



California Regulatory Notice Register

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JUNE 4, 2010

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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. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

ADOPTION

MULTI-COUNTY: Desert Sands Public Charter, Incorporated
Western Sierra Charter Schools, Incorporated

AMENDMENT

MULTI-COUNTY: West Valley Mission Community College District

A written comment period has been established commencing on **June 4, 2010**, and closing on **July 19, 2010**. Written comments should be directed to the Fair Political Practices Commission, Attention **Cynthia Fisher**, 428 J Street, Suite 620, Sacramento, California 95814.

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

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government

Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than July 19, 2010. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Cynthia Fisher, Fair

Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Cynthia Fisher**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period**. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person beginning **June 4, 2010** and ending at 5:00 p.m. on **July 19, 2010**. 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, 19380, 19381, 19382, 19383, 19384, and 19385, Food and Agricultural Code, and to implement, interpret or make specific sections 19227, 19228, 19240, 19260, 19280, 19300, 19300.5, 19301, 19302, 19303, 19305, 19310, 19310.5, 19310.7, 19312, 19313.1, 19313.5, 19313.8, 19315, 19320, 19321, of said Code, the Department proposes to adopt, amend, and repeal various sections of Subchapter 2, Chapter 4, Division 2, of Title 3, California Code of Regulations, as follows:

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Existing law, Food and Agricultural Code section 407, authorizes the Department to adopt such regulations that are reasonably necessary to carry out the provisions of the Food and Agricultural Code, which it is authorized to administer or enforce.

Existing law, Chapter 5 (commencing with section 19200), of Part 3, Division 9, of the Food and Agricultural Code, authorizes the Department to regulate, in part, the rendering industry, which includes collection centers, dead animal haulers, and transporters of inedible kitchen grease.

Rendering establishments and collection centers are exempt from inspection by the United States Department of Agriculture (USDA) but require inspection in California.

Dead animal haulers and transporters of inedible kitchen grease are required to be registered with the Department. For transporters of inedible kitchen grease, statutes allow for a reduced registration fee for persons transporting grease for their personal, noncommercial use.

Existing regulations for the rendering industry are found under Subchapter 2 (commencing with section 1180) of Chapter 4, Division 2, of Title 3 of the California Code of Regulations.

This proposal amends, reorganizes, and repeals various sections, and adopts new sections, of Subchapter 2 (commencing with section 1180) of Chapter 4, Division 2, of Title 3 of the California Code of Regulations relating to the regulation of the rendering industry. This proposal also incorporates by reference specified forms utilized by the Meat and Poultry Inspection Branch of the Department for use by the rendering industry. It also incorporates by reference specified standards from the 2007 California Building Code.

Comparable Federal Regulations

There are various federal rules and regulations relating to slaughter and processing establishments inspected by the USDA. However, there are no comparable federal rules and regulations for standards and requirements for State-licensed and inspected rendering establishments, collection centers, dead animal haulers and registered transporters of inedible kitchen grease.

Incorporation by Reference

The forms and materials listed below, as specified in this proposal, are incorporated by reference. The Department has included a copy of these documents in the rulemaking file which is available for public inspection. Any person may request a copy of these documents or view them during regular businesses hours of the Department by contacting the persons named below in this Notice.

- MPI Form 79–005A (Rev. 12/04), Dead Animal Hauler License Application
- MPI Form 79–006A (Rev. 11/08), Collection Center License Application
- MPI Form 79–007A (Rev. 11/07), Renderer License Application
- MPI Form 79–012A(1) (Rev. 02/10) Personal Use Inedible Kitchen Grease (Used Cooking Oil) Transporter Registration Application, or
- MPI Form 79–012A(2) (Rev. 02/10) Personal Use Inedible Kitchen Grease (Interceptor/Trap Grease) Transporter Registration Application, or
- MPI Form 79–012A(3) (Rev. 02/10) Commercial Use Inedible Kitchen Grease (Interceptor/Trap Grease) Transporter Registration Application, or
- MPI Form 79–012A(4) (Rev. 02/10) Commercial Use Inedible Kitchen Grease (Used Cooking Oil) Transporter Registration Application
- MPI Form 79–015 (Rev. 08/08), Driver/Vehicle Information for Renderers
- MPI Form 79–015A (Rev. 08/08), Registration of Transporters Of Inedible Materials
- MPI Form 79–016A (Rev. 12/04), Inedible Permit Application
- MPI Form 79–019A (Est. 08/07), Inedible Kitchen Grease Renderer Application
- MPI Form 79–020 (Rev. 08/08), Driver/Vehicle Identification for Collection Centers
- MPI Form 79–025 (Rev. 12/04), Request for Survey for State Meat and Poultry Inspection
- MPI Form 79–025A (Est. 09/07), Request for Survey For State Licensed Rendering Facility
- MPI Form 79–028 (Rev. 01/75), California Retain/Reject Tag
- MPI 79–032 (Rev. 12/04), Plant Improvement Program
- MPI Form 79–038 (Rev. 03/06), Schedule of Operations
- Division VI, Chapter 4A, Volume 1, Part 2, Title 24, California Building Code (2007).

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

This proposal affects businesses engaged in the rendering industry, operating a collection center, or transporting inedible kitchen grease, or hauling dead animal carcasses. This proposal includes the following compliance requirements for businesses:

- There are existing record keeping, reporting, and paperwork requirements for renderers, collection centers, dead animal haulers, and transporters of inedible kitchen grease. There are no new requirements imposed by this proposal except the new Global Positioning System (GPS) equipment requirement for transporters of inedible kitchen grease collected for commercial use vehicles.
- There are existing costs for license and registration application and renewal, which are specified in statute. There are no new fees imposed by this proposal and all specified forms are provided by the Department. There are two enforcement fee categories for transporters of inedible kitchen grease (specified in statute) effective January 1, 2009, for commercial use, and a reduced fee for persons transporting inedible kitchen grease for noncommercial use.
- *Record keeping* requirements include standard business records for persons engaged in the rendering industry, receipts, logs, accounting records and inspection records.
- *Paperwork* includes the participation of each licensed renderer or collection center in the Plant Improvement Program. This is intended to identify and record significant deficiencies in plant facilities and equipment that do not present immediate threat to plant sanitation or product wholesomeness, to establish and record due dates for correction of such deficiencies, and to record actual completion dates or corrections. The Department provides the plant improvement program form free of charge to all licensed establishments.
- *Equipment* requirements consist of the installation of a GPS device in all registered vehicles that transport inedible kitchen grease for commercial use. The GPS device records location data that can be stored within the tracking unit or it may be transmitted to a central location data base or an

internet-connected computer. The transporter is not required to transmit location data to the Department; however, the Department may request specific data from a registered transporter as needed on a case by case basis to track the proper transport and disposal of grease waste. The estimated initial cost for a business to equip commercial use vehicles with GPS is \$149–\$499/vehicle. There are approximately 342 registered transporters of inedible kitchen grease. Of that number, approximately 232 are commercial use vehicles. It is unknown how many vehicles are equipped with GPS; however, all commercial use vehicles are required to have GPS installed by January 1, 2012, as specified in this proposal.

Included in the rulemaking file is GPS cost comparison data, Fund Condition Statement, and Funding Sources documents. These documents are available to the public by contacting the persons named below in this Notice.

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will have impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California. However, it is not known if this impact would be negative upon jobs or new businesses as the Department cannot estimate how many jobs or businesses would be impacted by the requirements of this proposal. It could depend upon businesses being able to absorb any costs associated with the new GPS equipment requirements for registered transporters of inedible kitchen grease for commercial use vehicles. As stated above under “Business Impact” the estimated cost range for new businesses to comply with this proposal is \$149–499/vehicle. Some new vehicles may already be equipped with GPS; however, all commercial use vehicles are required to have GPS installed by January 1, 2012, as specified in this proposal.

Cost Impacts on Private Persons or Entities: The Department is aware of the following cost impacts that a representative private person or entity would necessarily incur in reasonable compliance with the proposed action:

This proposal affects private persons or entities engaged in the business of rendering, operating a collection center, or transporting inedible kitchen grease, or hauling dead animal carcasses. This proposal includes the following compliance requirements for private persons or entities:

- There are existing record keeping, reporting, and paperwork requirements for renderers, collection centers, dead animal haulers, and transporters of inedible kitchen grease. There are no new

requirements imposed by this proposal except the new GPS equipment requirement for transporters of inedible kitchen grease for commercial use vehicles.

- There are existing costs for license and registration application and renewal, which are specified in statute. There are no new fees imposed by this proposal and all specified forms are provided by the Department. There are two enforcement fee categories for transporters of inedible kitchen grease (specified in statute) effective January 1, 2009, for commercial use, and a reduced fee for persons transporting inedible kitchen grease for noncommercial use.
- *Record keeping* requirements include standard business records for persons engaged in the rendering industry, receipts, logs, accounting records and inspection records.
- *Paperwork* includes the participation of each licensed renderer or collection center in the Plant Improvement Program. This is intended to identify and record significant deficiencies in plant facilities and equipment that do not present immediate threat to plant sanitation or product wholesomeness, to establish and record due dates for correction of such deficiencies, and to record actual completion dates or corrections. The Department provides the plant improvement program form free of charge to all licensed establishments.
- *Equipment* requirements consist of the installation of a GPS device in all registered vehicles that transport inedible kitchen grease for commercial use. The GPS device records location data that can be stored within the tracking unit or it may be transmitted to a central location data base or an internet-connected computer. The transporter is not required to transmit location data to the Department; however, the Department may request specific data from a registered transporter as needed on a case by case basis. As stated above under “Business Impact” the estimated cost range for private persons or entities to comply with the GPS equipment requirement is \$149–\$499/vehicle. Some new vehicles may already be equipped with GPS; however all commercial use vehicles are required to have GPS installed by January 1, 2012, as specified in this proposal.

Effect on Housing Costs: None

In making the above determinations, the Department has not considered alternatives that would lessen any adverse economic impact on businesses and invites the public to submit such proposals during the written com-

ment 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.

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 these regulations 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

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Department of Food and Agriculture 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 proposed regulation.

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

INITIAL STATEMENT OF REASONS

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 by contacting the persons named below or by accessing the Department's website as indicated below in this Notice.

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

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

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

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations, or any written comments, facsimiles, or electronic mail concerning this proposal 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
 Email: AAquino@cdfa.ca.gov

The backup contact person is:

Nancy Grillo, Associate Analyst
 Department of Food and Agriculture
 Animal Health and Food Safety Services
 1220 N Street, Room A-114
 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 by accessing the following Internet address: <http://www.cdfa.ca.gov/ahfss/regulations.html>.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3423(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Oriental Fruit Fly Interior Quarantine as an emergency action that was effective May 4, 2010. The Department proposes to continue the regulation as amended and submit a Certificate of Compliance for this action no later than August 31, 2010.

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 120 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 July 19, 2010.

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 3423(b) removed approximately 84 square miles surrounding the infestation in the La Verne area of Los Angeles and San Bernardino counties as the area under quarantine for Oriental fruit fly. The effect of the change is to remove authority for the State to regulate movement of hosts of Oriental fruit fly from, into, and within that area under quarantine as it is no longer necessary to prevent artificial spread of the fly to noninfested areas to protect California's agricultural industry. The proposed action does not differ from any existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3423 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 3423. No reimbursement is required for Section 3423 under Section 17561 of the Government Code because this amendment eliminated the need for the agricultural commissioners of Los Angeles and San Bernardino counties to conduct any enforcement activities.

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 California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any costs a representative person or business would incur in reasonable compliance with the proposed action.

ASSESSMENT

The Department has made an assessment that the proposed amendments to the regulations 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 3423(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 Susan McCarthy at (916) 654-1017. Questions regarding the substance of the proposed regulations 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 regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, 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 4. CALIFORNIA GAMBLING CONTROL COMMISSION

NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING CONCERNING REACTIVATION OF EXPIRED GAMBLING LICENSES; SURRENDER; ABANDONMENT CGCC-GCA-2010-01-R

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest. Any interested person, or his or her authorized representative, may present statements or arguments orally or in writing relevant to the proposed regulatory action at a public hearing to be held at **10:00 a.m. on August 19, 2010**, at 2399 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.

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 at any time during the 45-day public comment period, which closes on July 19, 2010. Written comments will also be accepted at the above-referenced hearing.

Written comments relevant to the proposed regulatory action, including those sent by mail, facsimile, or e-mail, may be submitted to the Commission at any time during the public comment period. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than 5:00 p.m. on July 19, 2010**, or provided to the Commission at the above referenced hearing. Written comments should be directed to one of the individuals designated in this notice as a contact person. **Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.**

ADOPTION OF PROPOSED ACTION

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally 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 oral or written 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 19800, 19811, 19824, 19840, 19841, 19951, and 19963 of the Business and Professions Code, and to implement, interpret or make specific sections 19876, 19877, and 19963 of the Business and Professions Code,¹ the Commission is proposing to adopt the following changes to Chapters 1 and 6 of Division 18 of Title 4 of the California Code of Regulations:

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

INTRODUCTION:

The California Gambling Control Commission (Commission) is proposing to adopt regulations to provide guidelines and procedures for the surrender or abandonment of state gambling licenses, and the reactivation of specified expired state gambling licenses.

SPECIFIC PROPOSAL:

The proposed action would amend sections in Chapter 1 and Chapter 6 of Division 18 of Title 4 of the California Code of Regulations to provide guidelines and procedures for the surrender or abandonment of state gambling licenses, and the reactivation of specified expired state gambling licenses.

The proposed regulations establish the following:

1. A consequence for late submittal of an application for renewal of a state gambling license;
2. Definitions and procedures for the surrender or abandonment of a state gambling license; and,
3. A mechanism to reinstate state gambling licenses that were previously surrendered or had expired without being renewed, subject to specified conditions.

EXISTING LAW:

Business and Professions Code section 19876 requires applications for a renewal of a state gambling license to be filed with the Commission no later than 120 calendar days prior to the expiration of the current license. Licenses are issued for a 24-month term, and the Commission’s current practice is to send a letter 150 days in advance of the expiration date of a license to re-

mind the licensee about the upcoming deadline. Title 4, CCR, Section 12345 also specifies that a complete renewal application is due 120 days in advance of the expiration of the current license, and defines a complete application as including all required fees. However, no consequence currently exists for failing to submit a timely application. This proposed action would implement consequence for late submittals.

Second, the Gambling Control Act² (Act) contemplates the possibility of a license surrender. Section 19877 states, in part, that “the failure of an owner licensee to file an application for renewal before the date specified in this chapter may be deemed a surrender of the license.” The proposed action implements regulations providing procedures for surrendering a license, and specifying the consequences of doing so.

Finally, section 19963 provides a “moratorium” on the approval of new cardrooms. The proposed action provides an interpretation of the moratorium provision.

EFFECT OF REGULATORY ACTION:

This proposed action would make the following specific changes to Chapter 1 and Chapter 6 of Division 18 of Title 4 of the California Code of Regulations:

- *Section 12002, subsection (j)* adds a definition of “surrender” to the general definitions.
- *Section 12345, subsection (g)* states that if a licensee fails to submit a complete renewal application at least 120 days in advance of the date of expiration, and consequently, the Bureau of Gambling Control (Bureau) and the Commission cannot complete their review and approval of the application prior to the expiration date, the licensee must cease gambling operations as of the expiration date of the license. Gambling operations may not resume until the Commission approves the renewal of the license.
- *Section 12345, subsection (h)* deems a state gambling license “abandoned” if a renewal application has not been received within 10 days after the expiration date of the previous license.
- *Section 12347, subsection (a)* allows an owner–licensee to propose to surrender the license any time prior to expiration. A surrender must be requested in writing, and the matter considered before the full Commission at a properly–noticed, public hearing.
- *Section 12347, subsection (b)* describes the consequences of surrendering or abandoning a gambling license, as follows:

¹ All statutory references hereafter are to the Business and Professions Code, unless otherwise specified.

² Business and Professions Code, Division 8, Chapter 5, Section 19800 et seq.

- *Paragraphs (1) and (2)* prohibit the license from being reactivated or used to operate any gambling establishment in the state.
- *Paragraph (3)* prohibits the license holder from selling the gambling business.
- *Paragraph (4)* explicitly applies the moratorium provision of the Act to any gambling establishment whose owner surrenders or abandons the license.
- *Section 12348, subsection (a)* provides that a state gambling license, which includes a provisional license as well as a license issued by the Commission, that was surrendered or had expired without being renewed *prior* to the effective date of this section can be reactivated within the following guidelines:
 - *Paragraph (1)*: Limits the ability to reactivate the license to the last licensed owner of a gambling establishment that meets the requirements of section 19963.
 - *Paragraph (2)*: Requires the interested applicant to notify the Commission within 30 days of the effective date of the regulation of their intent to apply for reinstatement of the license.
 - *Paragraph (3)*: Requires the applicant to have all required forms, fees, and documentation submitted to the Commission within 12 months of the effective date of this section.
- *Section 12348, subsection (b)* specifies the documentation that is required to be submitted in addition to the initial application forms and fees:
 - *Paragraph (1)*: A copy of the last state license issued, whether provisional or a state gambling license, or other documentation satisfactory to the Commission proving that the applicant is the last licensed owner of the establishment.
 - *Paragraph (2)*: A written document addressing the circumstances under which the previous license was surrendered, abandoned, or allowed to expire without being renewed, and the applicant's prior efforts, if any, to have the license renewed.
 - *Paragraphs (3) and (4)*: A copy of the current applicable local gambling ordinance and an opinion from the chief legal counsel of the local jurisdiction, certifying that the reopening of the gambling establishment is authorized by local ordinance.
- *Paragraphs (5) and (6)*: Proof from the local governing body (e.g. city council or county board of supervisors) and the chief law enforcement officer of the local jurisdiction (e.g., the Chief of Police or County Sheriff) affirming support for the gambling establishment's reopening.
- *Paragraph (7)*: An economic feasibility study that demonstrates that the proposed gambling establishment will be economically viable, and that the owners have sufficient resources to enable them to comply with all laws and regulations.
- *Section 12348, subsection (c)* requires that the Commission consider specified factors when deliberating on an application to reactivate a license and reopen a closed gambling establishment. Specifically, the Commission would be required, but not limited, to consider the following:
 - *Paragraph (1)*: Generally, whether the issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust in gambling operations.
 - *Paragraph (2)*: The circumstances under which the previous license was surrendered or allowed to expire without being renewed, including (A) any extenuating circumstances; (B) whether the surrender may have been an attempt to avoid adverse action against the license; (C) whether the surrender was voluntary; (D) any prior efforts by the applicant to have the license renewed or reinstated.
 - *Paragraph (3)*: Any changes in the legal status or composition of the previously-licensed entity.
 - *Paragraph (4)*: The potential effect a reopened gambling establishment may have on the incidence of problem gambling.
 - *Paragraph (5)*: The potential impact a reopened gambling establishment may have on the local economy, including revenues to the local jurisdiction and the number of jobs that may be created.
 - *Paragraph (6)*: The economic impact on existing gambling establishments within a 20-mile radius of the proposed location for the reopened establishment.

- *Section 12348, subsection (d)* requires the reopened gambling establishment to be located in the same local jurisdiction in which it was previously licensed.
- *Section 12348, subsection (e)* prohibits the issuance of temporary licenses to applicants under this section.
- *Section 12348, subsection (f)* declares that any license that is eligible for reactivation under this section for which a complete application is not submitted within the required deadlines shall be deemed abandoned and shall be subject to the provisions of Section 12347(b).

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

To the extent this regulation results in the submittal of additional applications, a minor workload cost may be imposed upon the Commission and the Bureau. This cost is expected to be offset by the collection of fees and deposits.

NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES:

None.

MANDATE IMPOSED ON ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:

None.

COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH PART 7 (COMMENCING WITH SECTION 17500) OF DIVISION 4 OF THE GOVERNMENT CODE REQUIRES REIMBURSEMENT:

None.

IMPACT ON BUSINESS:

The Commission has made an initial determination that the adoption of these regulations 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:

During a review of the previously-held licenses that may be eligible for reactivation under this regulation, Commission staff has made a determination that few licenses are likely to be reactivated, probably no more than 10. The reopening of a cardroom may have an impact on neighboring cardrooms, but the Commission does not expect a significant, statewide impact to cardroom businesses. In determining whether to reactivate a license, the Commission must consider the economic impact on cardrooms within a 20-mile radius. This regulation will not affect the ability of California businesses to compete with businesses in other states, as cardroom businesses are generally not in direct competition with such businesses.

IMPACT ON JOBS/NEW BUSINESSES:

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

COST IMPACT ON 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.

EFFECT ON HOUSING COSTS:

None.

EFFECT ON SMALL BUSINESS:

The Commission has determined that the proposed regulatory action may affect small businesses, if any resulting new cardroom or any affected existing cardroom would qualify as a small business.

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

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), 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 either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

INITIAL STATEMENT OF REASONS,
INFORMATION AND TEXT OF PROPOSAL

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833-4231.

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

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the backup contact person named below.

Upon its completion, the Final Statement of Reasons will also be available. A copy of the Final Statement of Reasons may be obtained, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's Web site listed below.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following **primary** contact person .

James B. Allen, Regulatory Actions Manager
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento,
CA 95833-4231
Telephone: (916) 263-4024
Fax: (916) 263-0452
E-mail: Jallen@cgcc.ca.gov

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following **backup** contact person:

Shannon George, Associate Governmental Program
Analyst
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220, Sacramento,
CA 95833-4231
Telephone: (916) 263-4904
Fax: (916) 263-0452
E-mail: sgeorge@cgcc.ca.gov

WEB SITE ACCESS

Materials regarding this proposed action are also found on the Commission's Web site at www.cgcc.ca.gov.

**TITLE 16. COURT REPORTERS
BOARD OF CALIFORNIA**

**NOTICE OF PROPOSED CHANGES IN
THE REGULATIONS**

NOTICE IS HEREBY GIVEN that the Court Reporters Board of California (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 in the 3rd Floor Conference Room at 2535 Capitol Oaks Drive, Sacramento, California 95833, at 1:00 p.m. on Tuesday, July 20, 2010. Written comments must be received by the Board at its office (for the Board's address, see Contact Person section on page 3) not later than July 20, 2010, at 5:00 p.m. or at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposal if such modification is 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 the Notice as the 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 Citations

Pursuant to the authority vested by Sections 8007 and 8008 of the Business and Professions (B&P) Code, and to implement, interpret, or make specific Sections 163.5, 8008, and 8031 of said Code, the Court Reporters Board of California is considering changes to Division 24 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/PLAIN ENGLISH
POLICY STATEMENT OVERVIEW

Adopt Section 2450— Fee Schedule.

Section 163.5 of the B&P Code sets the renewal delinquency fee at 50% of the renewal fee. Section 8007 authorizes the Board to adopt, amend, or repeal rules and regulations which are reasonably necessary to carry out the provisions of the chapter. Section 8008 authorizes the Board to charge and collect fees. Section 8031 establishes the statutory limits for the fees that the Board may charge and collect.

The existing regulation sets forth the fees that may be charged and collected by the Board for an examination and as a penalty for failure to notify the Board of a name or address change.

This proposal would amend the regulation in order to:

- Delete subsection (a), which sets the fee for an examination at \$75 for each separate part for each administration.
- Add a new subsection (a) to set the fee for filing an application for examination at \$40 per three-year cycle and \$25 per section of examination or re-examination.
- Add a new subsection (b) to set the fee for an initial certificate at \$125 and set the fee for an initial certificate that is issued less than 180 days before it will expire at \$50.
- Add a new subsection (c) to set the fee for an annual renewal of a certificate at \$125.
- Add a new subsection (d) to set the delinquency fee for the renewal of a certificate at \$62.50.
- Add a new subsection (e) to set the fee for a duplicate certificate at \$5.
- Renumber existing subsection (b) to new subsection (f) and amend the text to revise the penalty fee for failure to notify the Board of a change of name or address from \$50 to \$20.

Adopt Section 2451— Due Dates of Fees.

Section 8007 of the B&P Code authorizes the Board to adopt, amend, or repeal rules and regulations which are reasonably necessary to carry out the provisions of the chapter. Section 8008 authorizes the Board to charge and collect fees. Section 8031 establishes the statutory limits for the fees that the Board may charge and collect.

The existing regulation sets forth the due dates of fees that must be paid to the Board, specifically the application fee and the original certificate fee.

This proposal would amend the regulations in order to:

- Revise subsection (b) by changing the term “original certificate” to “initial certificate” to be consistent with the terminology used in Section 2450 and elsewhere.
- Add a new subsection (c) to establish the due date of a delinquency fee for the renewal of a certificate if the certificate is not renewed within thirty (30) days after the date on which it expired.

Local Mandate

The proposed regulatory action does not impose a mandate on local agencies or school districts.

Fiscal Estimates per Government Code Section 11346.5(a)(6)

The proposed regulatory action does not impose any cost or savings to any state agency or federal funding to the state or any other non-discretionary cost or savings imposed upon local agencies. In addition there is no cost to any local agency or school district requiring reimbursement to Government Code Section 17500 et seq.

Fiscal Impact on Public Agencies/STD 399

The proposed regulatory action will allow the Board sufficient operating revenue through budget year 2015–16.

Cost Impact on Affected Private Persons

An increased renewal fee will affect all licensees; however, the license renewal fee has not been raised in at least 15 years. The adjustment to the exam fee will be a slight increase for first-time candidates. Those who must pay to re-take a single portion of the exam will find a slight decrease.

Housing Costs

The proposed regulatory action will not have any effect on housing costs.

Effect on Small Business

The proposed regulatory action will not affect small businesses, because it only affects individuals who are certified or applying for certification as court reporters.

Contact Person

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

Court Reporters Board of California
2535 Capitol Oaks Drive, Suite 230
Sacramento, CA 95833
Attn: Paula Bruning
(916) 263-3660
(916) 263-3664 (FAX)
Paula_Bruning@dca.ca.gov

The backup contact person is:

Yvonne Fenner
 (916) 263-3660
 (916) 263-3664 (FAX)
 Yvonne_Fenner@dcs.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Paula Bruning at (916) 263-3660.

