



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the “Commission”), under the authority vested in it under the Political Reform Act (the “Act”)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **September 19, 2013**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m. on September 17, 2013.**

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

BACKGROUND/OVERVIEW

Effective on March 1, 2009, Regulation 18521.5 sets forth restrictions applicable to ballot measure committees controlled by candidates for elective office (which also includes incumbent and former elected officials who have not terminated their controlled committees; see Section 82007). Subject to two exceptions, the regulation provides that contributions raised by these ballot measure committees may only be expended on specified costs related to a state or local measure or potential measure anticipated by the committee, or to qualifica-

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

tion or pre-qualification activities relating to such measures. The two exceptions also permit expenditure of contributions raised by these committees for: (1) The return of contributions to contributors; and (2) Within 60 days before termination of the committee, donations to specified types of tax-exempt nonprofit organizations, so long as no substantial part of the proceeds will have a material financial effect on the candidate or former elected officer, any member of his or her immediate family, or on the committee’s campaign treasurer.

REGULATORY ACTION

Amend 2 Cal. Code Regs. Section 18521.5: The proposed amendment to Regulation 18521.5 would add a third exception to the requirement that contributions made to candidate-controlled ballot measure committees be expended only on costs relating to a specified or anticipated ballot measure by allowing, within 60 days before termination of the committee, contribution of the committee’s unexpended funds to a political party committee, provided the funds are not used to support or oppose candidates for elective office as specified in Section 89519(b)(4).

Reasons for Proposed Amendment: Section 82007 defines the term “candidate” to include not only candidates for elective office but also incumbent and former elected officers who have not yet terminated their campaign committees. Section 85201(c) states that a candidate may only accept contributions into a single campaign account established for his or her election to a specific office and Section 85201(e) states that all of the candidate’s campaign expenditures must be made from that account. (Known as the “one bank account” rule; also see Section 85201(a).) Sections 85301 and 85302 establish limits on the amounts an individual or entity can make in contributions to a candidate for elective state office. Section 85316 permits elected state officers to establish an “officeholder” account into which they may accept contributions, also subject to contribution limits, to defray costs associated with holding office and Sections 85304 and 85304.5 permit, subject to certain restrictions (see Regulations 18530.4 and 18530.45), local and state candidates and elected officers to receive contributions for the defense of legal actions relating to their candidacy or office. The Act does not explicitly permit a candidate or elected officer to control a ballot measure committee and, given the various restrictions on the committees they are permitted to control, it would appear that the Act does not permit them to control ballot measure committees at all.

However, the Commission has recognized a limited exception to permit an elected officer or candidate to

control a separate ballot measure committee.² (See Bagatelos Advice Letter, No. I-89-240; Karpel Advice Letter, No. A-93-356.) Because of the limited nature of this exception, Regulation 18521.5 was adopted to ensure that candidates would not use their controlled ballot measure committees to circumvent the various restrictions described above by raising unlimited contributions into the ballot measure committee and spending them either on their own election campaigns or on political, legislative or governmental expenses that are regulated under these other restrictions and not related to a ballot measure. The two exceptions permitted under the Regulation, whereby the controlled ballot measure committee can spend committee funds to return contributions to contributors or, when terminating business, donate the funds to tax-exempt nonprofits, do not undermine these concerns. Staff believes that the proposed amendment to Regulation 18521.5, permitting such a committee within 60 days before terminating business to also contribute these funds to a political party so long as the funds cannot be used to support or oppose candidates for office, likewise does not undermine the concerns expressed above.

SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

²The case of *Citizens to Save California v. California Fair Political Practices Commission* (2006) 145 Cal.App.4th 736, held that the Commission lacked the statutory authority to impose the contribution limits in Sections 85301 and 85302 on ballot measure committees controlled by candidates for elective state office.

REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 82013, 82016, 82027.5, 82047.5, 84102, 84103, 84107, 84504, 85201, 85301, 85302, 85303, 85304, 85304.5, 85316 and 85310.

CONTACT

Any inquiries should be made to Scott Hallabrin, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.php?id=247#2>.

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

AGENCY: Marin Energy Authority
Schools Insurance
Program for Employees

AMENDMENT

STATE AGENCY: California State Teachers Retirement System

A written comment period has been established commencing on **August 16, 2013** and closing on **September 30, 2013**. Written comments should be directed to the Fair Political Practices Commission, Attention Barbara Smith, 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/her review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hear-

ing 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/her 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 **September 30, 2013**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act

and amend their codes when change is necessitated by changed circumstances.

CONTACT

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

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the “Commission”), under the authority vested in it under the Political Reform Act (the “Act”)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **September 19, 2013**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, commencing at approximately **10 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m. on September 17, 2013**.

BACKGROUND/OVERVIEW

In the wake of a scandal involving the fees paid to placement agents by hedge funds and private equity firms seeking investment money from CalPERS, California enacted legislation in 2010 that includes “placement agents” in the definition of lobbyist under the Political Reform Act. (Section 82047.3.) Placement agents — the intermediaries who connect private money managers with pension funds like CalPERS and

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CalSTRS — must register as lobbyists with the state if they sell or market securities, assets, or services of an “external manager” to California state public retirement systems. In addition, persons acting as placement agents for potential investments by local public retirement systems in California must comply with local lobbying rules.

Since 2011 when the legislation came into effect, the Commission has been advising and interpreting these new provisions on a case-by-case basis. Also in 2011, the Commission added placement agents to the regulatory definition of lobbyist to comport with the statutory changes. At the time, the only exceptions that applied to placement agents were statutory. Staff received many requests for advice regarding whether a person could accompany a placement agent to a meeting with a state public retirement system. Staff advised in the *Recht* Letter, 1-11-015 that a person who accompanies a registered placement agent on an occasional basis and does so to provide specialized information need not register as a lobbyist.

Regulation 18239 allows a similar scenario for a registered lobbyist. That is, a person may attend a meeting or have occasional contact with a public official and need not register as a lobbyist, as long as the person attends in the company of a registered lobbyist and does not otherwise meet the definition of a lobbyist. The accompanying persons are generally knowledgeable about the topic at hand, and attend the meetings to provide further, often technical, information. They are not registered lobbyists and do not become registered lobbyists when they engage in direct communication with a public official to provide additional information, as long as they are accompanied by a registered lobbyist.

