Audits Appeal Panel, (3d Dist. 2004) 123 Cal.App. 4th 1365, 1381, 20 Cal.Rptr.3d 831, 842, holds that to be deemed an underground regulation, which would be invalid because it was not adopted in substantial compliance with the procedures of the APA, the agency must intend it to apply generally rather than in a specific case, and the agency must adopt it to implement, interpret, or make specific the law enforced by the agency.

“The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. . . . (*Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4th at 571, 59 Cal.Rptr.2d 186.)” (*Morning Star Co. V. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 55).

Kings Rehabilitation Center, Inc. V. Premo, (3rd Dist. 1999) 69 Cal.App. 4th 215, 217, 81 Cal.Rptr.2d 406, notes:

“The APA is partly designed to eliminate the use of ‘underground’ regulations; rules which only the government knows about. If a policy or procedure falls within the definition of a regulation within the meaning of the APA, the promulgating agency must comply with the procedures for formalizing such regulations, which include public notice and approval by the Office of Administrative Law (OAL). Failure to comply with the APA nullifies the rule. (Govt. Code § 11350(a); *Armistead v. State Personnel Bd.* (1978) 22 Cal.3d 198, 204, 149 Cal.Rptr. 1, 4”) (Emphasis added.)

Special Order No.: 239.02 is neither intended nor utilized to make specific determinations but is utilized generally when determining numerous rights of all persons detained by the Department of Mental Health. Thus, *Special Order No.: 239.02* is a regulation that must be promulgated as a regulation but otherwise is a null and void underground regulation.

6. Provide information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.

Special Order No.: 239.02 is unconstitutionally vague and overbroad in its attempt to implement, interpret and/or make specific provisions of Welfare and Institutions Code, sections 5325 and 5325.1.

Special Order No.: 239.02 is at odds with the due process rights, conveyed by the California and United States Constitutions, to all persons detained by the DMH because it mandates actions that affect their liberty and property interests but has never been legally promulgated.

The state authorized enforcement by state employees of the numerous statutory and constitutional violations contained in each and every un-promulgated, underground,” Manual, Instructions, Administrative Directive, or Special Order has resulted in a great deal of litigation at great expense to the taxpayers of California. The OAL, pursuant to its regulatory duties, is in a position to bring these underground regulations into the oversight process, and has a duty to the taxpayers to do so.

Public comment and OAL oversight is needed in order to halt the “bureaucratic tyranny” warned of in *Tidewater* and *Morning Star*.

Morningstar reiterates, “[2] These requirements promote the APA’s goals of bureaucratic responsiveness and public engagement in agency rulemaking. ‘One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation [citation], as well as notice of the law’s requirements so that they can conform their conduct accordingly [citation]. The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]’ [132 P.3d 255] (*Tidewater, supra*, 14 Cal.4th at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)” (*Morning Star Co. V. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

7. (Optional) Please attach any additional relevant information that will assist OAL in evaluating your petition.

Notwithstanding numerous requests, grievances, complaints to the DMH, and even petitions submitted to the OAL, the Department of Mental Health has steadfastly refused and failed to follow the law as set forth in the Administrative Procedures Act and promulgate its guidelines, criteria, bulletins, manuals, instructions, orders, standards of general application, or other rules.

This type of obdurate opposition to correcting illegal and unconstitutional content in its Administrative Directives perfectly illustrates why the Legislature estab-

lished the procedures set forth in the Administrative Procedures Act. This clearly demonstrates the absolute need for oversight and public input to halt the type of bureaucratic tyranny exhibited by the Department of Mental Health by issuing, using, enforcing, or attempting to enforce this type of underground regulation.

CONCLUSION

The Department of Mental Health is not, and has not been, responsive to the public they serve. Nor has the DMH been responsible to the taxpayers who must pay the bills that result from the failure of the DMH to follow the law and serve the public who pays their salaries. The California Supreme Court directed attention to this problem by stating:

“Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]’ [132 P.3d 255] (*Tidewater, supra*, 14 Cal.4th at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)” (*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

Such bureaucratic tyranny has been a problem throughout the history of this country. Now, it must be stopped once again. The tyrannical bureaucrats in the Department of Mental Health must be directed to follow the law.

The DMH, part of the Executive Branch, lacks Constitutional authority to enact legislation. The Legislature has granted state agencies and departments quasi-legislative powers through the APA providing they follow specific promulgation procedures. However, until and unless the DMH does follow the provisions of the APA to properly promulgate *Special Order No.: 239.02*, it is an underground regulation which has been implemented in violation of the Separation of Powers Clause, Article III, Section 3, of the California Constitution.