Comment Period

Written comments must be received by the Board at the Court Reporters Board of California, 2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833 not later than July 20, 2010 at 5:00 p.m. or at the hearing to be held in the 3rd Floor Conference Room at 2535 Capitol Oaks Drive, Sacramento, CA 95833 at 1:00 p.m. on July 20, 2010,

Availability of Modifications

With the exception of technical or grammatical changes, the full text of any modified proposal will be available from the person designated in this notice as the contact person for 15 days prior to its adoption and will be mailed to those persons who submit written or oral testimony related to this proposed regulatory action or who have requested notification of any changes to the proposal.

Reference to Text and Initial Statement of Reasons

The Board has prepared a statement of the reasons for the proposed action, which is available to the public upon request. The express terms of the proposed action and all information upon which the proposal is based are available upon request.

Business Impact

The Board is not aware of any significant statewide adverse economic impact that the proposed regulatory action will have directly affecting business, including the ability of California businesses to compete with businesses in other states, because it only affects individuals who are certified or applying for certification as court reporters.

Impact on Jobs/New Businesses

The proposed regulatory action will not 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, because it only affects individuals who are certified or applying for certification as court reporters.

Public Hearing

A public hearing will be held in the 3rd Floor Conference Room at 2535 Capitol Oaks Drive, Sacramento, CA 95833 at 1:00 p.m. on July 20, 2010.

Federal Mandate

The proposed regulatory action is not mandated by federal law or is not identical to any previously adopted or amended federal regulation.

Consideration of Alternatives

The Board must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome on affected private persons than the proposed regulatory action. The actual determination must be part of both the Initial and Final Statement of Reasons.

Availability of the Final Statement of Reasons

Interested parties 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 above.

Website Access

Materials regarding the proposed regulatory action can be found at www.courtreportersboard.ca.gov.

TITLE 16. DENTAL BOARD OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

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

Department of Consumer Affairs
 1st Floor Hearing Room
 2005 Evergreen Street
 Sacramento, California on

July 19, 2010

10:00 a.m.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Dental Board of California (hereinafter "Board") at its office not later than 5:00 p.m. on July 19, 2010 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical

changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 1614 of the Business and Professions Code, and to implement, interpret or make specific Sections 1754.5, 1755, 1756, 1756.1, 1756.2 and 1758 of the Business and Professions Code the Board is considering changes to Division 10 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 1614 authorizes the Board to adopt, amend, or repeal, such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Dental Practice Act. The Board is proposing the following changes:

The main purpose of the proposed language is to clarify and place into regulation existing requirements for dental assisting educational programs and courses. These requirements were established by AB 2637 (Ch. 499, Statutes of 2008) that expanded duties allowed to be performed by a dental assistant, registered dental assistant (RDA) and registered dental assistant in extended functions (RDAEF), and added corresponding educational requirements. Two new categories of permits were also created by this bill, the Orthodontic Assistant Permit and the Dental Sedation Assistant Permit, and a specified course of instruction for each. As this bill was passing through the Legislature, it became clear that it would be impossible to promulgate regulations governing the various dental assisting educational courses and programs to implement the law in a timely manner. Therefore, they were included as statutes with inoperative dates of January 1, 2011 so that the Board could develop replacement regulations by the inoperative date. If these proposed regulations are not effective by the inoperative date of the statutes, there will be no laws to govern the approval of the required educational programs and courses that address the current duties allowed. Therefore, there would not be adequate regulatory oversight of current educational programs that are teaching the allowed duties for dental assistants, RDAs, OAs, DSAs and RDAEFs that are allowed by statutory law and will continue since only the statutory provisions relative to educational programs and courses expire.

The proposed amendments also delete time-sensitive language that is no longer applicable, make reference changes, and further clarify the existing statutes that they will replace.

Proposed changes, by section, are more specifically identified as follows.

Adopt new Section 1070. General Provisions Governing All Dental Assistant Educational Programs and Courses.

This proposed regulation would govern all dental assisting educational programs. It reinstates the provisions of Business and Professions Code Section 1755, which become inoperative on January 1, 2011. This section sets out the general requirements applicable to all programs and courses seeking approval by the board, specifies applicable references, and is renumbered to conform the text.

The proposed changes:

- (1) Clarify in subdivision (b) that RDHs, whose licenses will be issued by the Dental Hygiene Committee of California (DHCC) rather than the Board on and after July 1, 2009, may continue to serve as program or course directors. Current statutory language states that a program or course director must be licensed by the board, making the status of RDHs as program or course directors unclear, since their licenses will be issued by the DHCC on and after July 1, 2009.
- (2) Clarify in subdivision (b) that the program or course director is responsible for ensuring that programs or courses meet the requirements specified in the following subsections.
- (3) Clarify in subdivision (c) that RDAs who have held an RDA license for 2 or more years do not need to also hold an Orthodontic Assistant (OA) permit for an additional 2 years in order to perform as faculty in an OA course. This will assure that such courses remain accessible.
- (4) Clarify that objective evaluation criteria used for evaluating students must be the same for both the program or course and the extramural facility, if one is used.

Add new Section 1070.1 Educational Program and Course Definitions and Instructor Ratios

This heading text would inform students, educators, educational program directors and applicants for educational or course approval that the Sections that follow relate to requirements for faculty ratios for all dental assisting educational programs and courses. This Section reinstates the provisions of Business and Professions Code Section 1754.5, which become inoperative on January 1, 2011.

Add new Section 1070.1(a)

This Section would define the term “Didactic instruction” to clarify that this instruction does not involve active participation by students and can be accomplished by home study, electronic media or live lecture and specify that the content must be approved by the board.

Add new Section 1070.1(b)

This Section would define the term “Laboratory instruction” to clarify that this instruction consists of supervised experience using study models, mannequins or other simulated means, and specifies that at least one instructor for each 14 students be required for this instruction.

Add new Section 1070.1(c)

This Section would define the term “Preclinical instruction” to clarify that this instruction consists of supervised experience performing procedures on students, faculty or staff members, and specifies that at least one instructor for each six students be required for such instruction.

Add new Section 1070.1(d)

This Section would define the term “Clinical instruction” to clarify that this instruction consists of supervised experience performing procedures in a clinical setting on patients, and specifies that at least one instructor for each six students be required for such instruction.

Add new Section 1070.2 Approval of Registered Dental Assistant Educational Programs

This Section would specify the requirements for Registered Dental Assistant educational programs. This Section reinstates the provisions of Business and Professions Code Section 1757, which become inoperative on January 1, 2011, with the following proposed changes.

The proposed changes are as follows:

- (1) Subsection (b)(1) was changed to clarify the information that a program must submit if the maximum student enrollment is increased.
- (2) Subsection (b)(3)(B) relating to the requirement that program faculty complete a 30-hour teaching methodology course has been amended to delay implementation until 2012, since the current statutory deadline of January 1, 2010 has passed and the proposed regulatory language governing such courses has not yet been set for hearing.
- (3) Subsection (b)(5) relating to the number of extern hours has been amended, since the wording in Section 1757 is incorrect and essentially eliminates extern instruction, which is an integral part of all current RDA programs.

- (4) The requirement that program faculty visit each extramural clinical facility at least once every ten clinical days has been added to subsection (b)(6)(B). This requirement is in existing RDA program regulations, but was inadvertently omitted from Section 1757.
- (5) Equipment ratios have been added in subdivision (b)(7). The ratios stated for model trimmers, dental rotary equipment, vibrators, typodonts and bench mounts, and sets of hand instruments are the same ratio requirements contained in the current RDA program regulations. The ratio for orthodontically banded typodonts is the same as required for OA courses. The ratios for light curing devices, facebows, pulse oximeters, and caries detection devices are proposed as appropriate new ratios to provide students with adequate access to such equipment that were not addressed in the statute, and which are necessary to provide guidance to providers, Board staff and consultants who evaluate such courses and programs.
- (6) Subsection (b)(7)(C) has been amended to clarify that either a portion, or all, of the library holdings may be via the internet, to recognize current educational technologies.
- (7) Subsection (b)(9) is amended to clarify that programs may require that students complete CPR as a prerequisite to program enrollment, or provide evidence of completion from another provider, which was unclear in Business and Professions Code Section 1757.
- (8) Subsection (b)(9) is amended to clearly specify the manner in which programs must teach the Infection Control and Dental Practice Act (DPA) courses that RDA applicants must complete in order to apply for licensure on and after January 1, 2010. The proposed amendments reflect that their instruction in the DPA must meet the requirements set forth in the Board’s continuing education regulations, and provide specific section references.
- (9) Subsection (b)(9) is amended to specify the Sections of regulatory law referenced as requirements for a radiation safety course, a coronal polishing course, a pit and fissure sealant course, an infection control course, a course in the removal of excess cement with an ultrasonic scaler, an orthodontic assistant permit course, a dental sedation permit course and continuing education courses.

Add Section 1070.6

This Section would govern Infection Control courses. It reinstates the provisions of Business and Professions Code Section 1756, which become inop-

erative on January 1, 2011, with appropriate reference corrections. No changes are proposed to this section other than the reference corrections and deletion of the repealer date.

Add Section 1070.7

This proposed regulation would govern approval of Orthodontic Assistant (OA) permit courses. It reinstates the provisions of Business and Professions Code Section 1756.1, which become inoperative on January 1, 2011, with appropriate reference corrections and elimination of transition language that will not be necessary in the future.

The proposed modification to the current expiring statute in subsection (a) clarifies that OA course providers, like RDA programs, may reduce the course hours for RDA licensees, and for RDA licensees who also hold an ultrasonic scaling permit. This assures that such licensees are not required to repeat training for duties that they are already legally allowed to perform.

Add Section 1070.8

This proposed regulation would govern Dental Sedation Assistant permit courses. It reinstates the provisions of Business and Professions Code Section 1756.2, which become inoperative on January 1, 2011, with appropriate reference corrections and the elimination of transition language that is unnecessary.

The proposed changes to existing statute are as follows:

- (1) Adds definitions for “AED”, “CO2”, and “EKG/ECG,” which are used throughout the section.
- (2) Replace “but not limited to” with the phrase “at a minimum”, to clarify that these are minimum requirements that may be exceeded at the course’s discretion.
- (3) Replace “amount and time intervals” with “dosage and frequency” in subsection (m)(1)(c) for clarity.

Add Section 1071

This proposed regulation would govern RDAEF educational programs. It reinstates the provisions of Business and Professions Code Section 1758, which becomes inoperative on January 1, 2011, with appropriate reference corrections and elimination of transition language that is unnecessary.

The proposed changes to existing statute are as follows:

- (1) Adds a definition of the term “RDAEF” for clarity.
- (2) Current statute allows polishing of existing amalgams as a duty for RDAEFs, however fails to specify the instruction that is required for this duty. New subdivision (m) has been added to address this omission.

- (3) In subsection (a)(2), replaces “existing RDAEFs” with “RDAEFs licensed on or before January 1, 2010” to clarify the licensees to whom those provisions apply.
- (4) In subsection (a)(2)(B) adds “endodontic” to clarify the procedure referenced.
- (5) In subsection (e)(1) strikes “The following are minimum requirements for” as redundant, since similar text appears in subsection (e).
- (6) In subsection (f), strikes “In addition to the requirements of those subdivisions” as redundant.
- (7) In subsection (h), replaces “but not limited to” with the phrase “at a minimum”, to clarify that these are the required minimum components of a preliminary evaluation, but the course may exceed these minimums at its discretion.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The costs to the Board associated with this regulation would be minor and absorbable, as the Board currently performs all functions within the statutory requirements.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

AND

The following studies/relevant data were relied upon in making the above determination:

The Board does not believe that this regulation will have a significant adverse economic impact on businesses. Dental assisting courses and programs currently operate under these same requirements within existing statutory law.

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: Educational program and course providers currently are subject to these same requirements under

statutory law, as are students taking these programs and courses. The Board anticipates no cost impact on these individuals or businesses as a result of this regulatory action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not have a significant economic impact on small businesses. There are approximately 86 existing RDA educational programs currently approved and in compliance with these statutory provisions that will be placed into regulation. New educational programs and courses seeking approval must meet the same existing criteria to achieve Board approval. This proposal ensures that students taking any board approved educational program or course receive the same standard of education and training that is needed to teach them to perform procedures safely and effectively on patients.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would 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.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Board of California at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815.

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

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

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

CONTACT PERSON

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

Name: Sarah Wallace
 Address: 2005 Evergreen Street, Suite 1550
 Sacramento, CA 95815
 Telephone No.: (916) 263-2187
 Fax No.: (916) 263-2140
 E-Mail Address: Sarah_Wallace@dca.ca.gov

The backup contact person is:

Name: Donna Kantner
 Address: 2005 Evergreen Street, Suite 1550
 Sacramento, CA 95815
 Telephone No.: (916) 263-2211
 Fax No.: (916) 263-2140
 E-Mail Address: Donna_Kantner@dca.ca.gov

Website Access: Materials regarding this proposal can be found at the Board's Web site: www.dbc.ca.gov.

TITLE 16. MEDICAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Medical Board of California (hereinafter referred to as the "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 Medical Board of California's Hearing Room, 2005 Evergreen Street, Sacramento, California, at 9:00 a.m. on July 30, 2010. 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 July 26, 2010, or must be received at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially

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

Authority and Reference: Pursuant to the authority vested by Section 2018 of the Business and Professions Code, and to implement, interpret or make specific Sections 2082, 2141 and 2435 of said Code, the Board is considering changes to Division 13 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1306 in Article 2 of Chapter 1 of Division 13, relating to the Abandonment of Application Files.

Existing regulation specifies that the Board shall “deny an application without prejudice” if an applicant does not “exercise due diligence” by completing the application within one year. The intent of this section is to notify applicants that the Board will close their licensing application if they do not fulfill all applicable licensing requirements and receive a physician’s and surgeon’s license within one year after they filed the application. However, applicants can misinterpret the existing obsolete, ambiguous terminology to mean that the Board will take formal action to deny their application. This proposal would replace obsolete, ambiguous terminology with concise language that establishes what actions are necessary on the part of an applicant to prevent his or her application from being deemed abandoned by the Board. This proposal would also require that applicants notify the Board of a change of address within thirty days.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: None

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

There are no costs associated with the proposed regulatory action. The proposed amendments only clarify the requirements that applicants need to meet in order to maintain their licensing applications in active status and avoid having their applications deemed abandoned by the board.

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 Medical Board of California is certain that there are no cost impacts to this proposed rulemaking.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. This proposed regulation will only have an impact on those applying for licensure as a physician and surgeon.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would 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.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based. Copies of the initial statement of reasons and all of the information upon which the proposal is based may be obtained from the person designated in the Notice under Contact Person or by accessing the Board’s website:

http://www.medbd.ca.gov/laws/regulations_proposed.html.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the Board's website: http://www.medbd.ca.gov/laws/regulations_proposed.html.

CONTACT PERSON

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

Name: Fayne Boyd, Licensing Manager
 Medical Board of California
 Address: 2005 Evergreen St., Suite 1200
 Sacramento, CA 95815
 Telephone No.: (916) 263-2365
 Fax No.: (916) 263-2487
 E-Mail Address: regulations@mbc.ca.gov

The backup contact person is:

Name: Kevin A. Schunke
 Medical Board of California
 Address: 2005 Evergreen St., Suite 1200
 Sacramento, CA 95815
 Telephone No.: (916) 263-2389
 Fax No.: (916) 263-2387
 E-Mail Address: regulations@mbc.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.medbd.ca.gov/laws/regulations_proposed.html.

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF PROPOSED REGULATION FOR ENERGY EFFICIENCY AND CO-BENEFITS ASSESSMENT OF LARGE INDUSTRIAL FACILITIES

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider adopting a regulation affecting large industrial stationary facilities located in California. The primary purpose of the proposed regulation is to gather information on the energy efficiency improvement opportunities that are available to California's largest industrial stationary sources of greenhouse gases (GHG), and to quantify the associated potential emission reductions for GHG, criteria pollutants, and toxic air contaminants.

DATE: July 22, 2010

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 may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., July 22, 2010, and may continue at 8:30 a.m., on July 23, 2010. This item may not be considered until July 23, 2010. Please consult the agenda for the hearing, which will be available at least 10 days before July 22, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed adoption of California Code of Regulations (CCR), title 17, subchapter 10, article 2.1. Energy Efficiency and Co-Benefits Assessment of Large Industrial Facilities, sections 95150, 95151, 95152, 95153, 95154, 95155, 95156, 95157, 95158, 94159, 95160, 95161, and 95162.

Background: In 2006, the Governor signed California's Global Warming Solutions Act (AB 32), which set the State's GHG reduction goals into law. AB 32 directed the ARB to begin developing discrete early actions to be made enforceable by 2010 and to prepare a Scoping Plan that will identify how best to reach the 2020 greenhouse gas limit. The Board approved the Scoping Plan in December 2008. In the Scoping Plan,

the Board outlined a comprehensive set of actions to reduce GHG emissions. This proposed regulation is one of the many measures identified in the Scoping Plan. The goals for the proposed regulation are to:

- 1) for high GHG emitting stationary industrial facilities in California, identify the facility's energy consumption and the associated GHG, criteria pollutant, and toxic air contaminant emissions;
- 2) determine potential energy efficiency improvement opportunities for reducing GHG, criteria pollutant, and toxic air contaminant emissions; and
- 3) identify potential future actions for obtaining further reductions.

Industrial facilities in California are a large source of GHG emissions. In 2008, these facilities emitted approximately 160 million metric tonnes of carbon dioxide equivalent (MMT_{CO₂e}) emissions annually or about one-third of the total GHG emissions from all sources in California. Information gathered from the implementation of the proposed regulation will be a valuable resource in determining what GHG emission reduction opportunities are available as well as what criteria pollutant and toxic air contaminant co-benefits might be realized. ARB staff will use these data to inform ARB's GHG, criteria pollutant, and toxic air contaminant emission reduction programs, and the next update to the Scoping Plan. Additionally, the information will help California's largest stationary sources of GHG emissions consider potential co-benefits when deciding on actions to comply with other GHG programs, such as a cap-and-trade program.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

ARB staff is proposing a regulation (article 2.1, subchapter 10, title 17, sections 95150 to 95162, CCR) that will subject the largest stationary sources of GHG emissions in California to provide information on the energy efficiency improvement opportunities that are available, and quantify the associated emission reductions for GHG, criteria pollutants, and toxic air contaminants.

Applicability

The proposed regulation would apply to stationary sources that emit GHG emissions of greater than 0.5 MMT_{CO₂e} annually and transportation fuel refineries and cement plants that emit GHG emissions of greater than 0.25 MMT_{CO₂e} annually. Besides refineries and cement plants, these facilities include oil and gas extraction and transmission facilities, electricity generation facilities, mineral plants, and hydrogen production

facilities. Based on the emissions threshold and the GHG emissions data collected for the 2008 calendar year pursuant to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, sections 95100 through 95133, title 17, CCR (Mandatory GHG Reporting Regulation), approximately 60 facilities in five industrial sectors will be affected. The industrial sectors and the number of facilities include:

- petroleum refineries (18 facilities)
- oil and gas extraction and transmission facilities (6 facilities)
- electricity generating facilities (18 facilities)
- cement plants and mineral plants (11 facilities)
- hydrogen plants (3 facilities)

The combined total GHG emissions at these 60 facilities was about 70 MMT_{CO₂e} in 2008 or about 45 percent of the total emissions from the industrial sector. These facilities are located throughout California with the largest numbers found in the Southern San Joaquin Valley, and in and around Los Angeles and San Francisco.

Analysis of Facility Energy Consumption and Emissions

Facility operators would be required to provide a process flow diagram, the name and description of the processes and equipment used, and the facility-wide fuel and electricity consumption for the 2009 calendar year. The proposed regulation does not require facilities to create a new emissions inventory. Instead, facilities would provide their 2009 calendar year emissions of GHG, criteria pollutants, and toxic air contaminants that were reported for the Mandatory GHG Reporting Regulation (for GHG) and local air district reporting programs (for criteria pollutants and toxic air contaminants). The GHG emissions data reported will be validated by a third party verification process that is required by the Mandatory GHG Reporting Regulation. The criteria pollutant and toxic air contaminant emission data will be verified by ARB and district staff as part of their existing data validation and review programs.

Analysis of Potential Energy Efficiency Improvements

Facility operators would be required to conduct a comprehensive assessment of potential energy efficiency improvement projects that are possible at the facility and the associated impacts that would occur if the projects were implemented. The assessment would include a description of each project, the types of processes and equipment involved, preliminary estimates for costs, timing, status (if the project is being implemented), project life, energy and cost savings, potential emission reductions (GHG, criteria pollutant and toxic air contaminant), district permitting impacts, and other project related impacts.

Submittal of a Comprehensive Report

Facility operators would be required to submit a report, called the Assessment Report, containing the facility’s energy consumption and emissions analysis and the energy efficiency improvement analysis. The Assessment Reports would be submitted to ARB by the end of 2011, and would then undergo an internal ARB review process to determine completeness and validity. If a report is deemed to be incomplete, then a new assessment, conducted by an approved third party assessor, may be required. Completed assessment reports submitted to the ARB would be made publicly available on an ARB’s Climate Change website in April 2012. Staff will also develop a draft report, to be released in mid 2012, with preliminary findings and recommendations. This draft report will be used as a starting point for discussion with all stakeholders on opportunities for further emission reductions.

Exemptions

The requirements of the proposed regulation would not apply to combined-cycle electricity generating facilities built after 1995. These facilities are considered to have the most efficient power generation process and equipment available, as determined by the California Energy Commission.

The proposed regulation also includes an exemption for petroleum refineries that do not produce transportation fuels, such as asphalt plants, because their processes are less energy intensive, emissions are typically less than transportation fuel refineries, and there are a limited number of facilities.

The proposed regulation would also exempt mobile source combustion sources and portable equipment. The Scoping Plan measure for this regulation intended it to focus on stationary sources only, and mobile and portable equipment are not required reporting sources for the Mandatory GHG Reporting Regulation.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations at this time.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposed regulatory amendments and which also describes the basis of the proposed action in more detail. The Staff Report is entitled, “Staff Report: Initial Statement of Reasons for the Proposed Rulemaking — Proposed Regulation for

Energy Efficiency and Co-Benefits Assessment of Large Industrial Facilities.”

Copies of the ISOR with the full text of the proposed regulatory language may be accessed on the ARB’s website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing on July 22, 2010.

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

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact person, Lisa Williams, Air Pollution Specialist, at (916) 327-1498.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, and Trini Balcazar, Regulations Coordinator, (916) 445-9564. 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.

This notice, the Staff Report, and all subsequent regulatory documents, including the FSOR, when completed, are also available on the ARB website for this rulemaking at <http://www.arb.ca.gov/regact/2010/energyeff10/energyeff10.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

Costs to Businesses and Private Individuals

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

The affected businesses are the largest industrial stationary sources of GHG emissions in California. The majority of the businesses affected by the proposed regulation are large multi-national corporations. While we do not expect these businesses to be adversely affected by the costs of the proposed regulation, there will be costs associated with conducting the assessment, compiling the data, and submitting the report to the ARB. The specific cost for an individual facility subject to the regulation will generally depend on the complexity of

the facility and ranges from \$78,000 to \$425,000. Staff estimates the total costs for compliance with the proposed regulation to be approximately \$14 million over a period of about 16 to 18 months.

Therefore, the Board's initial determination is that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The profitability of California businesses affected by the proposed one-time cost of the proposed regulation should be minimal. Overall, affected businesses will be able to absorb the costs of the proposed regulation with no significant adverse impacts on their profitability. Because the proposed regulation would not alter significantly the profitability of most businesses, we do not expect a noticeable change in employment, business creation, elimination, or expansion, and business competitiveness in California for these industries.

The ARB staff has considered alternatives to the proposed regulation and evaluated the economic impact on businesses. None of the alternatives considered would achieve the objectives of the proposed regulation at a lower cost. The alternatives that staff considered are described in more detail in the Staff Report.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

The Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action would not affect small businesses because, together with its affiliates, they either exceed 100 employees or have average annual gross receipts greater than \$12 million over the previous three tax years.

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

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer

has found that the reporting requirements of the proposed regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

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

Costs to Local and State Government Agencies

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would create no costs to federal agencies.

The State, and almost all local, agencies do not own any electricity generating facilities, refineries, oil and gas extraction fields, cement plants, hydrogen plants, or mineral plants that are subject to this regulation.

No fiscal impact is expected on any local entity or program. The Los Angeles Department of Water and Power (LADWP) owns three electricity generating facilities that are subject to the proposed regulation. In addition, the Puente Hill landfill electricity generating facility is operated by the Los Angeles County Sanitation District. These facilities operate as not-for-profit corporations; thus their compliance costs, about \$78,000 per facility or about \$300 thousand dollars combined, are included in the total costs of the proposed regulation. Because these facilities recover any costs from their client via service fees, local tax payers would not be impacted through fiscal budgets. ARB will incur minimum costs to administer the proposed regulation. These costs would be met with existing resources. No other State agencies will be affected. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on June 7, 2010. To be considered by the Board, written comments not physically submitted at the meeting must be submitted on or after June 7, 2010 and received **no later than 12:00 noon, Pacific Standard Time, July 21, 2010**, and must be addressed to the following:

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

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

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

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in Health and Safety Code sections 38510, 38530, 38560, 38562, 39600, 39601, 39659, and 41511. This action is proposed to implement, interpret, and make specific Health and Safety Code sections 38501, 38505, 38510, 38530, 38550, 38551, 38560, 38561, 38562, 38563, 39003, 39500, 39600, 39601, 39659, and 41511.

HEARING PROCEDURES

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

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

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

To request a special accommodation or language needs for any of the following:

- An interpreter to be available at the hearing.
- Have documents available in an alternate format (i.e. Braille, Large print) or another language.
- A disability-related reasonable accommodation.

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

Para solicitar alguna comodidad especial o necesidad de otro idioma para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Tener documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de diez (10) días laborales antes del día programado para la audiencia. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF A PROPOSED REGULATION FOR A CALIFORNIA RENEWABLE ELECTRICITY STANDARD

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of a new regulation to reduce greenhouse gas (GHG) emissions from the electricity sector by implementing a renewable electricity standard.