As noted above, Commission staff has extended this lobbyist “ride along” provision to placement agents by advice letter, rather than via regulatory amendment. As an unintended result, many people attending meetings with placement agents to provide technical information to public officials are registering as lobbyists in California out of caution, rather than necessity. This over-registration makes quarterly reports more difficult than necessary, creates excessive registration in the Secretary of State’s office, and inhibits members of the public who want to see disclosure from obtaining relevant information. Staff proposes to codify this rule through regulatory amendment in order to clarify and publicize the rule and thereby reduce unnecessary registration.

REGULATORY ACTION

Amend 2 Cal. Code Regs. Section 18239:

Regulation 18239 defines lobbyist and is currently out of step with the real workings of placement agents who communicate with public retirement boards on be-

half of an external manager. Updating Regulation 18239 to apply the “ride-along” exception to placement agents will recognize that those people who are most knowledgeable about a particular investment might not be placement agents who are required to register as lobbyists. The proposed change would extend the existing ride-along exception and would address an issue with people who register unnecessarily as lobbyists.

SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Section 82039.

CONTACT

Any inquiries should be made to Heather M. Rowan, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.php?id=247#2>.

TITLE 4. CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE

NOTICE IS HEREBY GIVEN that the California Debt Limit Allocation Committee (Committee) pro-

poses to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

The California Debt Limit Allocation Committee has complied with the requirements to provide notice of proposed rulemaking action pursuant to Government Code section 11346.1(a)(2).

PUBLIC HEARING

The California Debt Limit Allocation Committee (Committee) has not scheduled a public hearing on this proposed action. However, the Committee will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Committee. Comments may also be submitted by facsimile (FAX) at (915) 653-6827 or by e-mail to cdlac@treasurer.ca.gov. The written comment period begins on August 16, 2013 and closes at 5:00 p.m. on September 30, 2013. The Committee will consider only comments received at the Committee offices by that time. Submit comments to:

Sean L. Spear
Executive Director
California Debt Limit Allocation Committee
915 Capitol Mall, Room 311
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Authority: Section 8869.94, California Government Code. Section 8869.94 of the Code authorizes the Committee to adopt regulations relating to an allocation system to administer the state unified volume ceiling as proposed regulations and instructs the Office of Administrative Law to consider such regulations to be “necessary for the immediate preservation of the public peace, health and safety or general welfare.”

Reference: Sections 8869.80 to 8869.94, California Government Code. These Regulations implement, interpret and make specific Section, 8869.80 to 8869.94 of the Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The existing regulations outline an allocation system to administer the state unified volume ceiling (California’s tax exempt bond authority). However, the existing regulations include or are absent language that may prevent viable projects from obtaining an award of tax exempt bond authority. The proposed changes to the regulations and associated applications would correct these deficiencies. More specifically, changes to the existing threshold and elective point categories in the applications will allow applicants to earn points where they previously would not have and would also prevent projects without adequate funding commitments from being eligible for an award of allocation.

In an effort to guarantee projects have all necessary Redevelopment Area (RDA) funding secured for project construction or rehabilitation, the proposed language requires that those Qualified Residential Rental Pool Projects with RDA-related project financing subject to the approval of the Department of Finance (DOF) are required to have obtained a Final and Conclusive Determination Letter prior to submitting an application to the Committee.

Proposed language also allows for projects that have been receiving and will continue to receive state or federal project-based rental assistance or a state or federal operating subsidy for a minimum of the last five (5) years to take advantage of the market study waiver exception. This will result in a minimal savings to projects that qualify for the market study waiver.

Finally, clarifying language is being added to thoroughly define the full-time equivalent (FTE) formula.

The overall objective of these Proposed Regulations is to ensure low-income housing developments are provided in the State of California. The regulations are being modified to provide clarifying language and to adopt new processes to allow for these developments to occur. (Government Code 11346.5(a)(3)(C).)

Anticipated Benefits of the Proposed Regulation:

The objective of these Proposed Regulations is to ensure low income housing developments and public benefits are being provided to the residents of these projects. In addition, to the extent that the proposed services amenity requirements are elected and met, ongoing and frequent services will benefit the health and welfare of the California multifamily housing residents who take advantage of such services. To the extent that tax exempt bonds are utilized to finance the production or rehabilitation of multifamily housing projects, it is possible that the use of tax exempt bond proceeds will increase economic activity and employment development. (Government Code 11346.5(a)(3)(C).)

Evaluation of Whether the Proposed Regulations Are Inconsistent or Incompatible:

We have conducted a review of any related regulations in this area and have determined that these are the only regulations concerning this subject area. Therefore, the proposed regulations are not inconsistent or incompatible with existing state regulations. (California Government Code 11346.5(a)(3)(D).)

List of forms to be incorporated by reference:

- Annual Applicant Public Benefits and Ongoing Compliance Self-Certification (8-5-13)
- Competitive Application For An Allocation Of The State Ceiling On Qualified Private Activity Bonds For A Qualified Residential Rental Project (QRRP) (6-11-13)
- Non-Competitive Application For Allocation Of The State Ceiling On Qualified Private Activity Bonds For A Qualified Residential Rental Project (QRRP) (6-11-13)
- Competitive Application For An Allocation Of The State Ceiling On Qualified Private Activity Bonds For A Qualified Residential Rental Project (QRRP) Universal Application Addendum (6-11-13)
- Non-Competitive Application For An Allocation Of The State Ceiling On Qualified Private Activity Bonds For A Qualified Residential Rental Project (QRRP) Universal Application Addendum (6-11-13)

DISCLOSURES REGARDING THE PROPOSED ACTION

The Committee and/or Executive Director have made the following initial determinations:

Mandate on Local Agencies or School Districts: The Executive Director of the Committee has determined that the Regulations do not impose a mandate on local agencies or school districts.