To allow the DMH to continue to utilize a controversial Administrative Directive, such as *Special Order No.: 239.02*, would be to allow the sort of unfettered power in the Executive Branch that is a step toward a totalitarian concentration of power in the executive; a power to be exercised with inadequate legislative standard, and capable of avoiding judicial review, particularly when done through sleight-of-hand tactics designed to avoid review, has been prohibited from the earliest times. See *Hayburn’s Case*, (1792) 2 U.S. (Dall.) 408, 1 L.Ed. 436, and its progeny.

Throughout the negotiation and complaint process prior to filing this petition, the Department of Mental Health has consistently cited “safety and security of the institution” as the justification for implementing the

rules and regulations that Petitioner alleges are underground rules.

Petitioner takes the position that the justification for using underground rules and regulations is not relevant to the question presented in this Petition. The questions before the OAL are: (1) Is *Special Order No.: 239.02* a regulation within the meaning of the Administrative Procedures Act; and, (2) Did the Department of Mental Health promulgate *Special Order No.: 239.02* pursuant to the Administrative Procedures Act.

Petitioner submits that *Special Order No.: 239.02* is a regulation within the meaning of the Administrative Procedures Act, and that the Department of Mental Health has not promulgated *Special Order No.: 239.02* pursuant to the Administrative Procedures Act, and it is therefore an underground regulation that must be declared null and void.

Based on the foregoing, it is clear that there is a need for public participation in the regulatory process which directs the attention of agency policymakers within the Department of Mental Health to the public they serve, and to ensure that those persons or entities whom a regulation will affect have a voice in its creation.

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to:

Stephen W. Mayberg, Ph.D., Director
California Department of Mental Health
1600 9th St., Suite 151
Sacramento, CA 95814
(916) 654-2413/(916) 654-2309

I certify that all the above information is true and correct to the best of my knowledge.

/s/

February 17, 2009

MICHAEL GEORGE ST. MARTIN
PETITIONER

Date

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# 2009-0312-01

CALIFORNIA ENERGY COMMISSION
Alternative & Renewable Fuel & Vehicle Technology Program

This rulemaking action implements the Alternative and Renewable Fuel and Vehicle Technology Program established by AB 118, Chapter 750 of 2007, and AB 109, Chapter 313 of 2008. The rulemaking describes program proposals that will receive preferences in the awarding of program funds. It establishes program sustainability goals and criteria which will be used to evaluate applications. It establishes certain funding restrictions on activities already required by law. It describes the purpose and requirements for the Investment Plan that must be created by the Commission in consultation with an Advisory Body. And it describes how the Advisory Body will be created as well as its duties and operations.

Title 20

California Code of Regulations

ADOPT: 3100, 3101, 3101.5, 3102, 3103, 3104, 3105, 3106, 3107, 3108

Filed 04/22/2009

Effective 04/22/2009

Agency Contact: Aleecia Macias (916) 654-4526

File# 2009-0316-01

CORRECTIONS STANDARDS AUTHORITY
Minimum Standards for Local Detention Facilities

This regulatory action would update and otherwise amend existing regulations on the minimum standards for local detention facilities.

Title 15

California Code of Regulations

AMEND: 1004, 1006, 1007, 1008, 1012, 1013, 1018, 1027, 1028, 1029, 1032, 1040, 1044, 1045, 1046, 1055, 1056, 1059, 1063, 1066, 1082, 1101, 1105, 1144, 1151, 1161, 1209, 1217, 1230, 1241, 1243, 1245, 1247, 1262, 1272

Filed 04/20/2009

Effective 05/20/2009

Agency Contact: Allison Ganter (916) 323-8617

File# 2009-0402-04

DEPARTMENT OF HEALTH CARE SERVICES
Out-of-State Hospital Inpatient Services Reimbursement

This rulemaking amends Title 22 section 51543 to comply with a judgment issued pursuant to a stipulation by the San Francisco Superior Court in April of 2004. The current text of the California Code of Regulations,

Title 22 section 51543 provides that out-of-state inpatient hospital services are reimbursed at an amount not to exceed the current statewide average of contract rates or the actual billed charges, whichever is less. This amendment changes this to read “. . . the current statewide per diem average . . .” or the actual billed charges, whichever is less. This amendment also clarifies that “current” means the most recent per diem as of December 1 of the previous calendar year. This amendment also removes language to allow hospitals to request an administrative adjustment.

Title 22
California Code of Regulations
AMEND: 51543
Filed 04/21/2009
Effective 05/21/2009
Agency Contact: Ben Carranco (916) 440-7766

File# 2009-0318-01
DEPARTMENT OF JUSTICE
Contractors State License Board Bond Form

This is a Contractors Bond form which is submitted for filing with the Secretary of State and printing only.