DATE: July 22, 2010

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., July 22, 2010 and may continue at 8:30 a.m., July 23, 2010. This item may not be considered until July 23, 2010. Please consult the agenda for the meeting date and time, which will be available at least 10 days before July 22, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT

Sections Affected: Proposed adoption of California Code of Regulations, title 17, division 3, chapter 1, subchapter 10, article 6, California Renewable Electricity Standard, sections 97000, 97001, 97002, 97003, 97004, 97005, 97006, 97007, 97008, 97009, 97010, 97011, and 97012.

Background:

Over the last decade, California has implemented several laws and policies to expand the use of renewable energy and reduce GHG emissions from the electricity sector. These policies are outlined below.

Senate Bill 1078 (Sher, Chapter 516, Statutes of 2002): This law established the California Renewables Portfolio Standard (RPS), which required retail sellers of electricity (electrical corporations {investor owned utilities}, community choice aggregators, and electric service providers) to procure 20 percent of their retail electric sales from renewable resources by 2017. The local publicly owned electric utilities (POUs) were encouraged, but not required, to meet the same goal. The bill delegated specific implementation roles to the California Energy Commission (CEC) and the California Public Utility Commission (CPUC).

Energy Action Plans I (2003) and II (2005): In 2003, CEC, CPUC, and the Conservation Financing Authority (now defunct) adopted an Energy Action Plan to present a single, unified approach to meet California's electricity and natural gas needs. The Plan recommended accelerating the RPS deadline for 20 percent to 2010. The second Energy Action Plan, adopted in 2005 to reflect the policy changes and actions of the ensuing two years, recommended an accelerated goal of 33 percent renewables by 2020.

Executive Order S-3-05 (2005): In June 2005, Governor Schwarzenegger signed Executive Order S-3-05 calling for the State to reduce GHG emissions to 1990 levels by 2020 and to 80 percent below 1990 levels by 2050. The 2020 goal was established to be an aggressive, but achievable, mid-term target and the 2050 goal

represents the level scientists believe is necessary to reach levels that will stabilize our climate.

Senate Bill 107 (Simitian, Chapter 464, Statutes of 2006): This bill modified the RPS Program by requiring retail sellers of electricity (investor owned utilities, community choice aggregators, and electric service providers) to procure 20 percent of retail sales from renewable energy by 2010 as recommended in the *Energy Action Plan I*.

Assembly Bill 32 (Núñez, Ch. 488, Statutes of 2006): This law, referred to as the California Global Warming Solutions Act of 2006, required the Board to develop a plan to reduce GHG emissions in California to 1990 levels by 2020. Among other provisions, the plan must achieve the maximum technologically feasible and cost-effective reductions in GHG emissions from sources or categories of sources of GHGs by 2020.

Executive Order S-14-08 (2008): In November 2008, Governor Schwarzenegger signed Executive Order S-14-08 to accelerate the RPS target to 33 percent renewables by 2020, as recommended in the *Energy Action Plan II*.

Climate Change Scoping Plan (2008): In December 2008, the Board approved the Climate Change Scoping Plan (Scoping Plan or Plan) as required by Assembly Bill 32 (AB 32). This law sets forth a comprehensive reduction strategy that combines market-based regulatory approaches, other regulations, voluntary measures, fees, policies, and other programs to reduce California's GHG emissions to 1990 levels by 2020. The Plan identified electricity generation (which includes both in-state and out-of-state generation) as the second largest contributor to California's GHG emissions. The Plan also identified a number of measures to reduce GHG emissions from California's electricity sector, with large estimated reductions coming from implementation of the goals of Executive Order S-14-08 to achieve 33 percent renewable energy by 2020.

Executive Order S-21-09 (2009): This Executive Order, signed by Governor Schwarzenegger on September 15, 2009, directed the ARB, under its AB 32 authority, to adopt a regulation consistent with the 33 percent renewable energy target established in Executive Order S-14-08. ARB was directed to adopt the regulation by July 31, 2010. As specified in Executive Order S-21-09, ARB:

1. May consider different approaches that would achieve the objectives of the Executive Order based on a thorough assessment of such factors as technical feasibility, system reliability, cost, GHG emissions, environmental protection or other relevant factors;

2. Shall work with the CPUC and the CEC to ensure that a regulation adopted under authority of AB 32 builds upon the RPS Program and regulates all California load serving entities, including investor-owned utilities, publicly-owned utilities, direct access providers, and community choice aggregators;
3. May delegate to CPUC and CEC any policy development or program implementation responsibilities that would reduce duplication and improve consistency with other energy programs;
4. Shall consult with California Independent System Operator (CAISO) and other load balancing authorities on, among other aspects, impacts on reliability, renewable integration requirements and interactions with wholesale power markets in carrying out the provisions of the Executive Order; and
5. Shall establish the highest priority for those resources that provide the greatest environmental benefits with the least environmental costs and impacts on public health.

The proposed regulation satisfies the directives of Executive Order S-21-09, as well as the implementation of the 33 percent renewables measure in the Scoping Plan.

DESCRIPTION OF THE PROPOSED REGULATORY ACTION

The proposed regulatory action was developed in consultation with CEC, CPUC, and CAISO. The proposed California Renewable Electricity Standard (RES) requires the State's sellers of electricity to demonstrate, by 2020, that 33 percent of the electricity sold to their retail end-use customers was generated from renewable energy resources. Increasing the portion of electricity supplied from qualifying renewable resources will reduce GHG emissions by displacing electricity produced by fossil fuel-fired electrical generating facilities.

The RES builds upon the existing California RPS Program and would establish an RES obligation that is determined by multiplying a utility's total retail electricity sales by the percentage of those sales that must come from renewable generation. Compliance with the RES obligation is demonstrated by retirement of Western Renewable Energy Generation Information System (WREGIS) certificates. WREGIS certificates document the generation of renewable energy. The credit given for such generation is called a renewable energy credit, or REC. A REC represents one megawatt-hour (MWh) of energy generated by an eligible renewable resource. RECs will be tracked using WREGIS certifi-

ates. As stated above, these certificates represent proof that one MWh of renewable energy was generated by a renewable energy facility. Entities that are subject to the regulation would comply with the percentage of electricity sales requirement if the number of WREGIS certificates retired at the end of the compliance period is equal to, or greater than, the percentage required during that period.

To the greatest extent possible, the proposed regulation utilizes the structure, provisions, policies, and implementation mechanisms established by CEC and CPUC for the existing California RPS Program. The primary areas where the proposed regulation expands upon or diverges from the RPS Program are as follows:

- Holding the POUs to the same compliance obligations and dates as the investor-owned utilities (IOUs);
- Providing a compliance exemption threshold for the smallest utilities;
- Establishing multi-year compliance intervals; and
- Providing more flexible REC trading options to achieve GHG reductions and increase the potential availability of renewable resources. Staff's analysis supports flexible trading options. These options allow compliance at a lower cost and do not have a significant impact on utilities securing in-state vs. out-of-state resources.

The proposed regulation does not supersede the obligations that apply under the existing RPS program. A renewable generating facility that is certified by the CEC as an eligible renewable resource under the RPS will also be considered as meeting the renewable generation requirements under the proposed regulation.

Applicability

The proposed regulation would affect over 60 private and public entities including seven IOUs, eight electric service providers, and approximately 50 POUs and rural electric cooperatives. The regulation refers to these entities as the regulated parties.

Standards

The regulation would establish minimum standards that obligate a regulated party to provide a specific percentage of its total electricity sales to retail end-use customers from renewable resources by certain dates. In order to achieve the 33 percent renewables requirement by 2020, the proposed regulation would phase-in the requirement to increase the amount of electricity from eligible renewable resources over an eight-year period, starting in 2012. The tiered schedule consists of compliance intervals, each with a specified percentage of retail sales that must be generated by eligible renewable energy resources. A regulated party's compliance is demonstrated by retirement of WREGIS certificates in an amount equivalent to the RES obligation for the ap-

pliable compliance interval. Compliance with the interim standards is not assessed until after the end of each compliance interval; however, a regulated party must measure, track, and report its status annually.

Partial Exemption

The RES obligations and compliance intervals of the proposed regulation do not apply to regulated parties that had annual sales of electricity to their retail end-use customers of 200,000 MWh or less averaged over calendar years 2007 through 2009. However, regulated parties that qualify for this partial exemption are still required to comply with certain recordkeeping and reporting provisions in order to demonstrate continued eligibility for the exemption.

Provisions Governing Use of Renewable Energy Credits

RECs reflecting generation from eligible renewable resources must be registered in and tracked by WREGIS. WREGIS issues a uniquely numbered certificate for each MWh of electricity generated by a facility registered in the system, tracks the ownership of certificates as they are traded, and retires the certificates once they are used to avoid double counting and double claims. WREGIS certificates used for compliance with the RES must be retired in WREGIS and may not be used to meet the regulatory or voluntary requirements of any other federal, state, or local program. However, a REC used for compliance with the California RPS would count toward compliance with the RES.

Banking and Trading of Renewable Energy Credits

The regulation would provide a mechanism for banking and trading of RECs. RECs that are not used by a regulated party to meet a current compliance obligation may be banked and applied toward that party’s RES obligation in subsequent years or may be traded to other parties. RECs may be traded for a limited time from the date the WREGIS certificate was created and the WREGIS certificate documenting the REC must be moved to a retirement subaccount at the end of this limited time period. WREGIS certificates placed into a WREGIS retirement subaccount that are not used to meet a current RES obligation have an unlimited banking life towards meeting future RES obligations. RECs from non-RPS eligible resources held by POUs may be banked in a retirement subaccount by the original owner but cannot be sold or traded to another entity. A regulated party operating under the partial exemption may not sell, bank, or trade RECs. It should be noted that these restrictions apply to how WREGIS certificates are used to meet a RES obligation under the RES Program. They do not limit the use, banking, or trading of RECs that are not otherwise used to meet the regulation.

Recordkeeping and Reporting

The regulation would require a regulated party to submit an annual progress report, starting in 2013, and a compliance interval report during the subsequent year that immediately follows the end of the compliance period.

The annual report must include information about the regulated party and provide information about the regulated party’s progress toward the RES obligation achieved over the prior calendar year.

The regulation would also require a regulated party to submit a compliance interval report following the end of a compliance interval. The compliance interval report must include information about the regulated party and provide sufficient information to determine whether the regulated party has demonstrated compliance with its RES obligation over the preceding compliance period. This information includes, but is not limited to, total retail sales to end-use customers over the compliance interval, the number of WREGIS certificates retired for the purpose of demonstrating compliance with the RES obligation, and the applicable subsection under which the regulated party calculated its RES obligation.

Additional information is required if the compliance interval report indicates that the RES obligation was not met.

Regulation Review

The regulation would require that at least three reviews be conducted to evaluate the effectiveness of the RES program. These reviews would occur in 2013, 2016, and 2018, and would be done in consultation with CEC, CPUC, and CAISO. The reviews will determine the need for program modifications and will evaluate whether any adjustments to the compliance schedules are necessary to minimize costs and maximize benefits for California’s economy, improve and modernize California’s energy infrastructure, maximize potential GHG and criteria pollutant emissions reductions, and maintain electric system reliability. Opportunities to harmonize the program with any federal, regional, or other state renewable portfolio standard programs or REC markets will also be considered. The reviews will be conducted using a public process and results will be presented to the Board.

Environmental Impacts:

Staff estimates that the proposed regulation would reduce GHG emissions by displacing fossil-fueled electricity generation in the Western Electricity Coordinating Council (WECC) region consistent with implementing a 33 percent renewables requirement. Overall, renewable generation produces less criteria pollutant and toxic emissions per unit of electricity output than the fossil-fuel generation it will displace. Therefore, the regulation is expected to provide an air quality bene-

fit by reducing statewide emissions of criteria and toxic air pollutants. Certain renewable technologies, however, may decrease these benefits and may contribute to localized impacts due to their variable nature and the need to back-up these technologies with fossil fuel-fired generation to meet demand. However, the proposed regulation is expected to result in an overall net benefit to California.

A more detailed discussion of these air quality impacts, as well as other environmental impacts, can be found in the environmental chapter of the Staff Report.

Economic Impacts:

The proposed regulatory action is considered a major regulation since the estimated costs to California business enterprises will exceed \$10 million. Overall, the RES is expected to result in a slight reduction in job growth in the State. The cost of the program is expected to be passed on to electricity consumers through increased rates. However, the analysis indicates that most new renewable projects will be built in-State leading to an increase in jobs in the renewable energy sector.

A detailed discussion of these impacts can be found in the economic impacts chapter of the Staff Report.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations that mandate the reduction of GHG emissions through a renewables portfolio standard. However, there are two bills before Congress that would establish a federal-level combined efficiency and renewable electricity standard that would require each retail electricity supplier to supply an increasing percentage of its demand each year from a combination of electricity savings and renewable resources.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The ISOR is entitled, "Initial Statement of Reasons for the Proposed Regulation for a California Renewable Electricity Standard."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on ARB's website listed below, or may be obtained from ARB's Public Information Office, Visitors and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California, 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on July 22, 2010.

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

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. David Mehl, Stationary Source Division, Energy Section Manager, at (916) 323-1491, or Mr. Gary Collord, Air Pollution Specialist, at (916) 324-5548.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, and 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.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are also available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2010/res2010/res2010.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

For the purposes of this analysis, all regulated parties are treated as businesses. POU's, however, have characteristics common to both businesses and public agencies. In the context of this regulation, it is the business aspects of the POU's activities and the acquisition and sale of electricity that are affected. The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Costs to State Government and Local Agencies

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

Costs to Businesses and Private Individuals

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The ARB has de-

terminated that representative private persons and businesses may be affected by the cost impacts from the proposed regulatory action. Pursuant to Government Code section 11346.5(a)(7)(C), the Executive Officer has made an initial determination that the proposed regulatory action may have a significant statewide adverse economic impact directly affecting businesses, but is expected to have little or no effect on the ability of California businesses to compete with businesses in other states. To put the impacts of the proposed regulation into context, the higher costs associated with additional renewable electricity are estimated to translate into a six percent increase, on average, in monthly electricity bills in 2020 for households and businesses.

ARB staff has considered proposed alternatives that would lessen any adverse economic impact on businesses. The alternatives that staff considered are described in more detail in the Staff Report. ARB staff invites you to submit proposals as part of the public comment period. Submission may include the following approaches for consideration:

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

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. However, the proposed regulatory action would affect the creation or elimination of jobs within the State of California. Specifically, the proposed regulatory action is expected to create jobs by increasing employment in certain business sectors, but will also eliminate jobs in other sectors resulting in a slight decrease in job growth overall.

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

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

Before taking final action on the proposed regulatory action, ARB must determine that no reasonable alternative considered by ARB, or that has otherwise been identified and brought to the attention of ARB, 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.

Additional information on economic impacts is addressed in the economic impacts chapter of the Staff Report.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on June 7, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after June 7, 2010, and received **no later than 12:00 noon, July 21, 2010**, and must be addressed to the following:

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

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

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

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in Health and Safety Code sections 38501, 38510, 38551, 38560, 38562, 38563, 38564,

38570, 38571, 38580, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511. The proposed regulations will implement, interpret and/or make specific Health and Safety Code sections 38501, 38510, 38551, 38560, 38562, 38563, 38564, 38570, 38571, 38580, 38592, 38596, 38597, 39600, 39601, 39607, 39607.4, and 41511.

HEARING PROCEDURES

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

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text, as modified, is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language, as modified, could result from the proposed regulatory action. For this rulemaking, such modifications may include, but are not limited to, alternative provisions related to the use and definition of RECs, the timing of compliance with regulatory requirements and the requirements for the determination of eligible facilities. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

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

SPECIAL ACCOMMODATION REQUEST

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

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e. Braille, large print) or another language;
- A disability-related reasonable accommodation.

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

Para solicitar alguna comodidad especial o si por su idioma necesita cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo (es decir, sistema Braille, letra grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Por favor llame a la oficina del Consejo a (916) 322-5594 o envíe un fax a (916) 322-3928 lo mas pronto posible, pero no menos de 10 días de trabajo antes del el dia programado para la audiencia del Consejo. TTY/TDD/Personas que nesessitan estes servicion pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

TITLE 24. BUILDING STANDARDS COMMISSION

**NOTICE OF PROPOSED ACTION
TO
BUILDING STANDARDS
OF THE
DEPARTMENT OF FOOD AND
AGRICULTURE (AGR)**

REGARDING AMENDMENT OF THE 2010 CALIFORNIA PLUMBING CODE (CPC), FOR USE IN THE CALIFORNIA CODE OF REGULATIONS (CCR), TITLE 24, PART 5

(AGR 01/10)

Notice is hereby given that the Department of Food and Agriculture proposes to adopt changes to building standards contained in the CCR, Part 5, Title 24 for dairies and places of meat inspection.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from June 4, 2010, until 5:00 p.m. on July 19, 2010. Please address your comments to:

California Department of Food and Agriculture
1220 N Street, A-114
Sacramento, CA 95814
Attention: Nancy Grillo, Regulation and Legislation
Coordinator
Animal Health and Food Safety Services

Written Comments may also be faxed to (916) 263-0959 or E-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, AGR may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). AGR will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

The Department of Food and Agriculture proposes to adopt these building standards under the authority granted by Food and Agricultural Code Sections 18735, 18960, 19384, and 33481. The purpose of these building standards is to implement, interpret, and make specific the provisions of Food and Agricultural Code Sections 18735, 18960, 19384, 33481, and 33731.

INFORMATIVE DIGEST

Summary of Existing Laws

Food & Agricultural Code Section 18735. Adoption of federal rules and regulations. The director may adopt, by reference or otherwise, such provisions of the rules and regulations under the federal acts, with such changes therein as he deems appropriate to make them applicable to operations and transactions subject to this chapter, which shall have the same force and effect as if promulgated under this chapter, and promulgate such other regulations as he deems necessary for the efficient execution of the provisions of this chapter.

Food & Agricultural Code Section 18960. The director may adopt, by regulation, standards and requirements relating to inspection, sanitation, facilities,

equipment, reinspection, preparation, processing, buying, selling, transporting, storing, identification, recordkeeping, registration and labeling, and marking for carrying out the purposes of this chapter.

Food & Agricultural Code Section 19384. Processing, transportation and storage of carcasses, etc., for pet food; diversion into human food channels. The director shall establish by regulation the condition under which carcasses or parts or products of animals for pet food may be processed, transported, and stored so as to prevent diversion into human food channels.

Food & Agricultural Code Section 33481. Regulations, plans and specifications. The secretary shall establish regulations for the construction of sanitary milk barns and milk houses which are used in the production of market milk.

Food & Agricultural Code Section 33731. Approval of plans and specifications for new milk product plants. No new milk products plant shall be constructed nor shall extensive repairs be made to any existing milk products plant unless plans or specifications which show in detail the nature of the construction or alteration have been submitted to the director and unless the plans and specifications have received the director's approval in writing.

Summary of Existing Regulations

The existing 2010 California Plumbing Code is a part of the California Code of Regulations, Title 24, also referred to as the California Building Standards Code and incorporates, by adoption, by the California Building Standards Commission, the 2009 Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials. Currently, AGR does not adopt model code standards for PEX water supply piping for applications under its authority.

Summary of Effect

The proposed action would amend Part 5 of Title 24 (2010 California Plumbing Code) by modifying footnote #3 contained in Table 6-4, which prescribes some of the requirements for the use of PEX water supply piping. AGR proposes to amend Table 6-4 footnote #3 to reflect the proposed changes in the Second Revised Draft Environmental Impact Report (SRDEIR) for PEX.

Comparable Federal Statute or Regulations

There are no comparable Federal Statutes or regulations related to the proposed action.

Policy Statement Overview

The broad objective of the proposed action is to repeal building regulations, in conformance with current state law, and adopt model code standards for applications within the agency's authority.

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

The Department of Food and Agriculture has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICT

The Department of Food and Agriculture has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

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

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

The Department of Food and Agriculture has made an initial determination that the amendment of these regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

No facts, evidence, testimony or other evidence has been relied upon to support the initial determination of no effect.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The Department of Food and Agriculture has made an assessment of the proposed code changes and has determined that these changes do not require a report.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

The Department of Agriculture has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.**
These regulations will not effect the creation of 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.**
These regulations will not effect the creation of or the elimination of existing business within the State of California.
- The expansion of businesses currently doing business with the State of California.**
These regulations will not affect the expansion of businesses currently doing business within the State of California.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

The Department of Food and Agriculture has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF RULEMAKING DOCUMENTS

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

Interested parties 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.

**CBSC CONTACT PERSON FOR PROCEDURAL
AND ADMINISTRATIVE QUESTIONS**

General questions regarding procedural and administrative issues should be addressed to:

Jane Taylor, Senior Architect
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
jane.taylor@dgs.ca.gov
Telephone No: (916) 263-0916
Facsimile No: (916) 263-0959

**PROPOSING STATE AGENCY CONTACT
PERSON FOR SUBSTANTIVE AND/OR
TECHNICAL QUESTIONS ON THE PROPOSED
CHANGES TO BUILDING STANDARDS**

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

**Nancy Grillo, Regulation and Legislation
Coordinator**
Animal Health and Food Safety Services
California Department of Food and Agriculture
(916) 651-7280
ngrillo@cdfa.ca.gov
FAX (916) 653-4249

**TITLE 24. BUILDING STANDARDS
COMMISSION**

**NOTICE OF PROPOSED ACTION
TO
BUILDING STANDARDS
OF THE
CALIFORNIA BUILDING STANDARDS
COMMISSION (CBSC)**

**REGARDING AMENDMENT OF THE 2010
CALIFORNIA PLUMBING CODE (CPC), FOR
USE IN THE CALIFORNIA CODE OF
REGULATIONS (CCR), TITLE 24, PART 5**

(BSC 01/10)

Notice is hereby given that the CBSC proposes to adopt, approve, codify, and publish changes to building standards contained in the CCR, Part 5, Title 24.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from June 4, 2010, until 5:00 p.m. on July 19, 2010. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Dave Walls, Executive Director

Written Comments may also be faxed to (916) 263-0959 or E-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

**POST-HEARING MODIFICATIONS TO THE
TEXT OF THE REGULATIONS**

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Sections (H&SC) 18928 and 18934.5. The purpose of these building standards is to implement, interpret, and make specific the provisions of H&SC Section 18928 and 18928.1. The California Building Standards Commission is proposing this regulatory action based on Health and Safety Code Section (H&SC) 18928.

INFORMATIVE DIGEST

Summary of Existing Laws

Health & Safety Code Section 18928. Model code, national standard, or specification; adoption of and

reference to the most recent addition; date of publication; committee

Authorizes the commission to adopt the most recent edition of the Uniform Plumbing Code.

Health & Safety Code Section 18928(b). Model code, national standard, or specification; adoption of and reference to the most recent addition; date of publication; committee

Sets forth that each state agency adopting or proposing adoption of a model code, national standard, or specification shall adopt or propose adoption of the most recent edition of the model code, as amended or proposed to be amended by the adopting agency, within one (1) year after the date of publication of the model code, national standard, or specification.

Health & Safety Code Section 18934.5. Standards or administrative regulations for state buildings; adoption, approval, codification and publication

Sets forth that where no state agency has the authority to adopt building standards applicable to state buildings, the commission shall adopt, approve, codify, and publish building standards providing the minimum standards for the design and construction of state buildings.

Summary of Existing Regulations

The 2010 California Plumbing Code is a part of the California Code of Regulations, Title 24, also referred to as the California Building Standards Code and incorporates, by adoption, by the California Building Standards Commission, the 2009 Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials without amendments for state owned buildings & buildings constructed by the University of California and California State Universities.

Summary of Effect

The proposed action would amend Part 5 of Title 24 (2010 California Plumbing Code) by modifying footnote #3 contained in Table 6-4, which prescribes some of the requirements for the use of PEX water supply piping. CBSC proposes to amend Table 6-4 footnote #3 to reflect the proposed changes in the Second Revised Draft Environmental Impact Report (SRDEIR) for PEX.

Comparable Federal Statute or Regulations

There are no comparable Federal Statutes or regulations related to the proposed action by the California Building Standards Commission.

Policy Statement Overview

The broad objective of the proposed action is to maintain building regulations in conformance with current state law, by adopting the most current edition of the model plumbing code.

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

The California Building Standards Commission has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Building Standards Commission has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

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

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

The CBSC has made an initial determination that the amendment of these regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

The CBSC affirms that the rulemaking action complies with the mandates set forth by the Health & Safety Code, Section 18928, & 18934.5.

Therefore, the CBSC's initial determination of no significant, statewide adverse economic impact directly affecting business in California and their ability to compete with businesses in other states does not require any additional evidence, documents or other evidence to support this action.

**FINDING OF NECESSITY FOR THE PUBLIC'S
HEALTH, SAFETY, OR WELFARE**

The CBSC has made an assessment of the proposed code changes and has determined that these changes do not require a report.

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

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

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

The CBSC has assessed whether or not and to what extent this proposal will affect the following:

@ The creation or elimination of jobs within the State of California.

These regulations will not effect the creation of 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.

These regulations will not effect the creation of or the elimination of existing business within the State of California.

@ The expansion of businesses currently doing business with the State of California.

These regulations will not effect the expansion of businesses currently doing business within the State of California.

**INITIAL DETERMINATION OF SIGNIFICANT
EFFECT ON HOUSING COSTS**

The CBSC has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

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

**AVAILABILITY OF
RULEMAKING DOCUMENTS**

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

Interested parties 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.