Fiscal Impact: The Executive Director of the Committee has determined that the Regulations do not impose any additional cost or savings requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the California Government Code, any other non-discretionary cost or savings to any local agency or any cost or savings in federal funding to the State. Pursuant to the State Administrative Manual Section 6680, a Fiscal Impact Statement (Form 399) is submitted without the signature of a Project Budget Manager at the Department of Finance, as there are no fiscal impact disclosures required by State Administrative Manual Sections 6600-6670. There will be no cost or savings to any State Agency pursuant

to Government Code Section 11346.1(b) or 11346.5(a)(6).

Housing Costs: The Executive Director of the Committee has determined that the Regulations do not have a significant effect on housing costs.

Significant, Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete: The Executive Director of the Committee has determined that the Regulations do not have an adverse economic impact affecting California businesses.

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

Business Reporting Requirement: The proposed regulations do not require any reports by businesses other than those for which an award of Allocation was granted. The reporting required is limited to certifications of compliance with the Committee's resolution that transferred the award to the business.

Small Business Determination: The proposed regulations will not have an adverse impact on small businesses in California as the awards of the state ceiling will only encourage the development of housing or facilities developed or operated primarily by small businesses.

Results of the Economic Impact Analysis: The proposed regulations will not have an effect on the creation or elimination of jobs within the State of California. The proposed regulations will not affect the creation of new businesses or the elimination of existing business with the State of California. The proposed regulations will not have an effect on the expansion of businesses currently doing business within the State of California. The proposed regulations will ensure low-income housing developments are following building guidelines and that public benefits are being provided to the residents of these projects.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries concerning the proposed regulatory action may be directed to:

Misti Armstrong
 Program Manager
 California Debt Limit Allocation Committee
 915 Capitol Mall, Room 311
 Sacramento, CA 95814
 (916) 653-3255

The back-up contact person for these inquiries is:

Leslie Campaz
 Regulations Analyst
 California Debt Limit Allocation Committee
 915 Capitol Mall, Room 308
 Sacramento, CA 95814
 (916) 653-3255

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, forms to be incorporated by reference, or other information upon which the rulemaking is based to Leslie Campaz at the above address.

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

The Committee will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulations, the forms to be incorporated by reference, and the initial statement of reasons. Copies may be obtained by contacting Leslie Campaz.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the written comment period hearing and considering all timely and relevant comments received, the Committee may adopt the proposed regulations substantially as described in this notice. If the Committee makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) avail-

able to the public for at least 15 days before the Committee adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Misti Armstrong at the address indicated above. The Committee will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at <http://www.treasurer.ca.gov/cdlac/index.asp>.

TITLE 8. DIVISION OF WORKERS’ COMPENSATION

Subject Matter of Regulations: Medical Provider Networks

TITLE 8. CALIFORNIA CODE OF REGULATIONS
SECTIONS 9767.1 – 9767.19

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers’ Compensation (hereinafter “Acting Administrative Director”) pursuant to the authority vested in her by Labor Code sections 59, 133, and 4616 proposes to amend and adopt the proposed regulations described below to implement the amended provisions of Labor Code section 4616, as amended by Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013). The regulations are mandated by Labor Code section 4616, and these proposed amendments do the following: define as a new MPN applicant type an entity that provides physician network services; provide a four-year approval period for MPN applications; require geocoding with reapproval applications; set forth the MPN Medical Access Assistant requirements; require written physician acknowledgments of MPN participation; clarify MPN access standards; establish a formal MPN complaint and a suspension/revocation petition process; create a random review process and a schedule of administra-

tive penalties for violations of statutory and regulatory requirements.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to amend Article 3.5 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, Sections 9767.1 through 9767.16, and adopt Article 3.5 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, Section 9767.5.1 and Sections 9767.16.5 through 9767.19.

- Amend Section 9767.1 Medical Provider Networks — Definitions
- Amend Section 9767.2 Review of Medical Provider Network Application or Application for Reapproval
- Amend Section 9767.3 Application for a Medical Provider Network Plan
- Amend Section 9767.4 Cover Page for Medical Provider Network Application or Application for Reapproval
- Amend Section 9767.5 Access Standards
- Adopt Section 9767.5.1 Physician Acknowledgments
- Amend Section 9767.6 Treatment and Change of Physicians Within MPN
- Amend Section 9767.7 Second and Third Opinions
- Amend Section 9767.8 Modification of Medical Provider Network Plan
- Amend Section 9767.9 Transfer of Ongoing Care into the MPN
- Amend Section 9767.10 Continuity of Care Policy
- Amend Section 9767.11 Economic Profiling Policy
- Amend Section 9767.12 Employee Notification
- Amend Section 9767.13 Denial of Approval of Application or Reapproval; Re-Evaluation
- Amend Section 9767.14 Probation, Suspension or Revocation of Medical Provider Network Plan; Hearing
- Amend Section 9767.15 Compliance with Current MPN Regulations; Reapproval
- Amend Section 9767.16 Medical Provider Network Complaints
- Adopt Section 9767.16.5 DWC Medical Provider Network Complaint Form 9767.16.5
- Adopt Section 9767.17 Petition for Suspension or Revocation of a Medical Provider Network

- Adopt Section 9767.17.5 DWC Petition for Suspension or Revocation of a Medical Provider Network Form 9767.17.5
- Adopt Section 9767.18 Random Reviews
- Adopt Section 9767.19 Administrative Penalty Schedule; Hearing

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the proposed regulatory action, on the follow date:

- Date: September 30, 2013**
- Time: 10:00 a.m. to 5:00 p.m., or until conclusion of business**
- Place: Elihu Harris State Office Building — Auditorium
1515 Clay Street
Oakland, CA 94612**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the Statewide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Acting Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at 5:00 p.m., on September 30, 2013. The Division of Workers' Compensation will only consider comments received at the

Department of Industrial Relations, Division of Workers' Compensation by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
 Regulations Coordinator
 Department of Industrial Relations
 P.O. Box 420603
 San Francisco, CA 94612

Written comments may be submitted via facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than 5:00 p.m., on September 30, 2013.

AUTHORITY AND REFERENCE

The Acting Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, and 4616.

Reference is to Labor Code sections 4604.5, 4616, 4616.1, 4616.2, 4616.3, 4616.4, 4616.5, 4616.7, 5300, 5307.27, 5401; Government Code sections 11445.10 through 11445.60.