Title 11
California Code of Regulations
AMEND: 30.1
Filed 04/17/2009
Effective 04/17/2009
Agency Contact: Karen W. Yiu (415) 703-5385

File# 2009-0323-02
DEPARTMENT OF PESTICIDE REGULATION
Field Fumigant Emission Limits

This rulemaking amends the current limitations on fumigation of agricultural fields by revising the total pesticide volatile organic compound (VOC) emissions benchmarks in the Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura ozone nonattainment areas. Nonattainment areas are geographical regions that do not meet either federal or state ambient air quality standards. This rulemaking also delays the fumigant limits and allowances in all ozone nonattainment areas until 2011 except for Ventura.

Title 3
California Code of Regulations
AMEND: 6452.2
Filed 04/20/2009
Effective 04/20/2009
Agency Contact:
Linda Irokawa-Otani (916) 445-3991

File# 2009-0309-01
DIVISION OF WORKERS COMPENSATION
Audit Regulation

Division of Workers' Compensation proposed amendments to title 8 regulations governing audits of and imposition of penalties on workers' compensation claims administrators pursuant to Labor Code secs. 129 and 129.5 and other California workers' compensation laws. The amendments clarify terms and procedures in existing regulations, and establish new criteria and procedures corresponding to audits and penalties resulting from amendments to workers' compensation legislation since 2003.

Title 8
California Code of Regulations
AMEND: 10100.2, 10101.1, 10103.2, 10104, 10105, 10106.1, 10106.5, 10107.1, 10108, 10109, 10111.1, 10111.2, 10112, 10113.4, 10113.5, 10114.2, 10115, 10115.1, 10115.2
Filed 04/20/2009
Effective 05/20/2009
Agency Contact:
George Parisotto (415) 703-4600

File# 2009-0414-03
STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998; Charter & COS Programs

On December 17, 2008, the State's Pooled Money Investment Board took action to temporarily halt disbursing cash from the State's Pooled Money Investment Account (PMIA) for capital projects, including school construction projects because of the State's financial situation. The Office of Public School Construction (OPSC) utilizes cash from the PMIA to release State funds for school construction projects that have been approved by the State Allocation Board (SAB). Until further notice the OPSC will be unable to release state funds for approved school construction projects. This emergency regulatory action will allow the SAB to make a finding that preliminary apportionments under the Charter School Facilities Program (CSFP) and the Critically Overcrowded School Facilities Program (COS Program) are “inactive.” This will temporarily suspend the time period for conversion to final apportionment under these programs. This period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon SAB approval. When State financing again becomes available for bond-funded projects, the time period will resume as it existed on December 17, 2008. This emergency regulatory action includes the definition for the terms “Inactive Preliminary Apportionment” and “Inactive Preliminary Charter School Apportionment,” and the

criteria to be met in order for SAB to make a finding that an apportionment is “inactive.”

Title 2

California Code of Regulations

ADOPT: 1859.148.2, 1859.166.2 AMEND: 1859.2, 1859.121, 1859.164.2, 1859.197

Filed 04/22/2009

Effective 04/22/2009

Agency Contact: Robert Young (916)445-0083

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN November 19, 2008 TO
April 22, 2009**

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

Title 1

01/20/09 AMEND: 260

01/20/09 AMEND: Appendix A, Std. Form 400

Title 2

04/22/09 ADOPT: 1859.148.2, 1859.166.2
AMEND: 1859.2, 1859.121, 1859.164.2, 1859.197

03/05/09 AMEND: 18704

02/17/09 AMEND: 51.3

02/02/09 AMEND: 18402, 18450.3

01/30/09 ADOPT: 18427.5

01/30/09 ADOPT: 18421.8, 18521.5 AMEND: 18401

01/27/09 AMEND: 2294

01/26/09 AMEND: 1859.104.1

01/21/09 ADOPT: 1859.184.1 AMEND: 1859.2, 1859.103, 1859.184

01/12/09 AMEND: div. 8, ch. 24, secs. 45100, 45127, 45128

01/08/09 ADOPT: 18420.1

01/08/09 ADOPT: 18944.3 AMEND: 18944.1

12/30/08 AMEND: 714

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12/15/08 AMEND: 17463, 17470, 17519

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02/10/09 AMEND: 3060.4(a)(1)(C)(1), 3652(k)

02/05/09 AMEND: 3434(b)

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 02/13/09 AMEND: 3336, 3650, 3653
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- 02/06/09 ADOPT: 4000, 4005
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- 03/27/09 AMEND: 2498.6 (Exhibit C)
- 03/25/09 AMEND: 2661.3, 2661.4, 2662.1
- 03/23/09 AMEND: 2498.6
- 02/26/09 AMEND: 2699.6805
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- 04/08/09 AMEND: 2245, 2320
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- 03/02/09 AMEND: 791.7(a), Form FG OSPR-1924, Form FG OSPR-1925, Form FG OSPR-1972
- 02/25/09 AMEND: 1038, 1052
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