**CBSC CONTACT PERSON FOR PROCEDURAL
AND ADMINISTRATIVE QUESTIONS**

General questions regarding procedural and administrative issues should be addressed to:

**Tom Morrison, Tom.Morrison@dgs.ca.gov
or Jane Taylor, Jane.Taylor@dgs.ca.gov
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833**

**Telephone No: (916) 263-0916
Facsimile No: (916) 263-0959**

**PROPOSING STATE AGENCY CONTACT
PERSON FOR SUBSTANTIVE AND/OR
TECHNICAL QUESTIONS ON THE PROPOSED
CHANGES TO BUILDING STANDARDS**

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

**Michael L. Nearman, Arch. Assoc. — Code
Analyst
California Building Standards Commission
(916) 263-5888
Michael.Nearman@dgs.ca.gov
FAX (916) 263-0959**

**TITLE 24. BUILDING STANDARDS
COMMISSION**

**NOTICE OF PROPOSED ACTION
TO
BUILDING STANDARDS
OF THE
CALIFORNIA DEPARTMENT OF PUBLIC
HEALTH (CDPH)**

**REGARDING AMENDMENT OF THE 2010
CALIFORNIA PLUMBING CODE (CPC),
DPH-10-001 FOR USE IN THE CALIFORNIA
CODE OF REGULATIONS (CCR),
TITLE 24, PART 5**

Notice is hereby given that the CDPH proposes to adopt changes to building standards contained in the

CCR, Part 5, Title 24, for organized camps and retail food facilities.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from June 4, 2010, until 5:00 p.m. on July 19, 2010. Comments received after this date will not be considered timely. Please address your comments to:

California Department of Public Health
Office of Regulations and Hearings
1501 Capitol Ave., MS 0507
P.O. Box 997377
Sacramento, CA 95899-7377
Attn: Kathleen Yelle

Written comments may also be faxed to (916) 440-5747 or emailed to regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-10-001" in the subject line to facilitate timely identification and review of the comment.

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, CDPH may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which CDPH adopts, amends, or repeals the regulation(s). CDPH will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written comments or request that you be notified of any modifications. Any comments or requests submitted, including email or fax transmission, should include the author's name and U.S. Postal Service mailing address in order for CDPH to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

AUTHORITY AND REFERENCE

The CDPH proposes to adopt these building standards under the authority granted by Health and Safety Code Sections (H&SC) 18897.2, 113707, 131052 and 131200. The purpose of these building standards is to implement, interpret, and make specific the provisions of H&SC Sections 18897.2, 18897.4, 18897.7, 113705 and 113707.

INFORMATIVE DIGEST

Summary of Existing Laws

Health and Safety Code Section 18897.2. Authorizes the Director of CDPH to adopt rules and regulations establishing minimum standards for organized camps.

Health and Safety Code Section 18897.4. Every local health officer shall enforce within his jurisdiction the building standards published in the State Building Standards Code relating to organized camps and other rules and regulations adopted by the Director of CDPH.

Health and Safety Code Section 18897.7. No organized camp shall be operated in this state unless each site or location in which the camp is operated complies with the State Building Standards Code and with other rules and regulations adopted by the Director of CDPH and State Fire Marshal. Violation constitutes a misdemeanor.

Health and Safety Code Section 113705. The legislature finds and declares that public health interest requires that there be uniform statewide health and sanitation standards for retail food facilities.

Health and Safety Code Section 113707. The CDPH shall adopt regulations to implement retail food safety.

Health and Safety Code Section 131052. The CDPH shall succeed to and be vested with all the powers, purposes, functions, responsibilities, and jurisdiction of the former State Department of Health Services as they relate to public health, including the duties described in Sections 18897.2, 18897.4, 18897.7, 113705 and 113707.

Health and Safety Code Section 131200. The CDPH may adopt and enforce regulations for the execution of its duties.

Summary of Existing Regulations

The existing 2010 California Plumbing Code is a part of the California Code of Regulations, Title 24, also referred to as the California Building Standards Code and incorporates, by adoption, by the California Building Standards Commission, the 2009 Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials. Currently, CDPH does not adopt model code standards for PEX water supply piping for applications under its authority.

Summary of Effect

The proposed action would amend Part 5 of Title 24 (2010 California Plumbing Code) by amending footnote #3 contained in Table 6-4, which prescribes some of the requirements for the use of PEX water supply piping. CDPH proposes to amend Table 6-4 footnote #3 to reflect the proposed changes in the Second Revised Draft Environmental Impact Report (SRDEIR) for PEX.

Comparable Federal Statute or Regulations

There are no comparable Federal Statutes or regulations related to the proposed action by the California Building Standards Commission.

Policy Statement Overview

The broad objective of the proposed action is to amend building regulations, in conformance with current state law, and adopt model code standards for applications within the agency's authority.

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

The CDPH has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The CDPH has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

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

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

The CDPH has made an initial determination that the amendment of these regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

No facts, evidence, testimony or other evidence has been relied upon to support the initial determination of no effect.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The CDPH has made an assessment of the proposed code changes and has determined that these changes do not require a report.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

EFFECT ON SMALL BUSINESS

The Department of Public Health has determined that the proposed regulations would affect small business.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

The CDPH has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.**
These regulations will not effect the creation of 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.**
These regulations will not effect the creation of or the elimination of existing business within the State of California.

- **The expansion of businesses currently doing business with the State of California.**
These regulations will not affect the expansion of businesses currently doing business within the State of California.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

The CDPH has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting Kathleen Yelle, Office of Regulations and Hearings.

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

Interested parties may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to Kathleen Yelle, Office of Regulations and Hearings.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

General questions regarding procedural and administrative issues should be addressed to:

Jane Taylor, Senior Architect
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
jane.taylor@dgs.ca.gov
Telephone No: (916) 263-0916
Facsimile No: (916) 263-0959

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Glenn Takeoka, Chief
Environmental Management Branch
California Department of Public Health
Glenn.Takeoka@cdph.ca.gov
(916) 449-5661
FAX (916) 449-5665

ASSISTIVE SERVICES

Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

Upon specific request to Jane Taylor, Senior Architect, this public notice and information upon which the proposed regulations are based will be made available in Braille, large print, audiocassette and computer disk.

TITLE 24. BUILDING STANDARDS COMMISSION

NOTICE OF PROPOSED CHANGES TO BUILDING STANDARDS OF THE DIVISION OF THE STATE ARCHITECT — STRUCTURAL SAFETY (DSA-SS)

REGARDING AMENDMENTS TO THE 2010 CALIFORNIA PLUMBING CODE (CPC) CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 5

(DSA-SS 01/10)

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of Division of the State Architect — Structural Safety (DSA-SS) proposes to amend the 2010 edition CPC and adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 5.

Building standards proposed by DSA-SS for adoption would be applicable to public elementary and secondary schools, community colleges, and state-owned or state-leased essential services buildings.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from June 4, 2010, until 5:00 p.m. on July 19, 2010. Please address your comments to:

California Building Standards Commission
 2525 Natomas Park Drive, Suite 130
 Sacramento, CA 95833
 Attention: E. David Walls, Executive Director

Written comments may also be faxed to (916) 263-0959, or E-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modification.

AUTHORITY AND REFERENCE

The California Building Standards Commission proposes to adopt these building standards on behalf of DSA-SS (which includes DSA-SS/CC) under the authority granted by Health and Safety Code Section 18928. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 16000-16023 and Education Code Sections 17280-17317, 81130-81147, and 81053. The Division of the State Architect is proposing this regulatory action based on Health and Safety Code Section 16022 and Education Code Sections 17310, 81142 and 81053.

INFORMATIVE DIGEST

Summary of Existing Laws

Section 16022 of the Health and Safety Code authorizes the State Architect to establish building standards for the design, construction and inspection of plumbing systems for state-owned or state-leased essential services buildings. Sections 17310, 81142 and 81053 of the Education Code authorize the State Architect to establish building standards for the design, construction and inspection of plumbing systems for public elementary and secondary schools, and community colleges.

Summary of Existing Regulations

Existing building standards which prescribe requirements for the design, construction and inspection of plumbing systems for state-owned or state-leased essential services buildings, and public elementary schools, secondary schools and community colleges are promulgated by the Division of the State Architect. These regulations are contained in the California Plumbing Code (Part 5, Title 24).

Summary of Effect

The proposed action would amend Part 5 of Title 24 (2010 California Plumbing Code) by modifying footnote #3 contained in Table 6-4, which prescribes some of the requirements for the use of PEX water supply piping. DSA-SS proposes to amend Table 6-4 footnote #3 to reflect the proposed changes in the Second Revised Draft Environmental Impact Report (SRDEIR) for PEX.

Comparable Federal Statute or Regulations

There are no comparable federal regulations or statutes.

Policy Statement Overview

The broad objective of the proposed action is to maintain building regulations in conformance with current state law, by adopting the most current edition of the model plumbing code.

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

There are no other matters prescribed by statute applicable to the Division of the State Architect, or to any specific regulation or class of regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Division of the State Architect has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

The Division of the State Architect has made an initial determination that the amendment of these regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

No facts, evidence, documents, testimony or other evidence has been relied upon to support the initial determination of no effect.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The proposed action does not require a report by any business or agency, so the Division of the State Architect has not made a finding of necessity for public's health, safety or welfare.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

The Division of the State Architect has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

The Division of the State Architect has determined that the proposed action has no effect.

- The creation of new businesses or the elimination of existing businesses within the State of California.

The Division of the State Architect has determined that this proposal has no effect.

- The expansion of businesses currently doing business with the State of California.

The Division of the State Architect has determined that the proposed action has no effect.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

The Division of the State Architect has made an initial determination that this proposal **WOULD NOT** have a significant effect on housing costs. The CBSC contact designated below will make the Division of the State Architect's evaluation of the effect of the proposed regulatory action on housing costs available upon request.

CONSIDERATION OF ALTERNATIVES

The Division of the State Architect (DSA) has determined that no reasonable alternative considered by DSA or that has otherwise been identified and brought to the attention of DSA 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.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review by contacting the person named below. This notice, the express terms, and initial statement of reasons can be accessed from the California Building Standards Commission website (<http://www.bsc.ca.gov>).

Interested parties 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 at the California Building Standards Commission website.

**CBSC CONTACT PERSON FOR PROCEDURAL
AND ADMINISTRATIVE QUESTIONS**

General questions regarding procedural and administrative issues should be addressed to:

Jane Taylor, Senior Architect
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Telephone No: (916) 263-0916
Facsimile No: (916) 263-0959

**PROPOSING STATE AGENCY CONTACT
PERSON FOR SUBSTANTIVE AND/OR
TECHNICAL QUESTIONS ON THE PROPOSED
CHANGES TO BUILDING STANDARDS**

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Richard Conrad
Ph. (916) 324-7180
richard.conrad@dgs.ca.gov

Howard "Chip" Smith, Jr.
Ph. (916) 327-8008
howard.smith@dgs.ca.gov

Division of the State Architect
1102 Q Street, Suite 5100
Sacramento, CA 95814
DSA Facsimile No: (916) 327-3371

**TITLE 24. BUILDING STANDARDS
COMMISSION**

**NOTICE OF PROPOSED ACTION
TO
BUILDING STANDARDS
OF THE
DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT REGARDING
THE AMENDMENT OF THE 2010
CALIFORNIA PLUMBING CODE (CPC)
BASED ON THE 2009 UNIFORM PLUMBING
CODE (UPC)
CALIFORNIA CODE OF REGULATIONS,
TITLE 24, PART 5**

(HCD 01/10)

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the De-

partment of Housing and Community Development (HCD) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 5. HCD is proposing building standards related to the Uniform Plumbing Code (UPC).

This rulemaking action covers Chapter 6, Table 6-4 footnote #3 for PEX tubing.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from **June 4, 2010**, until 5:00 p.m. on **July 19, 2010**. Please address your comments to:

California Building Standards Commission,
2525 Natomas Park Drive, Suite 130
Sacramento, California 95833
Attention: Dave Walls, Executive Director

Written comments may also be faxed to (916) 263-0959 or e-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

**POST-HEARING MODIFICATIONS TO THE
TEXT OF THE REGULATIONS**

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). The CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written and/or oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5. HCD is proposing this regulatory action based on Health and Safety Code Sections 17040, 17921, 17922, 18300, 18630, 18640, 18865, 18865.3, 18873.1, 18873.2 and 19990; and Govern-

ment Code Sections 12955.1 and 12955.1.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 17000–17060, 17910–17990, 18200–18700, 18860–18874 and 19960–19998; and Government Code Sections 12955.1 and 12955.1.1.

INFORMATIVE DIGEST

Summary of Existing Laws

Section 17921 of the Health and Safety Code and Section 12955.1 of the Government Code require HCD to propose the adoption, amendment, or repeal of building standards by the CBSC.

Section 17922 of the Health and Safety Code requires that the building standards be essentially the same as the most recent editions of the uniform industry codes. The CBSC is authorized to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5.

Health and Safety Code Section 17922 states that the most recent editions of the uniform codes referred to in the section shall be considered to be adopted one year after the date of publication of the uniform codes.

Health and Safety Code Section 17040 requires HCD to adopt building standards for employee housing for “. . . the protection of the public health, safety, and general welfare of employees and the public, governing the erection, construction, enlargement, conversion, alteration, repair, occupancy, use, sanitation, ventilation, and maintenance of all employee housing.”

Health and Safety Code Sections 18300, 18620, 18630, 18640, 18865, 18865.3, 18873, 18873.1 and 18873.2 require HCD to adopt building standards for plumbing, including toilets, showers, and laundry facilities, in mobilehome parks and special occupancy parks which HCD determines are reasonably necessary for the protection of life and property and to carry out the purposes of the Mobilehome Parks Act and the Special Occupancy Parks Act.

Health and Safety Code Section 19990 requires HCD to adopt building standards for factory–built housing.

Summary of Existing Regulations

The California Plumbing Code, Part 5 of Title 24 of the California Code of Regulations (CCR), also known as the California Building Standards Code, adopted by reference the 2009 Uniform Plumbing Code with California amendments, effective on January 1, 2011. The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare.

Summary of Effect

HCD proposes to amend the 2010 edition of the California Plumbing Code (CPC), Part 5, Title 24, CCR for the following programs:

- a) State Housing Law: relative to residential occupancies, buildings or structures accessory thereto and as provided for through the federal Fair Housing Amendments Act and state law accessibility requirements, except where the application is for public use only.
- b) Employee Housing Act: relative to the use of plumbing equipment and systems in or on any building or structure or outdoors on premises or property in accordance with Health and Safety Code Section 17040.
- c) Mobilehome Parks or Special Occupancy Parks: relative to the use of plumbing equipment and systems in or on any permanent buildings and accessory buildings and structures within the park in accordance with Health and Safety Code Sections 18300, 18630, 18640, 18873.1 and 18873.2.
- d) Factory–Built Housing Law: relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies in accordance with Health and Safety Code Section 19990.

The proposed action would amend Part 5 of Title 24 (2010 California Plumbing Code) by modifying footnote #3 contained in Table 6–4, which prescribes some of the requirements for the use of PEX water supply piping. HCD proposes to amend Table 6–4 footnote #3 to reflect the proposed changes in the Second Revised Draft Environmental Impact Report (SRDEIR) for PEX.

An in–depth discussion of the effect of the amendments may be found in the Initial Statement of Reasons.

Comparable Federal Statute or Regulations

None.

Policy Statement Overview

The proposed regulations will adopt, amend or repeal existing plumbing standards and establish new plumbing standards which will affect the following: residential occupancies and buildings or structures accessory thereto, as provided for by federal and state accessibility requirements; the use of plumbing equipment and systems in or on any building or structure or outdoors on premises or property; the use of plumbing equipment and systems in or on any permanent buildings, accessory buildings or structures relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies, housing construction, buildings and structures accessory thereto, and permanent buildings in mobilehome parks and special occupancy parks.

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

None.

MANDATE ON LOCAL AGENCIES OR
SCHOOL DISTRICTS

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. Therefore, it does not mandate state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: Health and Safety Code Section 17922 requires HCD to adopt by reference the most recent edition of the model building code. This action will result in a minimal cost to HCD which will be absorbed in the current budget.
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE.
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE.
- D. Other nondiscretionary cost or savings imposed on local agencies: NONE.
- E. Cost or savings in federal funding to the state: NONE.

Estimate: HCD believes that any additional expenditure resulting from this proposed action will be minimal and will be able to be absorbed within existing budgets and resources.

INITIAL DETERMINATION OF NO
SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESSES

HCD has made an initial determination that the proposed action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states. (See *Economic Impact of the Proposed California Plumbing Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

DECLARATION OF EVIDENCE

HCD has determined that there are minimal facts, evidence, documents, testimony, or other evidence upon which the agency relied to support its initial determination of no effect pursuant to Government Code Section 11346.5(a)(8). The public is welcome to submit any information, facts or documents either supporting HCD's initial determination or finding to the contrary.

FINDING OF NECESSITY FOR THE PUBLIC'S
HEALTH, SAFETY, OR WELFARE

HCD has made an assessment of the proposal regarding the economic impact of recordkeeping and reporting requirements and has determined that a report pursuant to Government Code Section 11346.3(c) is not required.

COST IMPACT ON REPRESENTATIVE PRIVATE
PERSON OR BUSINESS

HCD 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 EFFECT

HCD has initially determined that a small business may be affected by these proposed regulations. (See *Economic Impact of the Proposed California Plumbing Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

ASSESSMENT OF EFFECT OF REGULATIONS
UPON JOBS AND BUSINESS EXPANSION,
ELIMINATION OR CREATION

HCD has initially assessed whether or not, and to what extent, this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

These regulations will not affect the creation, or cause the elimination, of jobs within the State of California.

- The creation of new businesses or the elimination of existing businesses within the State of California.

These regulations will not affect the creation or the elimination of businesses within the State of California.

- The expansion of businesses currently doing business within the State of California.

These regulations will not affect the expansion of businesses currently doing business within the State of California.

(See *Economic Impact of the Proposed California Plumbing Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

HCD has made an initial determination that this proposal would not have a significant effect on housing costs. The CBSC contact person designated below will make HCD's initial evaluation of the effect of the proposed regulatory action on housing costs available upon request. (See *Economic Impact of the Proposed California Plumbing Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

CONSIDERATION OF ALTERNATIVES

HCD must determine that no reasonable alternative considered by HCD, or otherwise identified and brought to the attention of HCD, 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. (See *Economic Impact of the Proposed California Plumbing Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This Notice, the Express Terms and the Initial Statement of Reasons can be accessed from the California Building Standards Commission website at <http://www.bsc.ca.gov> and also will be posted on HCD's website at <http://www.hcd.ca.gov/codes/shl/t24.html>.

Interested parties 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, at HCD's website or at the California Building Standards Commission website.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

General questions regarding procedural and administrative issues should be addressed to:

- CBSC Contact:** Jane Taylor, Senior Architect
CBSC Back-up: If the contact person is unavailable, please contact Michael Nearman at the phone number or fax number provided below.
CBSC Address: California Building Standards Commission
 2525 Natomas Park Drive, Suite 130
 Sacramento, CA 95833
CBSC Telephone: (916) 263-0916
CBSC Fax: (916) 263-0959
CBSC E-mail: CBSC@dgs.ca.gov

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

- Shawn Huff
 Housing Standards Programs Manager
 Department of Housing and Community Development
 Telephone: (916) 445-9471
 E-mail: shuff@hcd.ca.gov
 Fax: (916) 327-4712

Back-up:

- Doug Hensel
 Assistant Deputy Director
 Department of Housing and Community Development
 Telephone: (916) 445-9471
 E-mail: dhensel@hcd.ca.gov
 Fax: (916) 327-4712

**TITLE 24. BUILDING STANDARDS
COMMISSION**

**NOTICE OF PROPOSED ACTION
TO
BUILDING STANDARDS
OF THE
OFFICE OF STATEWIDE HEALTH PLANNING
AND DEVELOPMENT**

**REGARDING THE 2010 CALIFORNIA
PLUMBING CODE
CALIFORNIA CODE OF REGULATIONS,
TITLE 24, PART 5**

**HEALTH FACILITIES CONSTRUCTION
(OSHPD 02/10)**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Office of Statewide Health Planning and Development (OSHPD) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 5. The OSHPD is proposing building standards related to health facility construction.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from June 4, 2010, until 5:00 p.m. on July 19, 2010. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Dave Walls, Executive Director

Written Comments may also be faxed to (916) 263-0959 or E-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing be held.

**POST-HEARING MODIFICATIONS TO THE
TEXT OF THE REGULATIONS**

Following the public comment period, the CBSC may adopt the proposed building standards substantial-

ly as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code §18949.3. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code §1226, §1275 and §129850. The OSHPD is proposing this regulatory action based on Health and Safety Code §1226, §1275 and §129850.

INFORMATIVE DIGEST

Summary of Existing Laws

Health and Safety Code Section 1226 authorizes the Office to prescribe, in consultation with the Community Clinics Advisory Committee, minimum building standards for the physical plant of clinics, for adoption in the California Building Standards Code.

Health and Safety Code Section 1275 authorizes the Office to adopt and enforce building standards for the physical plant of health facilities including hospitals, skilled nursing facilities and correctional treatment centers.

Health and Safety Code Section 129850 authorizes the Office to propose building standards, as necessary, in order to carry out the requirements of the Alfred E. Alquist Hospital Facilities Seismic Safety Act. The Office is also authorized to submit to the California Building Standards Commission for approval and adoption of building standards related to the seismic safety of hospital buildings.

Health and Safety Code Sections 129675 through 130070 authorizes the Office to provide plan review and construction observation for hospitals, skilled nursing facilities and intermediate care facilities in order to assure that these health facilities are compliant with the California Building Standards Code. Specifically, Section 129850 authorizes the Office to develop regulations to effectively carry out the mandate of the Alfred E. Alquist Hospital Facilities Seismic Safety Act.

Summary of Existing Regulations

Title 24, Part 5 contains requirements for plumbing fittings and fixtures for various rooms or areas in hospitals, skilled nursing facilities, licensed clinics, and correctional treatment centers. Title 24, Part 5 also contains requirements for various piping materials, including PEX, which may be used for the distribution of potable water.

Summary of Effect

The proposed action would amend Part 5 of Title 24 (2010 California Plumbing Code) by modifying, Section 604.1, Exception #5 which prescribes some of the requirements for the use of PEX water supply piping. OSHPD proposes to amend Section 604.1, Exception #5 to reflect the proposed changes in the Second Revised Draft Environmental Impact Report (SRDEIR) for PEX.

Comparable Federal Statute or Regulations

There are no comparable federal statutes or regulations related to this proposed action.

Policy Statement Overview

Title 24, Part 5 contains regulations for the review and construction of health facilities regulated by OSHPD.

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

There are no other matters to identify.

**MANDATE ON LOCAL AGENCIES OR
SCHOOL DISTRICTS**

The OSHPD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

(An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the "Economic and Fiscal Impact Statement" (Form 399))

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**

- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

**INITIAL DETERMINATION OF NO
SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESSES**

The OSHPD has made an initial determination that the adoption/amendment/repeal of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

The OSHPD has not relied on any other facts, evidence, documents, testimony or other evidence to make its initial determination of no statewide adverse economic impact. The proposed regulations are technical and editorial amendments that will provide clarification and consistency with nationally recognized standards and statute.

**FINDING OF NECESSITY FOR THE PUBLIC'S
HEALTH, SAFETY, OR WELFARE**

A report pursuant to Government Code § 11346.3(c) is not required by the proposed regulations.

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

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

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

The OSHPD has assessed whether or not and to what extent this proposal will affect the following:

- @ The creation or elimination of jobs within the State of California.

The proposed action would not have an effect on 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.

The proposed action would not have an effect on the creation of new businesses or elimination of existing businesses within the State of California.

@ The expansion of businesses currently doing business with the State of California.

The proposed action would not have an effect on the expansion of businesses currently doing business with the State of California.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

The OSHPD has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties 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 at the California Building Standards Commission website.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

General questions regarding procedural and administrative issues should be addressed to:

Jane Taylor, Senior Architect
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Telephone No.:(916) 263-0916
Facsimile No.:(916) 263-0959

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Glenn S.A. Gall, Supervisor, Health Facilities Review
Office of Statewide Health Planning and Development
Facilities Development Division
400 R Street, Suite 200
Sacramento, CA 95811

regsunit@oshpd.ca.gov
Telephone No.:(916) 440-8356
Facsimile No.:(916) 324-9188

GENERAL PUBLIC INTEREST

TITLE 2. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or CEIR has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P.O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P.O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P.O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO.
2080-2010-011-02**

Project: State Route 26 (Savage Way)

Location: San Joaquin and Calaveras Counties

Applicant: California Department of Transportation

Background:

The California Department of Transportation (Caltrans) and the Federal Highway Administration propose to rehabilitate pavement to meet current roadway standards by widening and realigning existing State Route 26 between Wimer/Ospital Road in San Joaquin County and Savage Way in Calaveras County (hereafter, the Project). The total length of the Project is 3.26 miles, with 0.2 mile located in San Joaquin County and the remaining 3.06 miles in Calaveras County. The final Project roadway will consist of a two-lane conventional highway with twelve-foot lanes and eight-foot shoulders. The Project's purpose is to:

- Repair deteriorated pavement;
- Widen lane and shoulder widths to current highway standards; and
- Correct non-standard curves and dips.

The Project and related activities are expected to result in the incidental take of California tiger salamander (*Ambystoma californiense*). The Project area consists of a portion of State Route 26 in Calaveras and San Joaquin County, including the roadway, shoulders, and right-of-way near the San Joaquin/Calaveras County line between Wimer/Ospital Road and Savage Way. The Project area includes uplands consisting of oak woodlands and grasslands; and wetlands including vernal pools. These vegetation types provide suitable habitat for the California tiger salamander. Project activities include specifically: vegetation removal, pavement removal, grading, earth-moving, soil compacting, stockpiling materials, equipment storage, vehicular movement, and paving.

The California tiger salamander is listed as a threatened species under the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). The California tiger salamander is also designated as a protected candidate species under the California Endangered Species Act (CESA)(Fish & G. Code, § 2050 et seq.). (See Cal. Reg. Notice Register 2009, No. 8-Z, p. 284; see also Fish & G. Code, §§ 2068, 2080, 2085.) In addition, on March 3, 2010, the California Fish and Game Commission, the constitutionally established entity with exclusive statutory authority to designate species as protected under CESA, determined that listing CTS as a threatened species under state law is warranted. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, §§ 2070, 2075.5(2).) Consistent with the Commission's determination, CTS will be added to the list of species designated as threatened under CESA following the completion of related formal rulemaking by the Commission under the Administrative Procedure Act (Gov. Code, § 11340 et seq.). (See also Fish & G. Code, 2075.5(2); Cal. Code Regs., tit. 14, 670.1, subd. (j), 670.5, subd. (b).) In the

interim, CTS will remain a candidate species protected under CESA. (Fish & G. Code, 2085; Cal. Reg. Notice Register 2009, No. 8-Z, p. 284.)