INFORMATIVE DIGEST/POLICY OVERVIEW

The regulations are required by legislative enactment — Senate Bill 863 (Chapter 363, stats. of 2012, effective January 1, 2013), which made substantial changes to the Medical Provider Network (MPN) statutory provisions. These legislative changes include, but are not limited to, a new category of MPN applicants, physician acknowledgments and medical access assistants, a reapproval process, a complaint process and third-party petition process for MPN suspension or revocation, administrative penalties, as well as random reviews of MPN. These changes are mandated to take effect on January 1, 2014 for all dates of injury.

Specifically, Labor Code section 4616(a)(1) was amended to allow an entity that provides physician network services to also establish or modify a medical provider network for the provision of medical treatment to injured employees. The revised section also eliminated the requirement that at least 25 percent of MPN physicians be engaged in the treatment of non-occupational injuries.

Labor Code section 4616(a)(2) was revised so that medical treatment for injuries shall be available and accessible in all areas, including where there is a health care shortage.

Labor Code section 4616(a)(3) was revised to require that all MPN treating physicians have a written acknowledgement to be a member of each MPN to which the physician belongs.

Labor Code section 4616(a)(4) is a new section that requires every MPN to post on its website a roster of all treating physicians within the network and to update this information quarterly.

Labor Code section 4616(a)(5) was added to require every MPN to have medical access assistants to help an injured employee find MPN physicians and schedule appointments with them.

Labor Code section 4616(b)(1) was amended to approve MPNs for a period of four years only. Commencing January 1, 2014, existing approved plans are deemed approved for four years from the most recent application or modification approval date. MPNs must submit plans for reapproval at least six months before the expiration of their four-year approval period.

Labor Code sections 4616(b)(2) and 4616(b)(3) were added to require that every MPN establish and follow procedures continuously to review the quality of care, performance of medical personnel, utilization of services and facilities and costs. Every MPN must also submit geocoding of its network for re-approval to establish that the number and geographic location of physicians in the MPN meet the required standards.

Labor Code section 4616(b)(4) gives the administrative director the authority to formally investigate complaints and to conduct random reviews of approved MPNs.

Labor Code section 4616(b)(5) provides that a third party can petition to suspend or revoke approval of an MPN and gives the Administrative Director the additional authority to place MPNs on probation and to assess penalties for regulatory and statutory violations. Appeals of decisions by the Administrative Director are to be reviewed by the Workers' Compensation Appeals Board.

Labor Code section 4616(g) was added to place provider notification requirements on MPN contracting agents. This subdivision provides that as of January 1, 2013, every contracting agent that "sells, leases, assigns, transfers or conveys" an MPN to another entity must disclose to providers whether that MPN can be sold, leased, transferred or conveyed.

The proposed amendments to the regulations are intended to implement, interpret or make specific the applicable Labor Code sections as follows:

Proposed Amendments to Section 9767.1 — Medical Provider Networks — Definitions

- This section defines key terms used in the MPN regulations.
- This section is re-lettered to accommodate the addition or deletion of definitions.
- This section adds definitions for “entity that provides physician network services”, “geocoding”, “health care shortage”, “medical provider network approval number”, “medical provider network medical access assistant”, “medical provider network geographic service area”, “probation”, “revocation”, “suspension”, and “withdrawal.”
- This section clarifies the definition for “ancillary services” to specify interpreter services, physical therapy and pharmaceutical services may be included as non-physician services to an MPN. This section also amends the definition for “covered employee”, “medical provider network plan”, and “MPN Applicant”, to conform to the amendment to Labor Code section 4616 that includes as an MPN applicant an entity that provides physician network services. This section further amends the definition of “MPN Contact” to state the responsibility of responding to MPN complaints and adds “MPN” before “independent medical review” to distinguish which review process applies. The definition of “provider” is amended by using the word “practitioner” instead of using the word “provider” in the definition. The definition of “termination” is amended to include as clarification the word “permanent” before “discontinued use.”
- This section strikes the definitions of “non-occupational medicine”, and “physician primarily engaged in treatment of non-occupational injuries” to reflect the deletion of this requirement in Labor Code section 4616. Finally, this section strikes the definition of “cessation of use,” which is no longer used.

Proposed Amendments to Section 9767.2 — Review of Medical Provider Network Application

- Section 9767.2 sets forth the Administrative Director’s responsibilities and procedures when reviewing a MPN Application or Application for Reapproval.
- The title of the section is amended to include “or Application for Reapproval.”

- Subdivision (a) is amended to clarify that MPN applications with correct information will be approved for a period of four years to conform to the new statutory mandate. If the Administrative Director fails to act on a plan within 60 days, the amendment clarifies that the application shall be deemed approved on the 61st day for a period of four years.
- Subdivision (b) is amended to clarify that the Administrative Director will additionally provide notification to an MPN applicant not eligible to have an MPN.
- Subdivision (e) is amended to correctly state that an MPN, not the MPN applicant, will be assigned an approval number, and to require that a unique MPN approval number shall be used in all correspondence with the DWC regarding the MPN.
- Subdivision (f) sets forth the method an MPN applicant may choose to withdraw an approved MPN that has never been implemented. The MPN applicant is to send a letter signed by the MPN’s authorized individual to the Administrative Director verifying that the MPN has never been used and that the MPN applicant does not wish to use the MPN in the future.

Proposed Amendments to Section 9767.3 — Application for a Medical Provider Network Plan

- Section 9767.3 specifies the information required in an application for an MPN.
- This section is re-lettered and renumbered to accommodate the addition or deletion of subdivisions. Subdivision (a) is amended to add “an entity that provides physician network services” as an eligible MPN applicant.
- Subdivision (b) strikes the phrase “insurer and an insured employer” and replaces it with the phrase “MPN applicant” to succinctly refer to all the entities eligible to establish an MPN.
- Subdivision (c) instructs MPN applicants to complete the Cover Page for Medical Provider Network Application or Application for Reapproval in section 9767.4 with an original signature and an MPN plan application, with a choice to use an optional application form. Applicants must submit the completed MPN application documents and a copy in a word-searchable electronic format. Valid electronic signatures are permissible and a hard copy of the original signed cover page shall be

made available by the MPN applicant to the Administrative Director upon request.

- Subdivision (c)(1) provides instructions to submit MPN provider information and is amended to add specific instructions to MPN applicants using a valid and currently certified Health Care Organization (“HCO”). The use of an HCO must be noted in the application’s Cover Page for Medical Provider Network Application and only a listing of any additional service providers is required to be submitted.
- Subdivision (c)(2) is revised to provide instructions for electronic submission of the MPN physician provider listings to include, in the specified order, six instead of three columns of information. This subdivision is also amended to include an affirmation that all of the providers in the MPN network understand that the Medical Treatment Utilization Schedule is presumptively correct on the issue of extent and scope of medical treatment and diagnostic services.
- Subdivision (c)(3) is revised to provide instructions for electronic submission of any MPN ancillary service provider listings to include, in the specified order, six instead of three columns of information. This subdivision is also amended to include specific instructions for listing ancillary services or service providers who are mobile.
- Subdivision (c)(4) is added to clarify that if an MPN lists a medical group in its provider listing, then all physicians in that medical group are considered to be approved providers. This subdivision further clarifies MPNs may list a subgroup of a larger medical group if all physicians in the larger group are not in the MPN, or an MPN may list approved providers individually.
- Subdivision (c)(5) is added to clarify only locations listed in the Medical Provider Network listings are considered to be approved locations for providing treatment under the MPN, but an MPN has the discretion to approve treatment at non-listed locations.
- Subdivision (c)(6) is added to clarify that any MPN applicant has the exclusive right to determine the members of its network.
- Subdivision (d) deletes the exception for “Health Care Organization, Health Care Service Plan, Group Disability Insurance Policy, or Taft–Hartley Health and Welfare fund,” making

the subdivision’s requirements applicable to all MPN applications.

- Subdivision (d)(1) is amended to include as an MPN applicant an entity providing physician network services and to require as part of the application, documentation to establish that the applicant entity is currently eligible to have an MPN.
- Subdivision (d)(2) and (d)(3) revises the capital letter “A” in MPN Applicant to lower case “a”
- Subdivision (d)(4) instructs the MPN applicant to use a name that is not used by an existing approved MPN.
- Subdivision (d)(5) clarifies that the reference to the Division liaison is the MPN liaison to DWC.
- Subdivision (d)(7) strikes the phrase “insurer or employer” and replaces it with “eligible MPN applicant” to include all entities eligible to establish an MPN.
- Subdivision (8)(A) adds “. . .and the method used to calculate the number” of employees expected to be covered by the MPN.
- Subdivision (8)(B) adds “MPN” to clarify the geographic service area to be described.
- Subdivision (8)(C) adds the application requirements to include a toll-free number, e-mail address, fax number and days and times of availability for medical access assistants.
- Subdivision (8)(D) adds the application requirement to include the MPN website address.
- Subdivision (8)(E) adds the application requirement to include the web address or URL to the MPN provider listing.
- Subdivision (8)(F) adds an affirmation requirement that each MPN physician in the network has acknowledged in writing to treat workers under the MPN, with the signed acknowledgment available for the Administrative Director’s review.
- Subdivision (8)(G) clarifies that the listing of only MPN physicians is required and excludes non-physicians providers by deleting the Labor Code reference to other providers.
- Subdivision (8)(H) adds the application requirements and parameters for electronic geocoding of the MPN provider listing.

- Subdivision (8)(I) clarifies the ancillary service provider listing is voluntary, deletes the unnecessary phrase “or provider,” and amends the citation to reference the updated regulatory provision(d)(8)(G) instead of (d)(8)(C).
- Subdivision (8)(E) has been deleted and moved for organizational purposes to (8)(K). Subdivision (8)(F) deletes the former requirement of at least 25% of the physicians in a network be primarily engaged in the treatment of non-occupational injuries.
- Subdivision (8)(L) has been re-lettered from (8)(H) and adds the requirement to state the five most commonly used specialties based on the common injuries for workers covered under the MPN.
- Subdivision (8)(M) is re-lettered from (8)(I) and is amended to clarify that a copy of required employee notification materials be provided in English and Spanish for review.
- Subdivision (8)(S) adds the requirement to describe the MPN’s procedures used to ensure ongoing quality of care, and how performance of medical personnel, utilization of services and facilities, and costs are sufficient to provide adequate and necessary medical treatment for covered employees.
- Subdivision (8)(T) requires an affirmation that as of January 1, 2013, every contracting agent that sells, leases, assigns, transfers, or conveys its medical provider networks and their contracted reimbursement rates to an insurer, employer, or entity that provides physician network services, or another contracting agent shall, upon entering or renewing a provider contract, disclose to the provider whether the medical provider network may be sold, leased, transferred, or conveyed to other insurers, employers, entities providing physician network services, or another contracting agent, and specify whether those insurers, employers, entities providing physician network services, or contracting agents include workers’ compensation insurers.
- Subdivision (e) is replaced in its entirety by the original language in the former subdivision (f), which is amended to update section references.

Proposed Amendments to Section 9767.4 — Cover Page for Medical Provider Network Application

- This section is a mandatory form to be submitted with an MPN application. The title of the form is amended to read, “Cover Page for Medical Provider Network Application or Application for Reapproval.”
- No. 1: The word “Legal” was added in front of “Name of MPN Applicant.”
- No. 2: The acronym “MPN Applicant” is added to “Address.”
- No. 4: “Type of” is deleted and replaced with “Eligibility Status of”.
 - The box for “Insurer” is clarified to include (CIGA and SISF).
 - The box for “Self-Insurer Security Fund” is stricken, as it is defined as an insurer.
 - The box for “Insurer” is stricken and moved.
 - A box for “Entity that provides physician network services” is added.
- No. 5: “(s), if applicable” is stricken as unnecessary.
- No. 6: The word “using” is added for accuracy.
- No. 7: Is stricken as unnecessary and replaced with “Is this an application for reapproval Yes No If Yes, include date of last MPN approval:”
- No. 8: “MPN Website Address:” is added.
- No. 9: “MPN Provider Listing Web Address” is added.
- No. 10: Is re-numbered from the existing No. #8 and the word “ability” is stricken and replaced with the word “belief” for regulatory consistency. “Phone” and “Email” is moved to a separate line.
- No. 11: Is re-numbered from the existing No. #9 and a separate line is provided for “Phone” and “Email”. In addition, the instructions are updated to reflect electronic submission is added.
- The form revision date is updated.