A portion of the Project area (1.967 acres) lies within an area classified by the U.S. Fish and Wildlife Service (Service) as critical habitat for the California tiger salamander under the federal ESA. The California Natural Diversity Data Base (CNDDDB) also identifies 11 records documenting known occurrences of the California tiger salamander within 10 miles of the Project area, an area that includes suitable habitat for the California tiger salamander, including suitable habitat within and adjacent to the Project area. Because the Project area includes and is located in close proximity to suitable habitat, CNDDDB documented occurrence records, and federally designated critical habitat, the Service determined that California tiger salamanders are reasonably certain to occur within the Project area and that California tiger salamander will be incidentally taken as a result of the Project.

Construction of the Project will result in the permanent loss of 1.28 acres of vernal pools that provide breeding habitat and 8.84 acres of upland habitat for the California tiger salamander. Because the Project has the potential to take California tiger salamander, a species listed as threatened under the ESA, the Federal Highway Administration consulted with the Service as required by the ESA. On February 15, 2006, the Service issued a biological opinion (Service file No. 1-1-03-0053) (BO) to the Federal Highway Administration. The BO describes Project actions, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures contained within the Project Biological Assessment.

Because the California tiger salamander is also listed as a protected candidate species pursuant to CESA, on April 23, 2010, the Applicant notified the Director of the Department of Fish and Game (DFG) that the Applicant was requesting a determination, pursuant to Fish and Game Code section 2080.1, that the BO and its related ITS are consistent with CESA for purposes of the Project.

Determination

DFG has determined that the BO, including the ITS, is consistent with CESA as to the Project because the mitigation measures contained therein meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of a species protected by CESA. Specifically, DFG finds that: take of the California tiger salamander will be incidental to an otherwise lawful activity; the mitigation

measures identified in the BO and ITS will minimize and fully mitigate the impacts of the authorized take; and construction of the Project will not jeopardize the continued existence of the California tiger salamander. The mitigation measures in the BO and ITS include, but are not limited to, the following:

Minimization, and Take Avoidance Measures

1. Caltrans will implement best management practices during construction. Parking of equipment, project access, supply logistics, equipment maintenance, and other project related activities will occur at a designated staging area. The staging area location will be pre-approved by a Caltrans biologist.
2. A qualified biologist will be on-site or on-call during all activities that could result in the take of listed species. The qualification of the biologist(s) will be presented to the Service for review and approval at least 60 calendar days prior to any groundbreaking at the project site. The biologist(s) will be given the authority to stop any work that may result in the take of listed species. If the biologist(s) exercises this authority, the Service and DFG will be notified by telephone and electronic mail within one working day. The Service contact is the Deputy Assistant Field Supervisor, Endangered Species Program at the Sacramento Fish and Wildlife Office at telephone (916) 414-6600. DFG will be contacted by e-mailing the Regional Manager, North Central Region, Kent Smith KSMITH@dfg.ca.gov, and by telephoning Caltip at (888) 334-2258.
3. An employee education program will be conducted which consists of a brief presentation by persons knowledgeable in vernal pools, California tiger salamander biology and legislative protection to explain endangered species concerns to contractors, their employees, and any other personnel involved in the Project. The program should include the following: a description of the species and their habitat needs; a report of the occurrence of the species in the Project area; an explanation of the status of these species and their protection under the ESA; and a list of measures being taken to reduce impacts to the species during project construction and implementation. A fact sheet conveying this information should be prepared for distribution to the above-mentioned people and anyone else who may enter the Project area. Upon completion of training, employees will sign a form stating that

they attended the training and understand all conservation and protection measures.

4. The limits of the construction area will be flagged, if not already marked by right of way or other fencing, and all activity will be confined within the marked area. All access to and from the Project area will be clearly marked in the field with appropriate flagging and signs. Prior to commencing construction activities, the contractor will determine the location of all construction vehicle parking and access.
5. To the extent possible, nighttime construction will be minimized. Construction crews will be informed during the education program meeting that, to the extent possible, travel within the marked project site will be restricted to established roadbeds. Established roadbeds include all pre-existing and project-construction unimproved and improved roads.
6. Construction within 1 kilometer (0.6 miles) of potential California tiger salamander breeding habitat will be timed to occur during the dry season (June to October) when larvae and breeding adult salamanders are not present.

Mitigation

1. Caltrans has purchased 26.52 acres of upland habitat credits at the Service-approved Fitzgerald Ranch Conservation Bank to compensate for direct effects to 8.84 acres of California tiger salamander habitat at a compensation ratio of 3:1.
2. Caltrans has purchased 2.80 acres of vernal pool habitat credits at the Service-approved Fitzgerald Ranch Conservation Bank for effects to California tiger salamander breeding habitat. The vernal pool habitat credits also provide mitigation for vernal pool fairy shrimp, a species listed under the ESA.

Notification and Reporting

1. Consistent with the BO, the Applicant will notify DFG and the Service via electronic mail and telephone within one working day of the death or injury of a California tiger salamander due to project related activities, or if a dead or injured California tiger salamander is observed in the Project area. Notification will include the date, time, and location of the incident or finding of the dead or injured animal.
2. A post construction monitoring report detailing the Project's compliance with the Avoidance and Minimization Measures for Listed Species specified in the BO will be provided to the Service. Although not a requirement of the BO, DFG requests that Caltrans provide a copy of the report to DFG.

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of the California tiger salamander for the Project, provided the Applicant implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO and ITS. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO and ITS, the Applicant will be required to obtain a new consistency determination or a CESA incidental take permit from DFG. (See generally Fish & G, §§ 2080.1, 2081, subds. (b), (c).)

DEPARTMENT OF HEALTH CARE SERVICES

Public Notice (OAL)

Addition of Contracted Specialty Provider Network

To meet the unique specialized care needs of the Medi-Cal population who utilize specialty drugs, the Department of Health Care Services (DHCS) will begin contracting with out-patient providers of specialized drugs.

Effective July 1, 2010 the DHCS will implement contracts with specialty providers of coagulation products, those defined in Welfare and Institutions Code Section 14105.86(a)(2)(A). The DHCS will contract with any specialty provider who will sign a contract to meet a list of performance obligations. These include but are not limited to delivery time requirements, providing patient education, and submitting quarterly and yearly reports to the DHCS. A provider who does not sign a contract, agreeing to abide by these provisions, will no longer be allowed to provide the specialized drug to Medi-Cal, CCS, or GHPP beneficiaries.

To demonstrate the benefits of utilizing specialty providers and documenting the impact on beneficiaries, the DHCS will generate an annual report published six months after the end of the first and second year.

FISH AND GAME COMMISSION

**NOTICE OF FINDINGS
California Tiger Salamander
(*Ambystoma californiense*)**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), at its March 3, 2010

meeting in Ontario, California, made a finding pursuant to Fish and Game Code section 2075.5, that the petitioned action to add the California tiger salamander (*Ambystoma californiense*) to the list of threatened species under the California Endangered Species Act (CESA)(Fish & G. Code, § 2050 et seq.) is warranted.¹ (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1).)

NOTICE IS ALSO GIVEN that the Commission, consistent with Fish and Game Code section 2075.5, proposes to amend Title 14, section 670.5, of the California Code of Regulations, to add the California tiger salamander to the list of species designated as threatened under CESA. (See also *Id.*, tit. 14, 670.1, subd. (j).)

I.

BACKGROUND AND PROCEDURAL HISTORY

On July 6, 2001, the Center for Biological Diversity (Center) petitioned the Commission to list the California tiger salamander as a threatened or endangered species under CESA, requesting that the Commission take emergency action to list the species as endangered pursuant to Fish and Game Code section 2076.5.² (Cal. Reg. Notice Register 2001, No. 33–Z, p. 1393.) On August 3, 2001, with a supporting recommendation from the Department of Fish and Game (Department), the Commission declined to take emergency action to list the California tiger salamander, finding there was no emergency posing a significant threat to the continued existence of the species. (*Id.*, 2001, No. 34–Z, p. 1426.) Thereafter, on October 4, 2001, the Department submitted its initial Evaluation of Petition: Request of Center for Biological Diversity to List California Tiger Salamander (*Ambystoma californiense*) as Endangered (October 3, 2001) (hereafter, the 2001 Candidacy Evaluation Report) to the Commission at its meeting in San Diego, California, recommending that the petition be accepted for further consideration pursuant to Fish and Game Code section 2073.5, subdivision (a)(2).

On December 7, 2001, at its meeting in Long Beach, California, the Commission rejected the Center's petition to list the California tiger salamander as a threatened or endangered species pursuant to Fish and Game Code section 2074.2, subdivision (a)(1). In reaching its decision, the Commission considered the petition, the Department's 2001 Candidacy Evaluation Report, and other relevant information, and determined based on substantial evidence in the administrative record of proceedings that the petition did not include sufficient in-

formation to indicate that the petitioned action may be warranted. The Commission adopted findings to the same effect at its February 8, 2002, meeting in Sacramento, California, publishing notice of its finding as required by Fish and Game Code section 2078 and controlling regulation on March 1, 2002. (Cal. Reg. Notice Register 2002, No. 9–Z, p. 469; see also Cal. Code Regs., tit. 14, § 670.1, subd. (e)(1).)

On January 30, 2004, the Commission received a second petition from the Center to list California tiger salamander as a threatened or endangered species under CESA. (Cal. Reg. Notice Register 2004, No. 9–Z, p. 270.) Consistent with the Fish and Game Code and controlling regulation, the Commission referred the petition to the Department, the Department evaluated the petition, along with additional information from the interested public, and submitted its initial Evaluation of Petition: Request of the Center for Biological Diversity et al. (2004) to List California Tiger Salamander (*Ambystoma californiense*) as Endangered (July 28, 2004) (hereafter, the 2004 Candidacy Evaluation Report) to the Commission. The Department recommended in its 2004 Candidacy Evaluation Report that the Commission accept the petition for further evaluation under CESA. (Fish & G. Code, § 2073.5, subd. (a)(2); Cal. Code Regs., tit. 14, § 670.1, subd. (d).)

The Commission, at its October 22, 2004 meeting in Concord, California, rejected the Center's 2004 petition for further evaluation under CESA pursuant to Fish and Game Code section 2074.2, subdivision (a)(1). In reaching its determination, the Commission found, based on the petition, the Department's 2004 Candidacy Evaluation Report, and other substantial evidence in the administrative record of proceedings, that there was not sufficient information to indicate the petitioned action may be warranted. The Commission adopted findings to the same effect at its December 2, 2004 meeting in Monterey, California, publishing notice of its finding as required by Fish and Game Code section 2078 and controlling regulation on December 24, 2004. (Cal. Reg. Notice Register 2004, No. 52–Z, p. 1754; see also Cal. Code Regs., tit. 14, § 670.1, subd. (e)(1).)

On February 28, 2005, the Center filed a petition for writ of mandate in Sacramento County Superior Court challenging the Commission's decision to reject the 2004 petition to list the California tiger salamander under CESA. (*Center for Biological Diversity v. California Fish and Game Commission*, Super. Ct. Sacramento County, 2005, No. 05CS00233.) The trial court in the litigation ruled against the Commission on December 14, 2006, finding that the administrative record of proceedings did not include substantial evidence to support the Commission's final action. The court, in turn, directed the Commission to accept the Center's petition for further evaluation and, in so doing, to designate

¹ The definition of a "threatened species" for purposes of CESA is found in Fish and Game Code section 2067.

² The definition of an "endangered species" for purposes of CESA is found in Fish and Game Code section 2062.

California tiger salamander as a candidate species under CESA. The Third District Court of Appeal affirmed the trial court decision on September 2, 2008, with the California Supreme Court denying the Commission's related petition for review on December 10, 2008. (*Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597.)

On February 5, 2009, at its meeting in Sacramento, California, the Commission, pursuant to court order in the *Center for Biological Diversity* litigation, set aside its October 2004 determination rejecting the Center's second petition and designated the California tiger salamander as a candidate species under CESA.³ (Cal. Reg. Notice Register 2009, No. 8–Z, p. 284; see also Fish & G. Code, §§ 2080, 2085.) The Commission took emergency action at the same time pursuant to the Fish and Game Code and the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), authorizing take of the candidate species under CESA, subject to various terms and conditions. (See Fish & G. Code, §§ 240, 2084, adding Cal. Code Regs., tit. 14, § 749.4; Cal. Reg. Notice Register 2009, No. 10–Z, p. 399.) The Commission extended the emergency take authorization for California tiger salamander on two occasions, effective through February 23, 2010. (*Id.*, 2009, No. 36–Z, p. 1499; Cal. Reg. Notice Register 2009, No. 49–Z, p. 208.)

Consistent with the Fish and Game Code and controlling regulation, the Department commenced a 12-month status review of California tiger salamander following published notice of its designation as a candidate species under CESA. As part of that effort, the Department solicited data, comments, and other information from interested members of the public, and the scientific and academic community; and the Department submitted a preliminary draft of its status review for independent peer review by a number of individuals acknowledged to be experts on the California tiger salamander, possessing the knowledge and expertise to critique the scientific validity of the report. (Fish & G. Code, §§ 2074.4, 2074.8; Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).) The effort culminated with the Department's final Status Review of the California Tiger Salamander (*Ambystoma californiense*) (January 11, 2010) (Status Review), which the Department submitted to the Commission at its meeting in Sacramento, California, on February 4, 2010. The Department recommended to the Commission based on its Status Review and the best science available to the Department that designating California tiger salamander as a threatened species under CESA is warranted. (Fish & G.

Code, § 2074.6; Cal. Code Regs., tit. 14, § 670.1, subd. (f).)

The Commission considered the petition, the Department's 2001 and 2004 Candidacy Evaluation Reports, the Department's 2010 Status Review, and other information included in the Commission's administrative record of proceedings at its meeting in Ontario, California, on March 3, 2010. (Fish & G. Code, § 2075; Cal. Code Regs., tit. 14, § 670.1, subds. (g), (i).) Following public comment and deliberation, the Commission determined, based on the best available science before it, that listing California tiger salamander as a threatened species under CESA is warranted. (Fish & G. Code, § 2075.5(2); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).) In so doing, the Commission directed its staff to prepare findings of fact consistent with its determination for consideration and ratification by the Commission at a future meeting. The Commission also directed its staff in coordination with the Department to begin formal rulemaking under the APA to add California tiger salamander to the list of threatened species set forth in Title 14, section 670.5, of the California Code of Regulations. (Fish & G. Code, §§ 2075.5(2); Cal. Code Regs., tit. 14, § 670.1, subd. (j).)

II.

STATUTORY AND LEGAL FRAMEWORK

The Commission has prepared these findings as part of its final action under CESA to designate the California tiger salamander as a threatened species. As set forth above, the Commission's determination that listing California tiger salamander is warranted marks the end of formal administrative proceedings under CESA prescribed by the Fish and Game Code and controlling regulation. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.) The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.)⁴

As set forth above, the CESA listing process for California tiger salamander began in the present case with the Center's submittal of its first petition to the Commission in July 2001. (Cal. Reg. Notice Register 2001, No. 33–Z, p. 1393; see also *Id.*, 2004, No. 9–Z, p. 270.) The regulatory process that ensued is described above in some detail, along with related references to

³ The definition of a "candidate species" for purposes of CESA is found in Fish and Game Code section 2068.

⁴ The Commission, pursuant to this authority, may add, remove, uplist or downlist any plant or animal species to the list of endangered or threatened species, or designate any such species as a candidate for related action under CESA. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A)–(C).) In practical terms, any of these actions may be commonly referred to as subject to CESA's "listing" process.

the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114–116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541–1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111–1116.

The “is warranted” determination at issue here for California tiger salamander stems from Commission obligations established by Fish and Game Code section 2075.5. Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether the petitioned action is warranted or is not warranted. Here with respect to California tiger salamander, the Commission made the finding under section 2075.5(2) that the petitioned action is warranted.

The Commission was guided in making this determination by various statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease. (Fish & G. Code, § 2062.)

Similarly, the Fish and Game Code defines a threatened species under CESA as a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter. (*Id.*, § 2067.)

Likewise as established by published appellate case law in California, the term “range” for purposes of CESA means the range of the species within California, (*California Forestry Association v. California Fish and Game Commission, supra*, 156 Cal. App. 4th at p. 1540, 1549–1551.)

The Commission was also guided in making its determination regarding California tiger salamander by Title 14, section 670.1, subdivision (i)(1)(A), of the California Code of Regulations. This provision provides, in

pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the species’ continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Likewise, the Commission was also guided in its determination regarding California tiger salamander by Fish and Game Code section 2070. This section provides that the Commission shall add or remove species from the list it establishes under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (Fish & G. Code, § 2055.) This policy direction does not compel a particular determination by the Commission in the CESA listing context. Yet, the Commission made its determination regarding California tiger salamander mindful of this policy direction, acknowledging that “ ‘[l]aws providing for the conservation of natural resources’ such as the CESA ‘are of great remedial and public importance and thus should be construed liberally.’ ” (*California Forestry Association v. California Fish and Game Commission, supra*, 156 Cal. App. 4th at pp. 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.)

Finally in considering these factors, CESA and controlling regulation require the Commission to actively seek and consider related input from the public and any interested party. (See, e.g., *Id.*, §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h).) The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a 12-month status review of the candidate species culminating with a report and recommendation to the Commission as to

whether listing is warranted based on the best available science. (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f), (h).)

III.

FACTUAL AND SCIENTIFIC BASES FOR THE COMMISSION'S FINDING

The factual and scientific bases for the Commission's finding that listing California tiger salamander as a threatened species under CESA is warranted are set forth in detail in the Commission's administrative record of proceedings. Substantial evidence in the administrative record of proceedings in support of the Commission's determination includes, but is not limited to the Center's 2001 and 2004 petitions, the Department's 2001 and 2004 Candidacy Evaluation Reports, the Department's 2010 Status Review, and other information specifically presented to the Commission and otherwise included in the Commission's administrative record of proceedings as it existed up to and including the meeting in Ontario, California, on March 3, 2010. The Commission made its final determination under CESA with respect to California tiger salamander at that meeting. (Fish & G. Code, § 2075; Cal. Code Regs., tit. 14, § 670.1, subds. (g), (i).)

The Commission finds the substantial evidence highlighted in the preceding paragraph, along with other substantial evidence in the administrative record of proceedings, supports the Commission's determination under CESA that the continued existence of California tiger salamander in the State of California is threatened by one or a combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

The Commission also finds that the same substantial evidence constitutes sufficient scientific information to establish that designating California tiger salamander as a threatened species under CESA is warranted.

The following Commission findings highlight in more detail some of the scientific and factual information and other substantial evidence in the administrative record of proceedings that support the Commission's determination that the California tiger salamander's continued existence is threatened in California:

1. Past and continuing loss and fragmentation of essential wetland and upland habitat due to urbanization and conversion to more intensive agricultural practices in its range in the Central Valley, Santa Barbara and Sonoma counties, Bay Area, and foothills of the Coast Range and Sierra Nevada.
2. Hybridization with non-native tiger salamander species illegally established in the wild (formerly legal as fishing bait) in significant portions of its range, resulting in viable hybrid offspring that have reduced genetic purity and which often out-compete or eat pure-strained California tiger salamanders.
3. Widespread predation and competition in breeding habitat by non-native fishes and bullfrogs.
4. Potential susceptibility to introduced diseases from non-native fishes and tiger salamanders, or other amphibian species.
5. Certain agricultural practices, primarily the use of rodenticides that kill ground squirrels whose burrows are essential California tiger salamander habitat.
6. Mortality from annual road crossings to breeding ponds.
7. Climate change, which would likely affect wetland-dependent species such as the California tiger salamander by changing wetland hydrology, reducing habitat, and increasing disease potential.
8. Populations on limited protected areas are impacted by varying degrees to the factors mentioned above.

IV.

FINAL DETERMINATION BY THE COMMISSION

The Commission has weighed and evaluated all information and inferences for and against listing California tiger salamander under CESA. This information includes scientific and other general evidence in the Center's 2001 and 2004 petitions, the Department's 2001 and 2004 Candidacy Evaluation Reports and the Department's related recommendations, the Department's 2010 Status Review and related recommendation based on the best available science, written and oral comments received from members of the public, and other evidence included in the Commission's administrative record of proceedings. Based upon substantial evidence in the administrative record the Commission has determined that there is sufficient scientific information to indicate that listing California tiger salamander as a threatened species under CESA is warranted. (Fish &

G. Code, § 2075.5(2).) In making this determination, the Commission also finds the continued existence of California tiger salamander is threatened in the State of California as set forth in these findings and supported by substantial evidence in the Commission's administrative record of proceedings. (Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).)

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY**

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

NOTICE TO INTERESTED PARTIES

NOTICE OF PUBLIC WORKSHOPS

ON

**PROPOSED REFERENCE EXPOSURE
LEVELS FOR METHYLENE DIPHENYL
DIISOCYANATE, TOLUENE DIISOCYANATE
AND CAPROLACTAM: ANNOUNCEMENT OF
PUBLIC WORKSHOPS.**

June 4, 2010

The Office of Environmental Health Hazard Assessment (OEHHA) is soliciting public comments on draft documents describing proposed Reference Exposure Levels (RELs) for methylene diphenyl diisocyanate (MDI), toluene diisocyanate (TDI) and caprolactam. OEHHA is required to develop guidelines for conducting health risk assessments under the Air Toxics Hot Spots Program (Health and Safety Code Section 44360(b)(2)). In response to this statutory requirement, OEHHA in 2008 adopted a Technical Support Document (TSD) that contains updated guidelines for the development of acute, 8 hour, and chronic RELs. OEHHA recently described the derivation, using these guidelines, of proposed RELs for MDI, TDI and caprolactam, and invited public comments on these. The draft documents are available on the OEHHA web site at: http://www.oehha.ca.gov/air/chronic_rels/RELS042310.html (MDI and TDI) and http://www.oehha.ca.gov/air/chronic_rels/052010REL.html (caprolactam). Written public comments are due by June 22 (MDI and TDI) and July 6, 2010 (caprolactam).

As part of the public comment process, OEHHA has arranged two public workshops on these documents that will be held at 9.00 a.m.–12.00 p.m. on June 15 in Diamond Bar and at 9.00 a.m.–12.00 p.m. on June 22, 2010 in Oakland. Location information is as follows:

Room CC2
South Coast Air Quality Management District
21865 Copley Dr.
Diamond Bar, CA 91765

Room 9,
Elihu Harris Building
1515 Clay St., 2nd Floor
Oakland, CA 94612

Please direct any inquiries concerning the workshops, or on the technical aspects or availability of the documents to:

Dr. Andrew G. Salmon
Chief, Air Toxicology and Risk Assessment Unit
Office of Environmental Health Hazard Assessment
1515 Clay St., 16th Floor
Oakland, CA 94612
E-mail: asalmon@oehha.ca.gov
Telephone: (510) 622–3191

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY OFFICE OF
ENVIRONMENTAL HEALTH HAZARD
ASSESSMENT**

NOTICE TO INTERESTED PARTIES

**NOTICE OF PUBLIC COMMENT PERIOD ON
PROPOSED REVISED REFERENCE
EXPOSURE LEVELS FOR NICKEL AND
NICKEL COMPOUNDS.**

June 4, 2010

The Office of Environmental Health Hazard Assessment (OEHHA) is soliciting public comments on a draft document describing proposed revised Reference Exposure Levels (RELs) for nickel and nickel compounds. OEHHA is required to develop guidelines for conducting health risk assessments under the Air Toxics Hot Spots Program (Health and Safety Code Section 44360(b)(2)). In response to this statutory require-

ment, OEHHA in 2008 adopted a Technical Support Document (TSD) that contains updated guidelines for the development of acute, 8 hour, and chronic RELs. These guidelines have already been used to develop updated RELs for several chemicals, and OEHHA is now presenting a draft update to the RELs for nickel (and nickel compounds). REL values proposed for Nickel and Nickel compounds are as follows:

- Acute REL (for a 1-hour exposure): 1.1 µg Ni/m³
- 8-Hour REL (for repeated 8-hour exposures): 0.08 µg Ni/m³
- Chronic REL for nickel and nickel compounds except nickel oxide: 0.015 µg Ni/m³
- Chronic REL for nickel oxide: 0.06 µg Ni/m³

We are seeking comments on the revised RELs for nickel and nickel compounds, and the application of the revised methodology to protect infants, children and other sensitive subpopulations. Following this public comment period, the RELs for nickel and nickel compounds and any comments received, along with OEHHA's response to these comments, will undergo review by the State's Scientific Review Panel on Toxic Air Contaminants.

The draft documents become available on the OEHHA Home Page at <http://www.oehha.ca.gov> on **June 4, 2010. The availability of the document on this site will commence a 60-day public review period that will end on August 3, 2010.**

Public workshops will be held at 9.00 a.m.–12.00 p.m. on July 20 in Diamond Bar and at 9.00 a.m.–12.00 p.m. on July 22, 2010 in Oakland. Location information is as follows:

Room CC2
South Coast Air Quality Management District
21865 Copley Dr.
Diamond Bar, CA 91765

Room 9,
Elihu Harris Building
1515 Clay St., 2nd Floor
Oakland, CA 94612

Please direct your comments on the documents, in writing or by e-mail, and any inquiries concerning technical matters or availability of the documents to:

Dr. Andrew G. Salmon
Chief, Air Toxicology and Risk Assessment Unit
Office of Environmental Health Hazard Assessment
1515 Clay St., 16th Floor
Oakland, CA 94612
E-mail: asalmon@oehha.ca.gov
Telephone: (510) 622-3191

Information about dates and agenda for meetings of the Scientific Review Panel can be obtained from the California Air Resources Board web page at <http://www.arb.ca.gov/srp/srp.htm>.