Proposed Amendments to Section 9767.5 — Access Standards

- Section 9767.5 sets forth the requirements to meet access standards.
- Subdivision (a) replaces the word “expected” with “available” to clarify that an MPN must have at least three available physicians of each specialty to

treat common injuries. This subdivision also adds a requirement that MPNs meet the access standards for the five commonly used specialties listed in its application at all times.

- Subdivision (d) adds that an alternative access standard for areas in which there is a health care shortage can be proposed for approval with an explanation of how the proposed alternative mileage standard was determined to be necessary for the specialty(ies) in which there is a health care shortage.
- Subdivision (e)(2) strikes the existing text, “the choice of” and replaces it with “a list of” to clarify the requirements for MPN assistance to injured workers treating outside of the MPN geographic service area.
- Subdivision (e)(4) is amended deleting excess verbiage from the old text to clarify a covered employee outside the MPN geographic service area may choose his or her own provider for non-emergency medical care.
- Subdivision (h) is added to set forth the requirements for MPN access assistants and to clarify the type of assistance they can provide.
- Subdivision (h)(1) is added to clarify the number of access assistants required and the time frame within which they need to respond. Subdivision (h)(2) is added to require MPN access assistants to work in coordination with the MPN Contact and the claims adjuster(s) to ensure timely and appropriate medical treatment is provided to the injured worker.
- Subdivisions (i) and (j) are re-lettered from the original subdivisions (h) and (i).

Proposed Section 9767.5.1 — Physician Acknowledgments

- Proposed section 9767.5.1 sets forth the requirements for physician acknowledgments.
- Subdivision (a) states the requirement that each MPN physician shall have a written acknowledgment to participate in that MPN unless the physician is a shareholder, partner or employee of a medical group that elects to be part of an MPN.
- Subdivision (b) sets forth the acknowledgment requirements if a physician has a contract that automatically renews and that valid electronic signatures are acceptable.
- Subdivision (c) clarifies that a physician may acknowledge participation in multiple MPNs in a single signed acknowledgment.

- Subdivision (d) sets forth the requirements for a medical group acknowledgment, including when a physician is added or leaves a medical group in the MPN.
- Subdivision (e) is added to ensure that all physician acknowledgments are available for review by the Administrative Director.

Proposed Amendments to Section 9767.6 — Treatment and Change of Physician Within MPN

- Section 9767.6 sets forth the requirements for treatment and change of physician within an MPN.
- Subdivisions (a) and (d) add the text “. . .or entity that provides physician network services. . .” to include the new MPN applicant entity.
- Subdivision (e) adds the new statutory limits to a chiropractor acting as a treating physician and clarifies what a worker must do when those limits are reached.

Proposed Amendments to Section 9767.7 — Second and Third Opinions

- Section 9767.7 sets forth the requirements for a second and third opinion from physicians within the MPN.
- Subdivisions (b) and (d) add the clarification that “at least” a regional area listing of MPN providers is made available to an employee going through the second or third opinion process.
- Subdivision (g) adds the text “or outside” to clarify that an employee can obtain recommended treatment within “or outside” the MPN.
- Subdivision (h) adds “MPN” before the text “Independent Medical Review” and adds the relevant statutory and regulatory section to clarify the process referenced in this section is the MPN Independent Medical Review and not a different review process.

Proposed Amendments to Section 9767.8 — Modification of Medical Provider Network Plan

- Section 9767.8 sets forth the requirements and procedures to file a modification to an approved MPN plan and the administrative parameters for review of a plan modification.
- This section is re-numbered and re-lettered to accommodate the amendments.
- Subdivision (a) adds clarifying text “. . .within the stated time frames or if no time frame is stated. . .” to highlight that some modifications have filing deadlines.
- Subdivision (a)(1) text is replaced by the text to the original subdivision (a)(6) and amended to require a modification filing within (15) business days of a

- change in the name of the MPN or the name of the MPN applicant.
- Subdivision (a)(2) text is replaced and amended to require a modification filing within (5) business days of knowledge of a change in MPN applicant eligibility status.
 - Subdivision (a)(3) text is replaced and amended to require a modification filing within (15) business days of a change in the division liaison or authorized individual.
 - Subdivision (a)(4) is replaced by the text of the original subdivision (a)(7) to require a modification filing when there is a change in MPN geographic service area.
 - Subdivisions (a)(5) through (9) have been re-numbered from the original subdivisions (a)(1) through (5).
 - Subdivision (a)(10) is renumbered from the original (a)(8). Subdivision (a)(11) is renumbered from the original (a)(9) and is amended to include a reference to medical access assistants.
 - Subdivision (a)(12) is renumbered from the original (a)(10).
 - Subdivision (a)(13) is renumbered from the original (a)(11) and amended to update the section referenced in the original text.
 - Subdivision (a)(14) is renumbered from the original (a)(12).
 - Subdivision (a)(15) is renumbered from the original (a)(13) and amended to replace the reference to “permanent” with “current” regulations.
 - Subdivision (b) is amended to reflect the new filing deadlines for name and status changes to (15) business days and within (5) business days of a change in eligibility status. Failure to meet these requisite notice requirements may result in appropriate sanctions pursuant to sections 9767.14 or 9767.19.
 - Subdivision (c) replaces the word “notice” with “modification” for clarification.
 - Subdivision (d) is amended to cite updated regulatory provisions.
 - Subdivision (g)(2) replaces the word “revoking” with “rescinding.”
 - Subdivision (h) is amended to correct the reference to subdivisions (h) to (g).
 - Subdivision (i) amends “A” to “An” before “MPN” and amends the procedure for appealing the Administrative Director’s decision to require a petition to be filed with the Workers’ Compensation Appeals Board.
 - Subdivision (j) Notice of Medical Provider Network Plan Modification is amended as follows:
 - No. 1: The word “Legal” is added in front of the “Name of MPN Applicant” for clarification.
 - No. 2: The original text has been moved to No. 3 and replaced by “Name of MPN,” which is moved from the original No. 5 and amended to include “MPN Approval Number”.
 - No. 3: Renumbered from the original No. 2 and amended to add “MPN Applicant” before “Address”.
 - No. 4: Renumbered from No. 3.
 - No. 5: Renumbered from No. 4 and amended to delete the box for “Self-Insured Security Fund,” move the box for “Insurer” and add a box for “Entity that provides physician network services.”
 - No. 6: The original text to No. 6 is deleted and replaced by the text of the original No. 7 which is amended to require only the date of the last plan modification approval. The original Nos. 8 and 9 are no longer necessary and deleted.
 - No. 7: Renumbered from the original No.10 and amended to replace the word “ability” with “belief” for consistency. The word “application” is replaced with “modification” for clarity. A separate line is provided for the Authorized Individual’s phone number and email address.
 - No. 8: Renumbered from the original No. 11 and amended to include a separate line for the Liaison’s phone number and email address.
 - No. 9: The text to the original No. 9 is replaced by the second half of the original No. 11 with the last sentence deleted as unnecessary.
 - The box and text of “Change in Service Area. . .” has been moved from the first box to the fourth box to be consistent with the text of the section.
 - The first box is replaced by the text in the original second box, which is amended to add as clarification the word “name” after “MPN” and a 15-day filing deadline. The text in the second box is replaced with the new requirement to file a modification for a change in MPN applicant eligibility status