DECISION NOT TO PROCEED

TITLE 14. FISH AND GAME COMMISSION

Notice of Decision Not to Proceed

PURSUANT TO GOVERNMENT CODE 11347, NOTICE IS HEREBY GIVEN that the Fish and Game Commission decided not to proceed with the proposed addition of Section 235.3 and amendments to sections 236, 238 and 240, Title 14, CCR, regarding marking and inspections of live fish transportation vehicles and inspections of aquaculture facilities (Notice File No. Z-09-0608-01, published June 19, 2009, in the California Notice Register 2009, No. 25-Z, page 966, therefore, withdraws this proposed action for further consideration. The Commission may initiate a new proposal to adopt regulations pertaining to the same or similar subject matter at a later date, with notice as required by law.

OAL REGULATORY DETERMINATION

OFFICE OF ADMINISTRATIVE LAW

ACCEPTANCE OF PETITION TO REVIEW ALLEGED UNDERGROUND REGULATIONS

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

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:

Donald Schutz
Schutz Litigation, LLC
535 Central Avenue
St. Petersburg, FL 33701

PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW
TO DETERMINE THAT THE CALIFORNIA
DEPARTMENT OF MANAGED HEALTH
CARE IS ENFORCING AN
UNDERGROUND REGULATION

Agency contact:

Christina Hook, Senior Staff Counsel
Department of Managed Health Care
980 9th Street, Ste. 500
Sacramento, CA 95814

Please note the following timelines:

Publication of Petition in Notice Register: June 4, 2010
Deadline for Public Comments: July 6, 2010
Deadline for Agency Response: July 19, 2010
Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response
Deadline for OAL Decision: October 4, 2010

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.

**DEPARTMENT OF MANAGED HEALTH
CARE**

DONALD J. SCHUTZ
California Bar No. 85597
535 Central Avenue
St. Petersburg, FL 33701
727-823-3222
Attorney for DentalPlans.Com, Inc.

BEFORE THE OFFICE OF ADMINISTRATIVE
LAW, STATE OF CALIFORNIA

DENTALPLANS.COM, INC.,
A Florida Corporation,
Petitioner,
v.
CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE,
Respondent.

DentalPlans.com, Inc., a Florida Corporation (DentalPlans.com), by and through undersigned counsel, now files this Petition to the Office of Administrative Law to determine that the California Department of Managed Health Care is enforcing an underground regulation affecting discount health plans.

1. **Petitioner's Name and Contact Information:** DentalPlans.com, Inc., a Florida Corporation, c/o Donald J. Schutz, Esq., CA Bar No. 85597, 535 Central Avenue, St. Petersburg, FL 33701, 727-823-3222, telefax 727-895-3222.

2. **Name of Agency that has allegedly issued, used, enforced or attempted to enforce the underground regulation:** California Department of Managed Health Care, Attn: Hon. Lucinda Ehnes, Director, 980 Ninth Street Suite 500, Sacramento, CA 95814 ("Department").

3. **Complete description of the particular underground regulation and a written copy of the purported underground regulation.**

Description:

The Department was established by the Knox-Keene Health Care Service Act of 1975, as Amended, Health & Safety Code § 1340 *et seq.* ("the Knox-Keene Act" or the "Act"). Lucinda Ehnes is the current Director of the Department. The Department is a governmental agency with limited jurisdiction, responsible only for the administration and enforcement of the Knox-Keene Act. The Department has no power or authority to administer or enforce any law other than the Knox-Keene Act.

On July 9, 1983, Commissioner Franklin Tom, on behalf of the Department's predecessor, issued Commissioner's Opinion N. 4614h, (the "Tom Opinion"), copy attached as Exhibit A, and determined, on a fact-specific basis, that a company providing members with multiple buying services at a discounted price, in return for payment of an annual membership fee, would make the company a "health care service plan," requiring a license under the Knox-Keene Act.

On June 7, 2001, Director Daniel Zingale, as Director of the Department, issued Director's Opinion 01/1 (the "Zingale Opinion"), copy attached as Exhibit B, vacating the Tom Opinion. In the Zingale Opinion, the director noted that it would be difficult for a discount plan to obtain a license under the Knox Keene act due to many requirements of the Act, but especially in relation to Section 1375.1, Cal. H & S Code, requiring every plan

to assume, “. . . full financial risk on a prospective basis for the provision of covered health services.” In concluding that discount plans are not covered by Knox–Keene, Director Zingale stated:

Regardless of how broad the term “arrange” may be used in the Knox–Keene Act, the fact remains that in the case of discount membership programs, the contract between the entity and its subscribers or enrollees (or person contracting on their behalf) does not “arrange” for the provision of health care services at all. Instead, arrangements for the provision of health care services are made directly between the member and the provider. The entity arranges only for a discounted rate for whatever health care services the member chooses to access on his or her own from a participating program provider. *Department of Managed Health Care of the State of California, Director’s Opinion 01/1, June 7, 2001, Page 4.*

Importantly, the Zingale Opinion is not a fact specific opinion dealing with only the facts of one company. The Zingale Opinion is a general rule declining to assert the jurisdiction of the Department as to discount programs, generally, on the basis that discount programs do not undertake to pay for health care services on a prospective basis as required by Section 1375.1 of the Act and other factors as more specifically set forth in the Zingale Opinion. After the issuance of the Zingale Opinion, discount health plans were sold and marketed throughout the State of California.

In June 2005, under the current Director, Lucinda Ehnes, the Department issued a subpoena to DentalPlans.com. After discussing the reasons for the subpoena with the Department, DentalPlans.com, on June 16, 2005, requested an interpretive opinion as to whether it was subject to licensure under the Knox–Keene Act, particularly in light of the Zingale Opinion, which remained in full force and effect in June of 2005.

On December 14, 2005, while DentalPlans.com’s Request for Director’s Opinion was pending, and through a one–sentence Notice, the Department, under Lucinda Ehnes, rescinded the Zingale Opinion without warning, and reinstated the Tom Opinion, copy attached as Exhibit C (“2005 Rescission Notice”).

From the time period between December 14, 2005 and February 8, 2008, DentalPlans.com continued to market other companies’ discount products, and enjoyed substantial growth in the State of California. DentalPlans.com continued to communicate with the Department in an effort to understand the Department’s position on discount plans in general, as well as the Department’s position on DentalPlans.com in particular.

On September 26, 2006, in the Matter of the Cease and Desist Order issued to the Capella Group, Inc., d/b/a Care Entrée, Respondent, DMHC No. 04–312, OAH NO. N2005–10–0840, Exhibit G (“Care Entrée”), an administrative law judge found, on a fact–specific basis, that the respondent, Care Entrée, was required to obtain a Knox–Keene License based on certain fact–specific operational variants of the Care Entrée business plan. Care Entrée is applicable only to the statement of facts in Care Entrée, and does not constitute any general ruling affecting all discount plans.

Almost three years after DentalPlans.com’s request for an opinion, on February 8, 2008, the Department issued Director’s Opinion No. 08/2 (the “Ehnes Opinion”), concluding that DentalPlans.com is a “health care service plan within the meaning of Section 1345(f) and is subject to the licensure requirements of the Knox–Keene Act.” *Department of Managed Health Care of the State of California, Director’s Opinion No. 08/2, Page 3, Exhibit D.* Thereafter, on May 1, 2008, Director Ehnes published an article in the Capitol Weekly titled, “Cracking down on fraud in managed health care,” in which she states, “. . . the DMHC has worked diligently to shut down fraudulent discount health plans, by ordering certain plans to stop doing business in California. We will soon be proposing new regulations to license companies, imposing strict consumer protections for those wishing to operate in California.” Exhibit E (“Ehnes Article”).

After issuance of the Ehnes Opinion, DentalPlans.com continued to interact with the Department in a proactive effort to both understand the Ehnes Opinion and comprehend how the Department expected DentalPlans.com to comply with the Knox–Keene Act as interpreted by the Department.

On March 19, 2009, the Department instructed DentalPlans.com in writing to either (1) schedule a pre–filing conference for the purpose of obtaining a license under the Knox–Keene Act or (2) request a new interpretive opinion based on any changes in its business practices which have modified the set of facts upon which the Ehnes Opinion was based. DentalPlans.com declined to do either, as (1) DentalPlans.com contends that it is not subject to licensure under the Knox–Keene Act, but has no opportunity to contest the Ehnes Opinion or the Department’s assertion of jurisdiction over DentalPlans.com and (2) DentalPlans.com had not changed any business practices and could not meet the Department’s limitations on the criteria for requesting a new interpretive opinion.

On July 29, 2009, the Department, in Enforcement Matter 05–061, Before the Department of Managed Health Care, In the Matter of DentalPlans.com, the De-

partment issued an Order dated July 29, 2009, titled, “Order RE: Licensure,” Exhibit F, (the “Order Re: Licensure”) directing DentalPlans.com to obtain a Knox–Keene license, and, on the same date, issued a Cease and Desist Order against two companies unrelated to DentalPlans.com. Under California law, DentalPlans.com is not entitled to any administrative hearing or administrative remedy as a result of the Order RE: Licensure. On the date of the issuance of these three Orders, the Director issued a press release with the following quotation from Director Ehnes, “Today’s action shows that we need to continue our efforts to rein in operators of discount cards that habitually rip–off consumers and lead them to believe they are buying legitimate health coverage.” *July 30, 2009 Press Release, Department of Managed Health Care*. In this Press Release, the Department identifies DentalPlans.com by name as having been ordered to file an application for a license. This Press Release, together with other press releases of the Department, are attached as composite Exhibit J.

In December of 2009, the Department issued a Notice of Rulemaking Action, “Discount Health Plans; Adoption of Article 2.5 and Amendment of Article 3 in Title 28, California Code of Regulations, Control No. 2001–0024,” Exhibit H, (the “Proposed Regulations”), with public comments open through February 22, 2010. DentalPlans.com filed a comment in opposition, Exhibit I. As of the date of this Petition, the initial 45–day public comment hearing for the Proposed Regulations has closed, and the Department has not yet noticed the subsequent 15–day period after comment review, or transmitted the Proposed Regulations to the Office of Administrative Law. However, the Department is actively enforcing the Proposed Regulations as underground regulations, as more specifically set forth hereinafter.

Written Copy of Underground Regulation

The Department is enforcing the following documents as an underground regulation to require discount health plans to obtain a Knox–Keene License:

- (i) Tom Opinion.
- (ii) 2005 Rescission of Zingale Opinion, Reinstating Tom’s fact–specific Opinion.
- (iii) Care Entrée fact–specific Opinion.
- (iv) Ehnes Article.
- (v) Ehnes Opinion.
- (vi) Order Re: Licensure as to DentalPlans.com, Inc.
- (vii) “Press Releases”, Exhibit J, and with particularity, the February 22, 2010 Press Release stating that all discount plans are required to be licensed.

4. Description of the Actions of the Agency Showing that it has Issued, Used, Enforce, or Attempted to Enforce the Underground Regulation:

- (i) December 2005: Rescinded Zingale Opinion and Reinstated Tom Opinion.
- (ii) September 26, 2006: Prosecuted Care Entrée in administrative forum to assert that Care Entrée was required to obtain a Knox–Keene License based on fact–specific operational variants of the Care Entrée business plan.
- (iii) June 11, 2009: licensed Association Health Care Management, Inc., d/b/a Family Care, as a medical discount health plan (See June 11, 2009 Press Release, Composite Exhibit J).
- (iv) July 29, 2009: issued the Order Re: Licensure requiring DentalPlans.com to become licensed.
- (v) July 30, 2009: issued Press Release stating that two companies, Prudent Choice and International Association of Benefits, were ordered to seek licensure, and issued cease and desist orders. Issued Order Re: Licensure as to DentalPlans.com (Composite Exhibit J).
- (vi) 2010: Issued, “Consumer Alert Discount Health Cards,” Composite Exhibit J, stating, “unlicensed discount cards can be hazardous to your pocketbook,” and stating that the Department, “is proposing new requirements for licensing discount health card companies . . .” (Composite Exhibit J).
- (vii) February 22, 2010; Issued Cease and Desist Orders against companies operating under the name HealthcareOne, LLC, and issued press release stating, “Since September 2004, the DMHC has ordered 18 fraudulent health discount card companies to cease operations or become licensed,” and asserted jurisdiction over all discount plans.

5. Legal Basis For Concluding that the Guideline, Criterion, Bulletin, Provision in a Manual, Instruction, Order, Standard, or Other Rule or Procedure is a Regulation as Defined in Section 11342.600 of the Government Code and that No Express Statutory Exemption to the Requirements of the APA is Applicable.

As stated by the Department in the Press Releases in Composite Exhibit J, the Department has ordered 18 different companies to cease operations, or obtain a license after vacating the Zingale Opinion and reinstating the Tom Opinion. The fact that the Department has enforced the underground regulation against 18 companies indicates that it is a rule of general application. The fact that the Department is in the process of attempting to adopt regulations governing the licensure of discount health programs while actively ordering discount pro-

grams to obtain licenses before the Proposed Regulations have been adopted, indicates that the Department is enforcing the licensing criteria it asserts through the Tom Opinion and Care Entrée as a Underground Regulation. In the February 22, 2010 Press Release at Exhibit I, the Department claims:

“California law already requires discount plans to be licensed in order to do business in the state. An administrative law judge ruled that the DMHC does have jurisdiction over discount card companies, although many of these plans are currently unlicensed and some have challenged the ruling. This precedential decision confirmed that these companies are acting as health plans by arranging for the provision of health care services in exchange for a periodic payment, similar to the business model of other health plans, and therefore, must be licensed by the DMHC. The new regulations will strengthen and clarify existing regulations that require licensure.”

These statements are patently untrue: Care Entrée was a fact specific case, and in no manner constitutes a ruling that the Department has jurisdiction over the entire discount industry; there is currently no challenge to the Care Entrée ruling — it is a fact specific ruling that was not appealed. The Department, by admitting that the Proposed Regulations will, “strengthen and clarify” existing regulations, is essentially admitting that its current enforcement of its licensing policy is being enforced as an underground regulation. As importantly, there are no “existing regulations,” governing discount programs, as asserted by the Department in the February 2010 Press Release. The Proposed Regulations are the first attempt by the Department to enact regulations governing the licensing of Discount Plans. The Department’s assertion of jurisdiction and licensure requirements against 18 companies before the legal adoption of the Proposed Regulations through compliance with the California APA constitutes the enforcement of an underground regulation. The contention in the February 2010 Press Release that the Care Entrée decision confirmed, “that these companies are acting as health plans,” referring to discount programs in general, is a false statement, as the Care Entrée decision applied only to Care Entrée. Care Entrée in no manner relates to other discount plans, programs, or companies. However, the Department is clearly attempting to enforce Care Entrée and the Tom Opinion as a rule of general application and as an underground regulation by virtue of its use of Care Entrée and the Tom Opinion as the authority for action against 18 discount companies, even before regulations relating to the licensure of discount card companies have been legally adopted.

The authority for the Department’s assertion of jurisdiction over discount health plans is Section 1345 of the Knox–Keene Health Care Service Plan Act of 1975 (the “Act”), which provides as follows:

§ 1345. Definitions

(f) “Health care service plan” or “specialized health care service plan” means either of the following:

- (1) Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

The statutory language referring to, “undertakes to arrange for the provision of health care services to subscribers or enrollees,” is not self-executing. The Act does not describe precisely what actions constitute such an undertaking. In Care Entrée, the Department relied on a series of operational variants, as did the Tom Opinion. As seen by the contrasting of the Zingale Opinion and the Tom Opinion, the statute is susceptible to different interpretations. Through February 22, 2010, it appeared that the Department was attempting to enforce this statute on a case-by-case basis by identifying individual operational variants in the business operations of specific discount programs. However, in February 2010, the Department has now claimed that Care Entrée requires all discount plans to be licensed without reference to individual operational variants in the specific businesses, claiming that the Care Entrée decision confirmed that discount programs are acting as health plans. The announced application of this fact-specific case to an entire industry indicates that the Department has abandoned its previous tactic of attempting to impose a licensure requirement on a case-by-case, fact specific basis, and instead, is attempting to use this fact-specific opinion as a rule of general application to regulate an entire industry before it has adopted regulations.

In the case of DentalPlans.com, DentalPlans.com has filed a Petition for Writ of Mandate, DentalPlans.com, Inc. v. Department of Managed Health Care, Et al., Case No. 34–2009–80000303, Superior Court of the State of California, County of Sacramento. In the brief in Opposition, filed March 1, 2010, the Department claims at Page 36,

While the various interpretive opinions requested by interested parties may contain operational variants not present in one or another of the opinions, the core of the Petitioner’s (DentalPlans.com’s) program — *access to discounted health care* — is the core of the programs in each of the requested opinions and each of the requested opinions came to the same

conclusion: Providing access to health care services at a reduced rate is arranging for health care services within the definition of section 1345(f)(1).

In the Proposed Regulations, the Department proposes to include a definition that complies with the underground regulation it is presently enforcing, by including the following definition as Proposed Regulations 1300.49.1.1(b):

“The term, “discount health plan” means a person who, in exchange for a prepaid or periodic charge paid by or on behalf of subscribers and enrollees, undertakes to arrange for discounts on health care services on behalf of subscribers and enrollees who retain the financial responsibility to pay the discounted cost of health care services.”

A comparison of its claims in the Press Releases, its claim that Care Entrée applies to all discount companies, and the definition of “discount health plan” in the above Proposed Regulation, indicates that the Department has abandoned its previous case-by-case application of the statute, and, before regulations have been adopted, has made the decision to apply its interpretation of Care Entrée and the Tom Opinion as an underground regulation against the entire discount health industry.

As utilized by the Department, the policy announced in the February 22, 2010 Press Release is a regulation subject to rulemaking procedures of the APA, Government Code Section 11346. The rule has become a general rule being applied to an entire industry, and is no longer dependent upon a case-by-case analysis of operational variants that purportedly bring a specific discount plan under the Department’s jurisdiction.

The Department is enforcing an underground regulation. By expanding and interpreting §1345 of the Act, the Department is embellishing upon expressed statutory authorization and language, and must promulgate regulations in conformance with the APA, *Englemann v. State Board of Education*, (1991) 2 Cal.App. 4th 47. If an agency rule looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated by the courts as a regulation whether or not the issuing agency so labeled it, *State Water Resources Control Board v. OAL* (1993) 12 Cal.App. 4th 697. Underground regulations are void for failure to comply with the APA, *Tide-water Marine Western, Inc., v. Bradshaw*, (1996) 14 Cal. 4th 557.

6. Information Demonstrating that This Petition Raises an Issue of Considerable Public Importance Requiring Prompt Resolution.

The sale of discount health programs is a nationally recognized industry operating throughout the United States. Many states have passed statutes governing the regulation and licensing of discount programs, addressing disclosures and other consumer safety measures. There are millions of satisfied users of discount health programs throughout the nation. California has not passed any statute regulating discount health programs. Instead, the Department has unilaterally declared its jurisdiction over discount plans and programs, and implemented a licensing mechanism through the enforcement of an underground regulation. Unfortunately, the licensing mechanism instituted by the Department is akin to the licensing of a national health insurance company, and not a discount plan. As a result, the companies that are legally entitled to operate in California are being driven out of the state, which deprives both the companies and their prospective customers of the advantages of this industry.

The Department is engaging in a clear violation of California law by enforcing regulations before they are legally adopted under the APA. As set forth in the Comments of DentalPlans.com to the Proposed Regulations, a copy of which is attached hereto as Exhibit I, DentalPlans.com believes that the Proposed Regulations are not subject to adoption as they attempt to add language to the Act and are otherwise unconstitutional. The vital public interest in requiring the Department to act only through lawfully enacted regulations can only be served through the acceptance of this Petition by the Office of Administrative Law for the purpose of declaring the actions of the Department to be an illegal underground regulation.

Wherefore; DentalPlans.com, Inc. hereby requests the Office of Administrative Law to accept this Petition, to declare that the actions of the California Department of Managed Health Care as set forth herein constitute an Underground Regulation, and for such other relief as this Office deems appropriate.

/s/

Donald J. Schutz, Esq.
 535 Central Avenue
 St. Petersburg, FL 33701
 727-823-3222
 727-895-3222 Telefax
 CA Bar 85597
 Attorney for DentalPlans.com, Inc.

**SUSPENSION OF
ACTION REGARDING
UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**SUSPENSION OF ACTION REGARDING
UNDERGROUND REGULATIONS**

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

On March 23, 2010, the Office of Administrative Law (OAL) received a petition challenging as an underground regulation a rule issued by the Department of Industrial Relations (DIR) stating that contributions to a defined contribution pension plan with immediate vesting need not be annualized.

On May 26, 2010, DIR certified to the OAL that the DIR would not issue, use, enforce or attempt to enforce the challenged rule; therefore, pursuant to Title 1, section 280 of the California Code of Regulations, OAL must suspend all action on this petition.

**DEPARTMENT OF INDUSTRIAL
RELATIONS**

May 26, 2010

Susan Lapsley
Director
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Re: CTU2010-032301

Dear Ms. Lapsley:

I have received your letter of May 18, 2010 concerning the above-referenced matter. While the Department believes that the language in question was taken from letters to specifically named persons and thus may well be exempted from the rulemaking requirements by Government Code section 11340.9, subdivision (i), it was not intended to apply generally.

I am writing to certify that the Department of Industrial Relations will not issue, use, enforce, or attempt to enforce the alleged underground regulation "Contributions to a defined contribution pension plan with immediate vesting need not be annualized." We understand this will suspend further action by your agency.

Thank you for your attention to this matter. Please let me know if you require any additional information.

Sincerely,

/s/
John C. Duncan
Director
cc: James Reed

PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW
Optional Petition Submission Form

RE: Alleged Underground Regulation

FROM: James Reed (Petitioner)

DATE: 03/19/2010

Use of this form is optional. It requests the information required by California Code of Regulations, title 1, section 260, for a petition challenging an alleged underground regulation. Although the use of this form is not required, the mandatory information required by California Code of Regulations, title 1, section 260, including the supporting documentation, must be included in your petition. If you create a separate petition, or if you use this form and need to add extra pages, be sure that each page is labeled clearly.

1. Petitioner's Identifying Information:

Your name: James Reed

Your address: 1168 E. La Cadena Dr. #202 Riverside, Ca. 92507

Your telephone number (if you have one): 951-712-5197

Your e-mail (if you have one): cccdirector@msn.com

2. State agency or department being challenged:

Department of industrial Relations / Office of the Director

3. Provide a complete description of the purported underground regulation. Attach a written 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.

(1) Letter dated July 19, 2001 addressed to The Honorable Rico Oiler (2) Letter dated November 30, 2001 addressed to Ms. Karen Thomas (3) Letter dated November 30, 2001 addressed to Mr. Thomas R. Hoecker (4) Letter dated November 30, 2001 addressed to Mr. Steve Biondi (5) Letter dated November 30, 2001 addressed to Mr. Don V. Cooley (6) Letter dated November 30, 2001 addressed to Mr. Daniel S. Buckley (7) Letter dated November 30, 2001 addressed to Ms. Julie Ogg (8) Letter dated December 10, 2001 addressed to Arthur R. Geller (9) Letter dated March 29, 2005 addressed to Thomas W. Kovacich and (10) Letter dated April 13, 2007 addressed to Paul V. Simpson, all attached as Exhibit "B".

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.

Between July 19, 2001 and April 13, 2007 the Department of Industrial Relations issued several opinion letters which seemingly provided exceptions to the annualization rules defined in Labor Code Section 1773.1(d). These letters, though sent to various individuals, do not interpret the law on a case by case basis but rather apply as a general application of the law. In at least two Wage and Hour cases I know of, the contractors have relied on one or more of these opinion letters, issued by the DIR, to avoid annualization for the purposes of taking credits against employer payments on Public Work construction projects where Prevailing Wages were required.

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 AND that no express statutory exemption to the requirements of the APA is applicable.

In Tidewater Marine Western, Inc. v. Bradshaw, (1996) 14 CAL.4th 557, 571, 59 Cal.Rptr.2d 186, 927 P.2d 296. Noting that in Labor Code Section 98.8 “the Legislature empowered the DLSE to promulgate necessary regulations and rules of practice and procedures” the Court found that the APA applies to the exercise of “any quasi legislative power conferred by any statute” including those given the DIR. Id. at 570. Any such opinion letter or policy is a “regulation” subject to the APA if it announces “how a certain class of cases will be decided” and if it is to “implement, interpret, or make specific the law enforced or administered by” the agency. I believe that both situations apply to the opinion letters identified on page one, section (3) of this petition and attached as Exhibit “B”. Please refer to Exhibit “A” SUMMARY OF EVENTS page 2, for discussions on statutory exemptions to the requirements of the APA.

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

Of considerable importance is the fact that contractors who do not follow the rules of annualization as set forth in Labor Code 1773.1 (d) may in fact be in violation of Labor Code Section 1774, the failure to pay the prevailing rate of wages to workmen. It has been proven in many instances that contractors will take the full credit for employer payments against the per diem prevailing wage, as provided on the State Wage Determinations, yet not provide the same amount of benefit

to their workers. In these instances had the annualization statute in Labor Code Section 1773.1(d) been followed, the correct hourly credit would have been applied. In most cases the credit, as determined by annualization, is something less than the benefits required by prevailing wage and in those cases the difference would be due to the worker as wages due. This discrepancy and underpayment of wages, not only affects the workers wages, but deprives all taxing and insurance agencies of tax revenue and insurance premiums that would be due on those underpaid wages.

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

Please refer to EXHIBIT “A” DISCUSSION OF BASIS FOR PETITION

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to the state agency which has issued, used, enforced, or attempted to enforce the purported underground regulation:

Name of person in agency to whom petition was sent: John Duncan, Director

Agency: Department of Industrial Relations/Office of the Director

Address: 455 Golden Gate Ave. 10th Floor San Francisco, Ca. 94102

Telephone number: 415-703-4240

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

/s/ 3-19-2010
Signature of Petitioner Date

Additional information, including OAL’s recommendations for submitting a petition, may be found on the OAL web site at www.oal.ca.gov.

If you have additional questions, contact the OAL Reference Attorney by calling (916) 323-6815, or by sending an e-mail message to staff@oal.ca.gov.

Deliver this petition, along with all supporting information, to:

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Attention: Chapter 2 Compliance Unit

You may also fax your petition to 916-323-6826

OAL will only accept petitions and accompanying documentation delivered in hard copy, either through the mail, or by hand delivery in person or by a commercial delivery service (FedEx, UPS, etc), or by fax. We do not accept petitions via e-mail.

CENTER FOR CONTRACT COMPLIANCE
 Riverside Office • 1168 E. La Cadena Dr. #202,
 Riverside, CA 92507
 TEL. (951) 686-3328 • FAX (951) 686-8470

March 19, 2010

Office of Administrative Law
 300 Capitol Mall, Suite 1250
 Sacramento, Ca. 95814

Attention Chapter 2 Compliance Unit

Re: Petition to review alleged Underground
 Regulation.

EXHIBIT "A"

DISCUSSION OF BASIS FOR PETITION

This Petition is being submitted because the Director has violated the Administrative Procedure Act ("APA") in relation to the issuance of a standard of general application regarding the annualization requirements of Labor Code section 1773.1, which section is part of California's Prevailing Wage Law (Labor Code section 1720, *et seq.*) The Director's policy is that a contractor need not annualize pension contributions made on behalf of employees if the pension contributions are made to a bona fide pension plan meeting the requirements of ERISA and the Internal Revenue Code, and provided the plan requires the contributions be irrevocable and vest immediately. This policy has not been adopted pursuant to the requirements of the APA, but instead was improperly adopted through a series of opinion letters issued by the Director (and attached hereto as Exhibit 13).

In September 2000, the Governor signed into law Assembly Bill 1646 Introduced by Assembly Member Steinberg. The bill added, amended and repealed many sections of the Prevailing Wage Law. Among those sections amended was § 1773.1: **Per diem wages; What employer payments are included therein; Credit for employer payments; Computation of credits; Filing of collective bargaining agreements.**

Section 1773.1(d) requires:

The credit for employer payments shall be computed on an annualized basis where the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, except where one or more of the following occur.

Section 1773.1(d)(4) permits a contractor not to annualize payments if "[t]he director determines that annualization would not serve the purpose of this chapter." The opinion letters identified on page one section (3) of this Petition and attached as Exhibit B — and which constitute an underground regulation in violation of the APA — were all presumably issued under the assumed authority provided by Section 1773.1(d)(4).

The requirements of the APA apply to the Director, and in particular, to the standard adopted by the Director in the opinion letters attached to this Petition. In Tide-water Marine Western, Inc. v. Bradshaw, (1996) 14 Cal.4th 557, 571, the California Supreme Court found that similar "interpretive policies" of the DIR "do constitute regulations and therefore were void because they were not adopted in accordance with the APA." The fact that the statute allows the Director to make a determination (and seemingly provides the Director with discretion to do so) does not change the outcome. As explained in Savient v. Department of Health Services, 146 Cal.App.4th 1457, 1470, 53 Cal.Rptr.3d 689 (3rd Dist. 2007), "[t]he Department's repeated emphasis on the fact that the statute confers 'discretion' on the director when choosing to amend the formulary misses the point. We agree that changing the formulary reflects a policy determination within the director's discretion. As just explained, that policy decision makes specific the law administered by the Department, meeting the broad definition of a regulation, and therefore the director's discretion must be exercised only after the APA procedures have been satisfied." (Citation omitted.)

Here, Labor Code § 1773.1(d)(4) specifically directs the DIR to make such a quasi-legislative determination of when the annualization rule should not apply. Indeed, the Director admits the need for a formal regulation in the last paragraph of his April 13, 2007, letter when he states "we have not yet established detailed regulations on the annualization question." And although the DIR does have regulations (8 CCR § 16000) on the subject of what qualifies as "employer payments" which can be credited against the prevailing wages; those regulations do not include the exception to the annualization rule which is the subject of this Petition.

Thus, the opinion letters attached as Exhibit B were issued outside of the APA process. These opinion letters interpret or make specific the law enforced or administered by the agency and are clearly a standard of general application, as illustrated by the fact that the Director has restated, in nearly identical language, the same rule repeatedly to multiple parties.

The standard at issue is not exempted from APA requirements. Although the APA does provide an exemption for "rate-fixing" (Cal. Gov't Code section 11340.9(g)), the Director's determination that certain pension contributions need not be annualized, falls out-

side that exemption. This is because the rate-fixing exception does not apply where “the policy creates a standard for the application of already-established rates,” rather than setting those rates. Division of Labor Standards Enforcement v. Ericsson Information Systems, Inc., 221 Cal.App.3rd 114, 128, 270 Cal.Rptr.75 (4th Dist. 1990) (rate-making exception does not apply to DIR “policy of choosing the most closely related classification when the workers are not precisely covered under one of the published classifications”), cited with approval in *Tidewater*, *supra*, 14 Cal.4th 557, 572. See also, Winzler & Kelly v. Department of Industrial Relations, 121 Cal.App.3rd 1120, 128, 174 Cal.Rptr. 744 (1st Dist. 1981) (determination of prevailing wage classifications comes within rate-fixing exception to APA).

In addition, the standard at issue does not fall within any of the other common exemptions of the APA (e.g., exemptions for “Internal Management”, “Forms”, “Audit Guidelines”, “Only legally tenable interpretation”, “Legal ruling of Tax Council”, or “Precedent Decision”). Cal. Gov’t Code § 11340.9.

Instead, the Director’s annualization policy creates a general standard for the application of already established rates. So, like the interpretation of what is a qualifying “employer payment” already in regulations, the determination (opinion letters) of exceptions to the annualization rule of counting those payments against already established rates is subject to the APA.

It is critical that the Director’s annualization policy be subjected to the rigors of the APA process. Section 1773.1(d)(4) permits the Director to grant an exemption to annualization payments only when the Director has determined that annualization would not serve the purposes of the Prevailing Wage Law. The opinion letters in Exhibit B contain little or no substantive discussion regarding the purposes of the Prevailing Wage Law or whether annualization of the pension contributions at issue would serve the purposes of the Prevailing Wage Law. Much to the contrary, had the Director evaluated the need to annualize such pension contributions in light of the purposes of the Prevailing Wage Law, the only reasonable conclusion is that annualization of those pension contributions must be required. Many of the purposes of the Prevailing Wage Law are well-established: to establish a level playing field for union and non-union contractors on public works, to prevent the use of itinerant labor and the undercutting of local area wage rates on public works, and to generally protect workers on public works. *Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 987. The annualization requirement is designed to prevent non-union contrac-

tors who perform private works of construction from taking full credit for all of their employee pension and welfare contributions (and other fringe benefits) on public works while paying much reduced rates of pay on private works. In essence, the annualization requirement prevents employers from loading the entire burden of such fringe benefits onto their public works projects in a manner that union signatory contractors (who are contractually obligated to pay fringe benefits for all hours worked by their employees), or contractors who perform only public works, cannot. Without annualization, contractors, who perform both public and private works, gain a competitive advantage because they are able to provide employees with fringe benefits, the costs of which are entirely born by the public, while insulating their non-public works construction from such costs.

Thus, requiring that pension contributions be annualized, even those pension contributions which are irrevocable and which vest immediately, serves the purposes of the Prevailing Wage Law. The Director, under the specific requirements of Section 1773.1(d)(4) should not have exempted such payments from the annualization requirements.

Moreover, the Director’s reliance on the Department of Labor’s enforcement practices for the Davis Bacon Act is misplaced. Unlike the requirements Section 1773.1(d)(4), the Davis Bacon Act does not require the DOL to determine whether exempting certain payments from annualization requirements comports with the purposes of the Davis Bacon Act. Under California’s Prevailing Wage Law, the Director is required to make such determination and failed to do so.

Had the Director complied with the APA, as required, the appropriate evaluation of the purposes of the Prevailing Wage Law would have been made, and the Director would have benefited from the input of public works participants and stakeholders. This Petition submits that the result would be that the Director’s standard for exempting certain pension contribution payments from annualization would be found not to comport with the purposes of the Prevailing Wage Law and, therefore, failed to meet the requirements of Section 1773.1(d)(4).

Sincerely,

/s/

James Reed
Executive Director

Cc: John Duncan, Director Department of Industrial Relations.

EXHIBIT "B"

COPIES OF OPINION LETTERS

Copies of letters identified in item (3) of the Petition to review Alleged Underground Regulations.

July 19, 2001

The Honorable Rico Oller
California State Senate
1200 Melody Lane, Suite 110
Roseville, CA 95678

Dear Senator Oller:

Thank you for your letter of May 23, 2001. I appreciate your concern and value your input on this important matter.

You suggest that the Department should allow full credit for contribution pension plans with immediate vesting. I have considered the purpose of AB 1646 and the overall policy of the prevailing wage law and have concluded that such contributions need not be annualized in order to serve the purposes of the prevailing wage law. Where the contribution is made to a bona fide plan that complies with ERISA and that meets the provisions of the Internal Revenue Code for tax exempt status, the fact that participation is immediate and that the contribution is irrevocable and vested immediately provides assurance that the Legislature's concerns about employer payments are satisfied.

Under these circumstances credit could be taken for these employer payments on the same basis as other fringe benefit payments. I also have considered the fact that the Department of Labor in enforcing the Davis Bacon Act makes a similar allowance for these types of employer payments, and where not inconsistent with our own state policy, we realize the value of consistency in regulations between the federal and state systems.

Thank you again for your input in this matter. If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

/s/
Stephen J. Smith
Director

November 30, 2001

Ms. Karen Thomas, Vice-President
T.P. THOMAS PLUMBING, INC.
PO Box 835
Dinuba, CA 93618

RE: CALIFORNIA LABOR CODE § 1773.1

Dear Ms. Thomas:

I have been asked to respond to your letter of July 16, 2001, addressed to Stephen J. Smith.

It has been suggested that the Department should allow full credit for contributions to defined contribution pension plans with immediate vesting. We have considered the purpose of AB 1646 and the overall policy of the prevailing wage law, and the Department has concluded that such contributions need not be annualized in order to serve the purposes of the prevailing wage law.

Where the contribution is made to a bona fide plan that complies with ERISA, and that meets the provisions of the Internal Revenue Code for tax exemption status, the fact that participation is immediate and that the contribution is irrevocable and vested immediately provides assurance that the Legislature's concerns about employer payments are satisfied. Under these circumstances, credit could be taken for these employer payments on the same basis as other fringe benefit payments.

The Department has also considered the fact that the Department of Labor, when enforcing the Davis Bacon Act, makes a similar allowance for these types of employer payments, and where not inconsistent with our own state policy, we realize the value of consistency in regulations between the federal and state systems. I hope this answers your concerns. Please feel free to contact me if you have further questions.

Sincerely,

/s/
Fred Lonsdale, Counsel

cc: Stephen J. Smith, Director
Art Lujan, Division of Labor Standards
Enforcement
Maria Robbins, Division of Labor Statistics and
Research

November 30, 2001

Mr. Thomas R. Hoecker
SNELL & WILMER, LLP
One Arizona Center
Phoenix, AZ 85004-2202

RE: CALIFORNIA LABOR CODE § 1773.1

Dear Mr. Hoecker:

I have been asked to respond to your letter of May 15, 2001, addressed to Stephen J. Smith.

You have suggested that the Department should allow full credit for contributions to defined contribution pension plans with immediate vesting. We have considered

the purpose of AB 1646 and the overall policy of the prevailing wage law, and the Department has concluded that such contributions need not be annualized in order to serve the purposes of the prevailing wage law.

Where the contribution is made to a bona fide plan that complies with ERISA, and that meets the provisions of the Internal Revenue Code for tax exemption status, the fact that participation is immediate and that the contribution is irrevocable and vested immediately provides assurance that the Legislature's concerns about employer payments are satisfied. Under these circumstances, credit could be taken for these employer payments on the same basis as other fringe benefit payments.

The Department has also considered the fact that the Department of Labor, when enforcing the Davis Bacon Act, makes a similar allowance for these types of employer payments, and where not inconsistent with our own state policy, we realize the value of consistency in regulations between the federal and state systems. I hope this answers your concerns. Please feel free to contact me if you have further questions.

Sincerely,

/s/

Fred Lonsdale, Counsel

cc: Stephen J. Smith, Director
Art Lujan, Division of Labor Standards
Enforcement
Maria Robbins, Division of Labor Statistics and
Research

November 30, 2001

Mr. Steve Biondi, President
BIONDI PAVING
8150 37th Avenue
Sacramento, CA 95824-2306

RE: CALIFORNIA LABOR CODE § 1773.1

Dear Mr. Biondi:

I have been asked to respond to your letter of June 21, 2001, addressed to Stephen J. Smith.

You have suggested that the Department should allow full credit for contributions to defined contribution pension plans with immediate vesting. We have considered the purpose of AB 1646 and the overall policy of the prevailing wage law, and the Department has concluded that such contributions need not be annualized in order to serve the purposes of the prevailing wage law.

Where the contribution is made to a bona fide plan that complies with ERISA, and that meets the provi-

sions of the Internal Revenue Code for tax exemption status, the fact that participation is immediate and that the contribution is irrevocable and vested immediately provides assurance that the Legislature's concerns about employer payments are satisfied. Under these circumstances, credit could be taken for these employer payments on the same basis as other fringe benefit payments.

The Department has also considered the fact that the Department of Labor, when enforcing the Davis Bacon Act, makes a similar allowance for these types of employer payments, and where not inconsistent with our own state policy, we realize the value of consistency in regulations between the federal and state systems. I hope this answers your concerns. Please feel free to contact me if you have further questions.

Sincerely,

/s/

Fred Lonsdale, Counsel

cc: Stephen J. Smith, Director
Art Lujan, Division of Labor Standards
Enforcement
Maria Robbins, Division of Labor Statistics and
Research

November 30, 2001

Mr. Don V. Cooley, President
MOJAVE EQUIPMENT COMPANY, INC.
PO Box 458
Apple Valley, CA 92307

RE: CALIFORNIA LABOR CODE § 1773.1

Dear Mr. Cooley:

I have been asked to respond to your letter of June 25, 2001, addressed to Stephen J. Smith.

You have suggested that the Department should allow full credit for contributions to defined contribution pension plans with immediate vesting. We have considered the purpose of AB 1646 and the overall policy of the prevailing wage law, and the Department has concluded that such contributions need not be annualized in order to serve the purposes of the prevailing wage law.

Where the contribution is made to a bona fide plan that complies with ERISA, and that meets the provisions of the Internal Revenue Code for tax exemption status, the fact that participation is immediate and that the contribution is irrevocable and vested immediately provides assurance that the Legislature's concerns about employer payments are satisfied. Under these circumstances, credit could be taken for these employer

payments on the same basis as other fringe benefit payments.

The Department has also considered the fact that the Department of Labor, when enforcing the Davis Bacon Act, makes a similar allowance for these types of employer payments, and where not inconsistent with our own state policy, we realize the value of consistency in regulations between the federal and state systems. I hope this answers your concerns. Please feel free to contact me if you have further questions.

Sincerely,

/s/

Fred Lonsdale, Counsel

cc: Stephen J. Smith, Director
Art Lujan, Division of Labor Standards
Enforcement
Maria Robbins, Division of Labor Statistics and
Research

November 30, 2001

Mr. Daniel S. Buckley, Vice President
CONTINENTAL PLUMBING, INC.
11165 Thurston Lane
Mira Loma, CA 91752-1427

RE: CALIFORNIA LABOR CODE § 1773.1

Dear Mr. Buckley:

I have been asked to respond to your letter of June 29, 2001, addressed to Stephen J. Smith.

You have suggested that the Department should allow full credit for contributions to defined contribution pension plans with immediate vesting. We have considered the purpose of AB 1646 and the overall policy of the prevailing wage law, and the Department has concluded that such contributions need not be annualized in order to serve the purposes of the prevailing wage law.

Where the contribution is made to a bona fide plan that complies with ERISA, and that meets the provisions of the Internal Revenue Code for tax exemption status, the fact that participation is immediate and that the contribution is irrevocable and vested immediately provides assurance that the Legislature's concerns about employer payments are satisfied. Under these circumstances, credit could be taken for these employer payments on the same basis as other fringe benefit payments.

The Department has also considered the fact that the Department of Labor, when enforcing the Davis Bacon Act, makes a similar allowance for these types of employer payments, and where not inconsistent with our

own state policy, we realize the value of consistency in regulations between the federal and state systems. I hope this answers your concerns. Please feel free to contact me if you have further questions.

Sincerely,

/s/

Fred Lonsdale, Counsel

cc: Stephen J. Smith, Director
Art Lujan, Division of Labor Standards
Enforcement
Maria Robbins, Division of Labor Statistics and
Research

November 30, 2001

Ms. Julie Ogg, Secretary
M.A. OGG HEATING & AIR CONDITIONING, INC.

4721 Arrow Highway, Suite B
Montclair, CA 91763-1200

RE: CALIFORNIA LABOR CODE § 1773.1

Dear Ms. Ogg:

I have been asked to respond to your letter of July 2, 2001, addressed to Stephen J. Smith.

As you note, it has been suggested that the Department should allow full credit for contributions to defined contribution pension plans with immediate vesting. We have considered the purpose of AB 1646 and the overall policy of the prevailing wage law, and the Department has concluded that such contributions need not be annualized in order to serve the purposes of the prevailing wage law.

Where the contribution is made to a bona fide plan that complies with ERISA, and that meets the provisions of the Internal Revenue Code for tax exemption status, the fact that participation is immediate and that the contribution is irrevocable and vested immediately provides assurance that the Legislature's concerns about employer payments are satisfied. Under these circumstances, credit could be taken for these employer payments on the same basis as other fringe benefit payments.

The Department has also considered the fact that the Department of Labor, when enforcing the Davis Bacon Act, makes a similar allowance for these types of employer payments, and where not inconsistent with our own state policy, we realize the value of consistency in regulations between the federal and state systems. I hope this answers your concerns. Please feel free to contact me if you have further concerns.

Sincerely,

/s/

Fred Lonsdale, Counsel

cc: Stephen J. Smith, Director
Art Lujan, Division of Labor Standards
Enforcement
Maria Robbins, Division of Labor Statistics and
Research

December 10, 2001

Arthur R Geller, Vice President
HELIX ELECTRIC, INC.
PO Box 85298
San Diego, California 92186-5298

RE: California Labor Code Section 1773.1
Request by Helix Electric, Inc.

Dear Mr. Geller,

This is in response to your inquiry concerning the California Labor Code section 1773.1. You ask specifically about immediately vested pension contributions and about annualization of contributions to the ABC Training Trust for apprenticeship. You raise questions concerning contributions to the Training Trust for both apprentices and for journey level workers.

You have suggested that the Department should allow full credit for contributions to your defined contribution pension plans with immediate vesting. We have considered the purpose of AB 1646 and the overall policy of the prevailing wage law, and the Department has concluded that such contributions need not be annualized in order to serve the purposes of the prevailing wage law.

Where the contribution is made to a bona fide plan that complies with ERISA, and that meets the provisions of the Internal Revenue Code for tax exemption status, the fact that participation is immediate and that the contribution is irrevocable and vested immediately provides assurance that the Legislature's concerns about employer payments are satisfied. Under these circumstances, credit could be taken for these employer payments on the same basis as other fringe benefit payments.

The Department has also considered the fact that the Department of Labor, when enforcing the Davis Bacon Act, makes a similar allowance for these types of employer payments, and where not inconsistent with our own state policy, we realize the value of consistency in regulations between the federal and state systems.

You indicate that contributions for apprentices are the same on both public and private works. This will confirm that under those circumstances, no annualization is required for the contributions made for apprentices.

As to training trust contributions made on behalf of Journey level workers, you indicate that the contribution rate is different for public works than for private works. As your letter suggests, this does implicate the annualization requirements of Labor Code section 1773.1. Where the contribution rate for journeymen on public works is higher than the rate for journeymen on private works we must look to the terms of 1773.1.

Under 1773.1(d) unless an exception applies "[t]he credit for employer payments shall be computed on an annualized basis where the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer. . . ." Under the factual situation you describe, it is indisputable that the employer would be seeking credit for payments that are "higher for public works projects than for private construction performed by the same employer." Thus, annualization is required.

You also ask how annualization requirements would be fashioned. In the fact situation you describe, the total contributions made for a journey level worker would be divided by the total hours worked by a journey level worker to determine the actual hourly contribution on an annualized basis. For example, if in the year prior to the public works job a journey level worker was employed on public works for 1,000 hours and contributions of \$1,000 were made for that employee and 1000 hours on private works and \$100 in contributions were made, the contractor would take credit for \$1,100 divided over 2000 hours or \$.55 per hour.

Hopefully, this has answered all your questions. If you have specific information that you believe would show that these unequal training fund contributions should not be subject to the annualization requirement, we would be happy to review that information.

Sincerely,

/s/

Fred Lonsdale, Counsel

cc: Stephen J. Smith, Director
Art Lujan, Division of Labor Standards
Enforcement
Maria Robbins, Division of Labor Statistics and
Research

March 29, 2005

Thomas W. Kovacich, Esq.
 Atkinson, Adelson, Loya, Ruud & Romo
 17871 Park Plaza Drive, Suite 200
 Cerritos, CA 90703-8597

Re: **Annualization**

Dear Mr. Kovacich:

I have been asked to respond to your letter of December 17, 2004 to Acting Director John Rea concerning annualization requirements for defined contribution pension plans that provide for immediate vesting. In response to a prior request, the department expressed the opinion that the overall policy of the prevailing wage law did not require annualization when the contribution was made to a bona fide plan where the contribution is irrevocable and vested immediately. This remains the position of the Department with regard to such contributions.

Yours truly,

/s/
 Fred Lonsdale
 Counsel

FL:aa

cc: John Rea
 Gary O'Mara
 Tom Fredericks, DLSE
 Maria Robbins, DLSR

BCC: Vicki Bradshaw, Secretary, Labor &
 Workforce Development Agency Douglas
 Hoffner, Undersecretary, Labor Workforce
 Development Agency

April 13, 2007

SENT VIA FACSIMILE AND
 REGULAR MAIL

Paul V. Simpson
 Simpson, Garrity & Innes
 601 Gateway Blvd, Suite 950
 South San Francisco, CA 94080

Re: Waiver of Annualization Requirement for Hours
 Bank Health
 Plan, File #31061-1

Dear Mr. Simpson:

This is in response to your inquiry of January 7, 2007, concerning the California Labor Code section 1773.1 and Health Savings Accounts ("HSA") under Section 223 of the Internal Revenue Code. You ask specifically

about immediately vested HSA contributions and about whether annualization of those contributions would be required. You raise questions concerning contributions to such a fund made only on public works projects.

You have suggested that the Department should allow full credit for contributions to HSA with immediate vesting. We have considered the purpose of AB 1646 and the overall policy of the prevailing wage law, and the Department has concluded that such contributions need not be annualized in order to serve the purposes of the prevailing wage law. Contributions very similar to these appear to be allowed under Davis-Bacon regulations upon which our Labor Code provision was modeled. *Mistick v. Reich* 54 F3d 900 (DC Cir. 1995).

Fringe benefit payments that are made to a trustee or third person pursuant to a plan fund or program can constitute employer payments for the purpose of determining per diem wages. L.C.1773.1(b) An HSA is distinct from a "flexible spending" program an employer might set up that did not actually transfer funds to a trustee or other third person, and that could revert to the employer if not used by the worker. We assume that the contribution you propose will be made to a bona fide plan that complies with ERISA if necessary, and that meets the provisions of the Internal Revenue Code for tax exemption status and to qualify as an HSA. DIR neither conditions state recognition of benefit payment credits in compliance with Federal requirements, nor restricts recognition of benefit payments to those which comply with Federal requirements, but we raise the point because our assumption from your reference to this Federal Act has led us to refer to and rely on the Federal regulations and publications for details as to ownership of the assets, protection from diversion, etc.

The fact that participation is immediate and that the contribution is irrevocable and vested immediately provides assurance that the Legislature's concerns about employer payments are satisfied. In all relevant aspects, these would be as much the workers' property as the 401(k) retirement contributions approved soon after the passage of the law, by then Director Steve Smith, in a letter of July 19, 2001 to State Senator Rico Oller. Under these circumstances, credit could be taken for these employer payments on the same basis as other fringe benefit payments. Because they are close to wages, annualization is almost certainly not required, but if it were, for the reasons noted above, it is determined that annualization would not serve the purposes of this chapter. L.C. 1771.3(d)(4).

As to contributions made toward a high deductible medical plan that is provided together with the HSA, you indicate that the contribution rate is expected to be higher for public works than for private works. In this situation, it would be indisputable that the employer would be seeking credit for payments that are "higher

for public works projects than for private construction performed by the same employer.” 1773.1(d). Thus, annualization, as you surmise, would be required.

As you may know, we have not yet established detailed regulations on the annualization question. In general, where not inconsistent with state policy, we seek to have consistency with the Davis–Bacon regulations and Department of Labor opinion in this area. It would be very much in the interests of your contractors on works funded in part with federal monies to confirm that the Department of Labor would treat such a plan as not requiring annualization, and we would be interested in the Department of Labor’s response. DIR’s approval is not however conditioned on receipt of Davis–Bacon approval. Hopefully, this has answered all your questions. We understand that a specific program may be presented which you would like us to consider, and if you have further questions please feel free to contact the Department.

Sincerely,

/s/
John Rea
Acting Director

Enclosure: Stephen Smith letter to Senator Oller

cc: John Upshaw, IBCER, Inc
Fred Lonsdale, OD–L

**AVAILABILITY OF INDEX OF
PRECEDENTIAL DECISIONS**

**DEPARTMENT OF MANAGED HEALTH
CARE**

**NOTICE OF AVAILABILITY OF INDEX OF
PRECEDENTIAL DECISIONS OF THE
DEPARTMENT OF MANAGED HEALTH CARE.**

PLEASE TAKE NOTICE that the Department of Managed Health Care’s precedent decision index is available for purchase or you may view it at the Department of Managed Health Care’s website located at www.dmhca.ca.gov/healthplans/gen/gen_precedent.aspx#cgc.