with a required filing within five (5) business days.

- The text in the third box is amended to add a deadline to file within fifteen (15) business days of a change of division liaison or authorized individual.
- The fourth box contains the text from the original first box requiring a filing when there has been a change in MPN service area.
- The eleventh box is the original tenth box with the amended text to include “Medical Access Assistants” and to add “MPN” before “website.”
- The fifteenth box is amended to replace the word “permanent” with “current” before “regulations.”
- The instructions have been amended to reflect proposed submission requirements for the modification to be submitted in word-searchable PDF format on a computer disk, CD ROM, or flash drive. The revision date for this form is updated.

Proposed Amendments to Section 9767.9 — Transfer of Ongoing Care into the MPN

- Section 9767.9 sets forth the requirements for transferring medical care for an injured worker treating with a non-MPN doctor into the MPN.
- Subdivision (a) is amended to add the text, “unless otherwise authorized by the employer or insurer.”
- Subdivisions (d), (e)(2), and (f) are amended to add an “entity that provides physician network services” as an eligible entity to perform the referenced actions in each subdivision.

Proposed Amendments to Section 9767.10 — Continuity of Care Policy

- Section 9767.10 sets forth the requirements for continuing care when a worker’s treating provider has been terminated from the MPN.
- Subdivisions (a) and (d)(1) are amended to add an “entity that provides physician network services” is also eligible to perform the referenced actions in each subdivision.

Proposed Amendments to Section 9767.11 — Economic Profiling Policy

- Section 9767.11 sets forth the requirements for filing an economic profiling policy.
- Subdivision (a) replaces the text, “insurer’s or employer’s” with “MPN applicant” to succinctly include all MPN applicants.

Proposed Amendments to Section 9767.12 — Employee Notification

- Section 9767.12 sets forth the requirements for giving notice to employees of MPN policies and procedures.
- Subdivision (a) is deleted in its entirety and replaced by the text in the original subdivision (d) which is re-lettered with the following amendments: the addition of “at the time of injury or when an employee with an existing injury is required to transfer treatment to an MPN” to clarify when the employee notification is to be provided to employees; the replacement of “subdivision (f)” with an updated reference to paragraph (2); the addition of “the” before “covered employees” and “by the employer, insurer or entity that provides physician network services” to clarify who is responsible for providing employee notification; the deletion of the text “at the time of injury or when an employee with an existing injury begins treatment under the MPN” and the revision of the language requiring the MPN notification to be provided in English and also in Spanish when the employee primarily speaks Spanish with the remaining text of the subdivision deleted.
- Subdivision (a)(1) is the original text in subdivision (e) re-lettered with amendments clarifying that a complete MPN notification with the information specified in paragraph (2) of this subdivision may be sent electronically in lieu of by mail.
- Subdivision (a)(2) is the original subdivision (f) re-lettered and sets forth the information required to be included in the employee notification.
- Subdivision (a)(2)(A) is the original subdivision (f)(1) re-lettered with the following amendments: the text “the employer or insurer” is replaced by “MPN applicant”; the text “the use of” before “MPNs” is added and the word “problems” is replaced by “complaints” to clarify the role of the MPN Contact; the word “geographical” is replaced by “geographic”; and a new sentence is added to require the listing of a toll-free number for MPN Medical Access Assistants, with a description of the access assistance they can provide and the times they are available to assist workers with obtaining access to medical treatment under the MPN.
- Subdivision (a)(2)(B) is the original subdivision (f)(2) re-lettered with the amendment to require

the MPN’s “approval number” to be added to the employee notification.