You may obtain a copy by either calling or writing to:

John Kingsbury, Staff Services Analyst
Office of Legal Services
Department of Managed Health Care
980th St. Ste 500
Sacramento, CA 95814
Phone No. (916) 322–6727
Fax No. (916) 322–3968
Email: pra@dmhc.ca.gov

This notice is published pursuant to California Government Code section 11425.60, subdivision (c).

**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# 2010–0415–07
BUREAU OF AUTOMOTIVE REPAIR
Motor Vehicle Inspection Program Definitions

This Section 100 change without regulatory effect amends the existing Motor Vehicle Inspection Program definitions regulation by rearranging the definitions into alphabetical order.

Title 16
California Code of Regulations
AMEND: 3340.1
Filed 05/19/2010
Agency Contact: Steven Hall (916) 255–2135

File# 2010–0415–01
CALIFORNIA FILM COMMISSION
Film and Television Tax Credit Program

This rulemaking action implements Senate Bill 15, Chapter 17 of 2009, which established the California Film and Television Tax Credit Program to encourage film and television production companies to produce their products within the State of California. The rulemaking specifies, among other things, project eligibility and application rules, the credit certificate issuance process, the kinds of production expenditures that qualify for the program, and the procedures used to audit production companies in connection with their tax-credit applications.

Title 10
 California Code of Regulations
 ADOPT: 5500, 5501, 5502, 5503, 5504, 5505, 5506,
 5507
 Filed 05/19/2010
 Effective 05/19/2010
 Agency Contact: Terri Toohey (916) 768-5638

File# 2010-0423-05
CALIFORNIA STUDENT AID COMMISSION
 Amendments to: CA National Guard Education Award
 Assistance Program

The California Student Aid Commission adopted sections 30730, 30731, 30732, 30733, 30734, 30735, and 30736 in title 5 of the California Code of Regulations on an emergency basis implementing the California National Guard Education Assistance Award Program. This filing is the certificate of compliance for those emergency regulations which became effective on December 16, 2009.

Title 5
 California Code of Regulations
 ADOPT: 30730, 30731, 30732, 30733, 30734,
 30735, 30736
 Filed 05/20/2010
 Agency Contact: Kathy Spencer (916) 464-3021

File# 2010-0415-04
**DEPARTMENT OF CORRECTIONS AND
 REHABILITATION**
 Increase to Inmate Draw Limits

The California Department of Corrections and Rehabilitation (DOCS), amends Title 15 California Code of Regulations section 3090, 3091, 3093 and 3095 to raise the maximum inmate draw limit for the canteen. DOCS is also removing references to two forms that are no longer needed now that the canteen purchasing process has become automated.

Title 15
 California Code of Regulations
 AMEND: 3090, 3091, 3093, 3095
 Filed 05/25/2010
 Effective 06/24/2010
 Agency Contact: Gail Long (916) 341-7329

File# 2010-0415-05
**DEPARTMENT OF CORRECTIONS AND
 REHABILITATION**
 General Visiting Guidelines and Searches and Inspections

The Department of Corrections and Rehabilitation submitted this rulemaking action to amend two title 15 sections in the California Code of Regulations to pro-

vide clarity and uniformity to general visiting guidelines in section 3170.1(g) and to searches and inspections in section 3173.2(d).

Title 15
 California Code of Regulations
 AMEND: 3170.1(g), 3173.2(d)
 Filed 05/25/2010
 Effective 06/24/2010
 Agency Contact: Gail Long (916) 341-7329

File# 2010-0517-02
DEPARTMENT OF FOOD AND AGRICULTURE
 Light Brown Apple Moth Interior Quarantine

This emergency rulemaking expands the contiguous quarantine areas in Alameda, Contra Costa, Monterey, San Joaquin and Sonoma counties by approximately 32 square miles. A new quarantine area is established in the west Tracy area of Alameda and San Joaquin counties of approximately 31 square miles. The Kenwood area of Sonoma County is expanded by approximately one square mile and the Davis area of Yolo County is expanded by approximately 12 square miles. This results in a total of approximately 4,744 square miles under quarantine regulation within the State with respect to the Light Brown Apple Moth (LBAM; *Epiphyas postvittana*).

Title 3
 California Code of Regulations
 AMEND: 3434(b)
 Filed 05/24/2010
 Effective 05/24/2010
 Agency Contact:
 Stephen S. Brown (916) 654-1017

File# 2010-0415-06
**DEPARTMENT OF HOUSING AND COMMUNITY
 DEVELOPMENT**
 Emergency Housing Assistance Program (EHAP-CD)

This regulatory action amends sections 7966 and 7970 of title 25 of the California Code of Regulations in order to give borrowers the full 24 months allowed under the statute to commence the project for which a capital development grant was awarded, as well as extend the completion deadline, and to allow the Department flexibility to grant extensions to the term of the standard agreement.

Title 25
 California Code of Regulations
 AMEND: 7966, 7970
 Filed 05/25/2010
 Effective 05/25/2010
 Agency Contact: Lenora Frazier (916) 323-4475

File# 2010-0409-01
DEPARTMENT OF JUSTICE
Conflict of Interest Code

This is a Conflict of Interest Code that has been approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing in the California Code of Regulations.

Title 11
California Code of Regulations
AMEND: 20
Filed 05/19/2010
Effective 06/18/2010
Agency Contact: Erin Peth (916) 323-8230

File# 2010-0421-02
DEPARTMENT OF TOXIC SUBSTANCES
CONTROL
Hazardous Wastes of Concern: Reporting by Generators

This Section 100 change without regulatory effect updates the current address for DTSC's Los Angeles area regional office.

Title 22
California Code of Regulations
AMEND: 66262.44
Filed 05/25/2010
Agency Contact: Heather Jones (916) 322-2833

File# 2010-0407-03
EMERGENCY MEDICAL SERVICES
AUTHORITY
Paramedic Regulations

This rulemaking amends Title 22 sections 100159, 100166 and 100171. The amendment to section 100171 increases the paramedic licensure and licensure renewal fee from \$125 to \$195 over the next two years with a \$35 increase in 2010 and a \$35 increase in 2011. The amendment to section 100166 provides up to a 6 month extension on a paramedic license for a licensee on active military duty whose license expires within 6 months of their release from active duty. The amendment to section 100159 updates the incorporated documents that contain the national standards for paramedic education.

Title 22
California Code of Regulations
AMEND: 100159, 100166, 100171
Filed 05/19/2010
Effective 06/18/2010
Agency Contact:
Nancy J. Steiner (916) 322-4336

File# 2010-0428-01
FISH AND GAME COMMISSION
Klamath-Trinity Rivers Sport Fishing

On April 15, 2010, the Pacific Fishery Management Council (PFMC) adopted Recreational Salmon Management Measures and recommended a harvest allocation of 12,000 Klamath River Fall Chinook (KRFC) for the recreational fishery in the Klamath River System. The Fish and Game Commission proposed to amend section 7.50(b)(91.1) of title 14 of the California Code of Regulations which contains the sport fishing regulations for the anadromous waters of the Lower Klamath River Basin to conform with those PFMC recommendations and to make other changes.

Title 14
California Code of Regulations
AMEND: 7.50
Filed 05/26/2010
Effective 06/25/2010
Agency Contact:
Sherrie Fonbuena (916) 654-9866

File# 2010-0427-08
MANAGED RISK MEDICAL INSURANCE
BOARD
AB 1422 — HFP Subscriber Premium Increase

Assembly Bill 1422 raised the family child contributions for the Healthy Families Program effective November 1, 2009. The Managed Risk Medical Insurance Board proposed by emergency filing to amend section 2699.6809 of title 10 of the California Code of Regulations to reflect these increases. Pursuant to section 12693.22 of the California Insurance Code, that filing was deemed an emergency and exempt from review by the Office of Administrative Law. This filing is the certificate of compliance for these emergency regulations.

Title 10
California Code of Regulations
AMEND: 2699.6809
Filed 05/26/2010
Effective 05/26/2010
Agency Contact: Dianne Knox (916) 324-0592

File# 2010-0421-05
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
CSO 1599

This regulatory action amends a construction safety order to remove a possible ambiguity as to whether one flagger can be used in some instances for traffic control.

Title 8
 California Code of Regulations
 AMEND: 1599
 Filed 05/25/2010
 Effective 06/24/2010
 Agency Contact: Marley Hart (916) 274-5721

File# 2010-0507-01
 SAN JOAQUIN RIVER CONSERVANCY
 Conflict-of-Interest Code

The San Joaquin River Conservancy is amending its conflict of interest code found at title 2, div. 8, ch. 65, sec. 55400, California Code of Regulations. The amendment was approved for filing by the Fair Political Practices Commission on April 7, 2010.

Title 2
 California Code of Regulations
 AMEND: div. 8, ch. 65, sec. 55400
 Filed 05/25/2010
 Effective 06/24/2010
 Agency Contact:
 Melinda S. Marks (559) 840-6338

File# 2010-0414-01
 STATE WATER RESOURCES CONTROL BOARD
 Water Quality Enforcement Policy

This regulatory action amends the regulatory policy on water quality enforcement. It repeals the current concise summary of that policy and adopts a version reflecting the amended policy.

Title 23
 California Code of Regulations
 ADOPT: 2910 REPEAL: 2910
 Filed 05/20/2010
 Effective 05/20/2010
 Agency Contact: Ann Marie Ore (916) 327-8195

File# 2010-0419-02
 STRUCTURAL PEST CONTROL BOARD
 Fumigation Safety Kit & Other Equipment/Requirements for Reporting Property Addresses/WDO Inspection & Completion Activity fee

The Structural Pest Control Board proposed to amend sections 1996.3 and 1997 of title 16 of the California Code of Regulations to raise the WDO Inspection and Completion Activity fee from \$1.50 to \$2.50.

Title 16
 California Code of Regulations
 AMEND: 1996.3, 1997
 Filed 05/20/2010
 Effective 06/19/2010
 Agency Contact: Susan Saylor (916) 263-2540

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN December 23, 2009 TO
 May 26, 2010**

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

- Title 2**
- 05/25/10 AMEND: div. 8, ch. 65, sec. 55400
 - 05/11/10 AMEND: 18945
 - 05/06/10 AMEND: 1859.2
 - 05/03/10 AMEND: 60040, 60045
 - 04/21/10 AMEND: 1859.96, 1859.148.2, 1859.166.2
 - 04/08/10 AMEND: 1859.76
 - 03/23/10 AMEND: 18351
 - 03/19/10 ADOPT: 59670
 - 03/19/10 AMEND: 18942 REPEAL: 18630
 - 03/11/10 AMEND: 18932.4
 - 02/24/10 AMEND: 1859.2, 1859.41, Form SAB 50-01, Form SAB 50-02
 - 02/23/10 AMEND: div. 8, ch. 16, sec. 37000
 - 02/19/10 AMEND: 52400
 - 02/11/10 ADOPT: 18421.9 AMEND: 18431
 - 02/11/10 AMEND: 18950.3
 - 02/09/10 ADOPT: 59660
 - 01/26/10 ADOPT: 1899.570, 1899.575, 1899.580, 1899.585
 - 01/25/10 AMEND: 58100
 - 01/19/10 AMEND: div.8, ch. 102, sec. 59100
 - 01/14/10 AMEND: Section 27000
 - 01/13/10 ADOPT: div. 8, ch. 119, sec. 59640
 - 01/11/10 ADOPT: 18229.1, 18944 REPEAL: 18944
 - 01/05/10 AMEND: div. 8, ch. 49, sec. 53800

- Title 3**
- 05/24/10 AMEND: 3434(b)
 - 05/17/10 AMEND: 3591.5(a)
 - 05/17/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7, 3701.8 AMEND: 3407(e), 3407(f) REPEAL: 3000, 3001, 3002, 3003, 3004
 - 05/13/10 AMEND: 3437
 - 05/04/10 AMEND: 3423(b)
 - 05/04/10 AMEND: 3437(b)
 - 05/04/10 AMEND: 3434(b)
 - 05/03/10 AMEND: 3434(b), 3434(c) and 3434(d)
 - 04/22/10 AMEND: 3434(b)

CALIFORNIA REGULATORY NOTICE REGISTER 2010, VOLUME NO. 23-Z

04/22/10 AMEND: 3406(b), 3406(c)
 04/20/10 AMEND: 3437(b)
 04/15/10 AMEND: 3434(b)
 04/05/10 AMEND: 3434(b)
 03/24/10 ADOPT: 3436
 03/24/10 AMEND: 3588
 03/17/10 AMEND: 3423(b)
 03/15/10 AMEND: 3434(b)
 03/10/10 AMEND: 3591.20(a)
 03/10/10 AMEND: 3434(b)
 03/04/10 AMEND: 3700(c)
 03/04/10 AMEND: 3406(b)
 03/03/10 REPEAL: 3279, 3433
 03/03/10 AMEND: 3591.20
 03/03/10 AMEND: 3406(b)
 03/03/10 AMEND: 3423(b)
 03/03/10 ADOPT: 3437
 02/26/10 AMEND: 3435
 02/18/10 AMEND: 3591.23
 02/18/10 ADOPT: 3591.24
 01/25/10 AMEND: 3434(b)
 01/25/10 AMEND: 3406(b)
 01/25/10 ADOPT: 1430.54, 1430.55, 1430.56,
 1430.57
 01/19/10 ADOPT: 3436
 01/12/10 AMEND: 3434(b)
 01/11/10 AMEND: 3406(b) and (c)
 01/06/10 AMEND: 3435(b)
 01/04/10 AMEND: 2675, 2734, 2735
 12/31/09 AMEND: 3434(b), (c), (e)
 12/29/09 AMEND: 3423(b)
 12/28/09 AMEND: 3434(b)
 12/28/09 AMEND: 3434(b)

Title 4

05/17/10 ADOPT: 12590 REPEAL: 12590
 04/29/10 AMEND: 8034, 8035, 8042, 8043
 04/13/10 ADOPT: 12350, 12351, 12352, 12353,
 12354, 12355 AMEND: 12008, 12335,
 12340, 12342, 12343 renumbered as and
 merged with amended 12342, 12344
 renumbered as and merged with amended
 12345, and 12348 renumbered as 12346
 REPEAL: 12347
 04/06/10 ADOPT: 12372, 12395, 12396 AMEND:
 12370
 03/29/10 AMEND: 1685
 03/29/10 AMEND: 1632
 03/25/10 AMEND: 10175, 10176, 10177, 10178,
 10179, 10180, 10181, 10182, 10185,
 10187, 10188, 10190
 03/15/10 ADOPT: 12482
 02/01/10 AMEND: 1867
 01/29/10 AMEND: 1866
 01/27/10 AMEND: 10020

01/27/10 AMEND: 1890
 01/27/10 AMEND: 1859
 01/27/10 AMEND: 1843.6 and 1858

Title 5

05/20/10 ADOPT: 30730, 30731, 30732, 30733,
 30734, 30735, 30736
 04/15/10 AMEND: 19816, 19816.1
 04/12/10 REPEAL: 40503
 04/12/10 AMEND: 42002
 02/26/10 AMEND: 19824, 19851, 19854
 02/01/10 ADOPT: 70030, 70040, 71135, 71320,
 71390, 71395, 71400.5, 71401, 71475,
 71480, 71485, 71640, 71650, 71655,
 71716, 71750, 71760, 74110, 74115,
 76020, 76140, 76212, 76240 AMEND:
 70000, 70010, 70020, 71100, 71110,
 71120, 71130, 71140, 71150, 71160,
 71170, 71180, 71190, 71200, 71210,
 71220, 71230, 71240, 71250, 71260,
 71270, 71280, 71290, 71300, 71310,
 71340, 71380, 71400, 71405, 71450,
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73010, 73100, 73110, 73120, 73130,	04/21/10	AMEND: 2699.202
73140, 73150, 73160, 73165, 73170,	04/21/10	AMEND: 2699.202
73180, 73190, 73200, 73210, 73220,	04/13/10	ADOPT: 2031.1, 2031.2, 2031.3, 2031.4,
73230, 73240, 73260, 73270, 73280,		2031.5, 2031.6, 2031.7, 2031.8, 2031.9,
73290, 73300, 73310, 73320, 73330,		2031.10
73340, 73350, 73360, 73380, 73390,	04/12/10	AMEND: 2690
73400, 73410, 73420, 73430, 73440,	04/06/10	ADOPT: 2850.1, 2850.2, 2850.3, 2850.4,
73470, 73480, 73500, 73520, 73530,		2850.5, 2850.6, 2850.7, 2850.8, 2850.9,
73540, 73550, 73600, 73610, 73620,		2850.10
73630, 73640, 73650, 73660, 73670,	04/01/10	ADOPT: 1409.1, 1414, 1422.4, 1422.4.1,
73680, 73690, 73700, 73710, 73720,		1422.5, 1422.6, 1422.6.1, 1422.6.2,
73730, 73740, 73750, 73760, 73765,		1422.6.3, 1422.7, 1422.7.1, 1422.9,
73770, 73780, 73790, 73800, 73820,		1422.10, 1422.11, 1422.12, 1424, 1437,
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73870, 73880, 73890, 73900, 73910,		1950.122, 1950.122.5, 1950.122.5.1,
74008, 74010, 74014, 74016, 74018,		1950.122.5.2, 1950.122.5.3,
74020, 74030, 74040, 74050, 74100,		1950.122.5.4, 1950.122.6, 1950.122.7,
74180, 74300, 74310, 74320, 75000,		1950.122.8, 1950.122.9, 1950.122.10,
75020, 75030, 75040, 75100, 75110,		1950.122.11, 1950.122.12, 1950.205.1,
75120, 75130, 76010		1950.209, 1950.307 AMEND: 1404,
01/21/10	ADOPT: 30701, 30702, 30703, 30704,	1409, 1411, 1430.5, 1431, 1433, 1436,
	30705, 30706, 30707, 30708, and 30709	1454, 1550, 1552, 1557, 1950.003,
	REPEAL: 30701, 30702, 30703, 30704,	1950.122.2, 1950.123, 1950.204.3,
	30705, 30706, 30707, 30708, and 30709	1950.204.4, 1950.301, 1950.314.8,
01/21/10	ADOPT: 80034.1, 80034.2, 80034.3	1950.316, 1950.317 REPEAL: 1950.122
	AMEND: 80035, 80035.1, 80035.5	
01/04/10	AMEND: 1203, 1204, 1205, 1206,	03/29/10
	1207.1, 1208, 1209, 1211, 1217, 1218,	AMEND: 2202, 2203
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		ADOPT: 5500, 5501, 5502, 5503, 5504,
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05/25/10	AMEND: 1599	ADOPT: 2756, 2758.1, 2758.2, 2758.3,
05/05/10	AMEND: 3308	2758.4, 2758.5, 2758.6, 2758.7, 2945.1,
04/06/10	AMEND: 2305.2, 2340.16, 2360.3,	2945.2, 2945.3, 2945.4 AMEND: 2750,
	2405.4, 2534.8	2911
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03/10/10	AMEND: 6070, 6074, 6075, 6080, 6085,	ADOPT: 2187, 2187.1, 2187.3, 2187.6,
	6087, 6089, 6090, 6100, 6115, 6120,	2188.2.5, 2188.5.5, 2188.50(a),
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02/03/10	AMEND: 5155	2188.50(h) AMEND: 2186, 2186.1, 2187
02/02/10	AMEND: 1549(h)	(renumbered to 2187.3), 2187.1
		(renumbered to 2187.2), 2187.2
		(renumbered to 2187.7), 2187.3
		(renumbered to 2187.4), 2187.4
		(renumbered to 2187.5), 2188, 2188.1,
		2188.2, 2188.3, 2188.4, 2188.5, 2188.23
		(renumbered to 2188.50(d)), 2188.24
		(renumbered to 2188.50(f)), 2188.83
		(renumbered to 2188.50(g))
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04/28/10	ADOPT: 4350	01/21/10
04/20/10	ADOPT: 10700, 10701 AMEND: 10518,	ADOPT: 3575, 3576, 3577 AMEND:
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		3528, 3529, 3530, 3582, 3681, 3702,
		3703, 3721, 3724, 3726, 3728, 3731,
		3741
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05/26/10	AMEND: 2699.6809	
05/19/10	ADOPT: 5500, 5501, 5502, 5503, 5504,	
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05/04/10	AMEND: 2699.6625	
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 04/01/10 AMEND: 1961, 1961.1
 04/01/10 AMEND: 1961, 1961.1
 03/25/10 AMEND: 2480
 03/04/10 ADOPT: 205.00, 205.02, 205.04, 205.06, 205.08, 205.10, 205.12, 205.14
 03/03/10 AMEND: 423.00
 02/22/10 AMEND: 350.36, 350.38, 350.40, 350.44, 350.46
 01/14/10 ADOPT: 2032 AMEND: 1961, 1962, 1962.1, 1976, 1978
 01/05/10 AMEND: 553.70
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 05/03/10 AMEND: 820.01
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 03/29/10 ADOPT: 18452.1 AMEND: 18449, 18450, 18451, 18453, 18453.2, 18454, 18455, 18456, 18456.1, 18456.2, 18456.3, 18456.4, 18457, 18459, 18459.1, 18459.1.2, 18459.2.1, 18459.3, 18460.1, 18460.1.1, 18460.2, 18461, 18462, 18463, 18464, 18466, 18831 REPEAL: 18456.2.1, 18460.2.1
 03/10/10 AMEND: 670.5
 02/23/10 AMEND: 1052(a)
 02/18/10 AMEND: 155
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 01/28/10 AMEND: 2090, 2425, 2525, 2530
 01/14/10 ADOPT: 749.5
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 01/08/10 AMEND: 4970.00, 4970.01, 4970.05, 4970.06.1, 4970.07, 4970.07.2, 4970.08, 4970.10, 4970.10.1, 4970.10.3, 4970.10.4, 4970.11, 4970.14.1, 4970.14.3, 4970.15.1, 4970.15.2, 4970.15.3, 4970.17, 4970.19, 4970.19.2, 4970.19.4, 4970.20, 4970.21, 4970.22, 4970.24, 4970.25.1, 4970.26
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05/25/10 AMEND: 3170.1(g), 3173.2(d)
 05/25/10 AMEND: 3090, 3091, 3093, 3095
 04/26/10 ADOPT: 3720, 3721, 3721.1, 3722, 3723
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 02/02/10 ADOPT: 3054.3 AMEND: 3054, 3054.1, 3054.2, 3054.3 (renumbered to 3054.4), 3054.4 (renumbered to 3054.5), 3054.5 (renumbered to 3054.6), 3054.6 (renumbered to 3054.7)
 01/25/10 ADOPT: 3042 AMEND: 3040, 3040.1, 3041, 3041.2, 3043, 3043.1, 3043.3, 3043.4, 3043.5, 3043.6, 3044, 3045, 3045.1, 3045.2, 3045.3 REPEAL: 3040.2
 01/25/10 ADOPT: 3075.2(b)(4) through (b)(4)(C), 3075.3(c), 3505 AMEND: 3000, 3075.2, 3075.3, 3502, 3504
 01/07/10 AMEND: 1, 100, 102, 260, 261, 262, 263, 351, 352, 353, 354, 355, 356, 358, 1006, 1010, 1029, 1032, 1045, 1055, 1056, 1063, 1081, 1083, 1084, 1100, 1122, 1140, 1160, 1245, 1260, 1264, 1272, 1280
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 05/19/10 AMEND: 3340.1
 05/13/10 ADOPT: 1399.615, 1399.616, 1399.617, 1399.618, 1399.619 AMEND: 1399.571

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 04/27/10 AMEND: 1399.152, 1399.153.3,
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 04/12/10 ADOPT: 3340.36.1
 03/29/10 ADOPT: 1355.4
 03/16/10 ADOPT: 311.1
 03/09/10 AMEND: 1016, 1017 REPEAL: 1016.1,
 1017.1
 03/08/10 AMEND: 4100
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 02/22/10 ADOPT: 2262.1 AMEND: 2262
 02/18/10 ADOPT: 50.1
 02/16/10 ADOPT: 318.1
 01/06/10 AMEND: 1505
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 1751.6, 1751.7, 1751.8, 1751.9
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04/15/10 AMEND: 95480.1, 95481, 95486
 04/07/10 AMEND: 1031.2, 1031.3
 02/08/10 AMEND: 95362, 95365, 95366, 95367,
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 01/12/10 ADOPT: 95480, 95480.1, 95481, 95482,
 95483, 95484, 95485, 95486, 95487,
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 05/11/10 REPEAL: 1525.7
 04/14/10 AMEND: 192, 193, 371
 03/30/10 ADOPT: 3500 AMEND: 2300, 2401,
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 03/19/10 ADOPT: 25101.3 AMEND: 25137-7
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 2735.5, 2745.1, 2745.10, 2750.2, 2750.3,
 2765.2, 2775.6, 2780.1, 2780.2, 2780.3,
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 05/19/10 AMEND: 100159, 100166, 100171
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 100106.1, 100106.2, 100107.1 AMEND:
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 100057, 100058, 100059, 100059.2,
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05/12/10 ADOPT: 5300, 5400 AMEND: 5002, 5010, 5052, 5055, 5062, 5102, 5105

05/12/10 AMEND: 11-425, 22-001, 22-003, 22-009, 45-302, 45-303, 45-304, 45-305, 45-306

05/06/10 AMEND: 66273.36

04/08/10 AMEND: 50778

04/05/10 AMEND: 4446.5

03/03/10 AMEND: 70055, 70577, 70703, 70706, 70707, 70717, 70749, 70751, 70753, 71053, 71203, 71205, 71503, 71507, 71517, 71545, 71551, 71553, 72091, 72109, 72303, 72311, 72315, 72319, 72337, 72413, 72423, 72433, 72453, 72461, 72471, 72515, 72523, 72525, 72528, 72543, 72547, 73077, 73089, 73301, 73303, 73311, 73313, 73315, 73325, 73329, 73399, 73409, 73449, 73469, 73479, 73489, 73517, 73519, 73523, 73524, 73543, 73547, 79315, 79351, 79637, 79689

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02/25/10 ADOPT: 6200, 6201, 6202, 6203

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