- Subdivision (a)(2)(C) is the original subdivision (f)(3) re-lettered with the following amendments: The addition of “an entity that provides physician network services” as another responsible entity for providing access to the MPN provider directory; the addition of the requirement of accessing the MPN provider listing on the MPN’s website with the web address clearly listed; the addition of the requirement to include the provider listing URL address and any necessary instructions and passcodes to access the directory online; the addition of the requirement that “MPN applicants are responsible for updating and for confirming the accuracy of an MPN’s provider listings”; the deletion of the text “to ensure the listing is kept accurate”; the reduction from 60 to 30 days as the time frame an MPN shall have to correct provider listing inaccuracies through the contact method stated on the provider listing to report inaccuracies; and the reference to “network administrator” is deleted as no longer necessary.
- Subdivision (a)(2)(D) is the original subdivision (f)(4) re-lettered with an amendment to add how to contact the medical access assistants if an employee needs help in finding a physician or scheduling an appointment.
- Subdivision (a)(2)(E) is the original subdivision (f)(5) re-lettered.
- Subdivision (a)(2)(F) is the original subdivision (f)(6) re-lettered with amendments to refer to “geographic” service area instead of “geographical” service area for consistency and to use a defined term.
- Subdivision (a)(2)(G) is the original subdivision (f)(7) re-lettered.
- Subdivision (a)(2)(H) is the original subdivision (f)(8) with the amendment to add how to use the medical access assistants for help.
- Subdivision (a)(2)(I) is the original subdivision (f)(9) re-lettered.
- Subdivision (a)(2)(J) is the original subdivision (f)(10) re-lettered.
- Subdivision (a)(2)(K) is the original subdivision (f)(11) re-lettered.
- Subdivision (a)(2)(L) is the original subdivision (f)(12) with the clarifying addition of “MPN” before “independent medical review.”
- Subdivision (a)(2)(M) is the original subdivision (f)(13) with the amendment to require that the transfer of care policy be provided in English or in Spanish if the employee speaks Spanish.
- Subdivision (a)(2)(N) is the original subdivision (f)(14) with the amendment to require that the continuity of care policy be provided in English or in Spanish if the employee speaks Spanish.
- Subdivision (b) is deleted in its entirety and replaced by new text requiring the MPN applicant to provide written notice to injured covered employees using its MPN when MPN coverage will end. The notice is required to include the date the employee will no longer be able to use its MPN and the notice shall be provided in English and also in Spanish if the employee speaks Spanish.
- Proposed subdivisions (b)(1)(A)–(D) require the MPN applicant to provide written notice to every affected injured covered employee prior to the date its MPN coverage ends and include the following information: the effective date the employee can no longer use the MPN; the specific MPN name and MPN approval number; whether the MPN will still be used for injuries arising before the date MPN coverage ends; the address(es), telephone number(s), and email address(es) of the MPN Contact and MPN Medical Access Assistants who can address MPN questions; an MPN website; and notice that for periods when an employee is not covered by an MPN, an employee may choose a physician 30 days after the date the employee notified the employer of his or her injury.
- Proposed subdivision (b)(2) provides model notice language that may be provided to injured covered employees to comply with the notice requirement.
- Proposed subdivision (b)(3) specifies the parameters for an MPN applicant to send the required notice electronically, by mail, with a paystub or by other means in writing to affected injured covered employees prior to the date its MPN coverage ends.
- Proposed subdivision (b)(4) clarifies that any pending MPN Independent Medical Review will end with the employee’s coverage under the MPN.

- Subdivision (c) is deleted in its entirety and replaced with the original subdivision (g), which is re-lettered and amended to clarify that the Independent Medical Review (“IMR”) process referenced in the subdivision is the MPN IMR process as set forth in section 9768.9(a). The requirement to give the notification in English and also in Spanish to a Spanish-speaking employee is deleted as unnecessary.

Proposed Amendments to Section 9767.13 — Denial of Approval of Application; Re-Evaluation

- Section 9767.13 sets forth the requirements for the procedures for denial of approval, reevaluation, and appeal of the Administrative Director’s denial. The title of the section is amended to replace “and” with “or reapprovals”, which are subject to the same procedures.
- Subdivision (a) adds the text “or reapproval”.
- Subdivision (b)(1) replaces the word “new” with the more accurate word, “corrected.”
- Subdivision (d)(2) replaces “revoking” with “rescinding” for accuracy.
- Subdivision (f) replaces “A” with “An” before “MPN applicant” and strikes the former procedure for appeal with the new process to file a “Petition Appealing the Administrative Director’s Medical Provider Network Determination” with the Workers’ Compensation Appeals Board, pursuant to WCAB Rule 10959 with service of a copy of the petition on the Administrative Director.

Proposed Amendments to Section 9767.14 — Suspension or Revocation of Medical Provider Network Plan; Hearing

- Section 9767.14 specifies the parameters for suspending or revoking an MPN and the procedures for re-evaluation and appeal.
- The title of the section is amended to include “Probation” as a new administrative action that can be taken by the Administrative Director.
- Subdivision (a) adds the authority of the Administrative Director to place an MPN on probation among other actions and strikes the text “approval of a MPN Plan.”
- Subdivision (a)(3) is replaced by text setting forth a new situation under which that the Administrative Director may take action if an MPN fails to meet the requirements for reapproval.
- Subdivisions (a) (4) and (5) are renumbered from the original subdivisions (a)(3) and (4), respectively to accommodate amendments to this section.

- Proposed subdivision (a)(6) clarifies when an MPN applicant no longer meets the eligibility requirements to have an MPN.
- Proposed subdivision (a)(6)(A) specifies the consequences once an MPN no longer meets the eligibility requirements to have an MPN, including the automatic suspension of the MPN by operation of law and that MPN coverage will not be deemed valid for new claims during the period of suspension. This subdivision also sets forth the MPN requirement to inform any injured worker with a new claim during the effective dates of an MPN’s suspension of the right to choose a physician within a reasonable geographic area 30 days after reporting the injury. After a suspension has ended, any transfer of the employee’s care back into the MPN shall be subject to the MPN transfer of care requirements.
- Proposed subdivision (a)(7) adds that the Administrative Director may take administrative action if the MPN fails to respond to at least two or more repeated requests or inquiries by the Administrative Director to comply with MPN requirements.
- Subdivision (b) replaces references to “deficiencies” with “violations” for accuracy and adds the new authority to place an MPN on “probation.”
- Subdivision (c) replaces “A” with “An” before “MPN applicant” and adds the word “probation” as another action the Administrative Director can take and have reevaluated.
- Subdivision (d)(2) replaces the word “revoking” with “rescinding” when referring to the Administrative Director’s Notice of Action.
- Subdivision (f) replaces “A” with “An” before “MPN applicant” and strikes the former procedure for appeal with the new process to file a “Petition Appealing the Administrative Director’s Medical Provider Network Determination” with the Workers’ Compensation Appeals Board, pursuant to WCAB Rule 10959 with service of a copy of the petition on the Administrative Director.

Proposed Amendments to Section 9767.15 — Compliance with Permanent MPN Regulations

- Section 9767.15 sets forth the grandfathering requirements for MPNs to comply with the permanent regulations that went into effect on September 15, 2005.
- The title of the section is amended to replace the reference to “permanent” with “current” regulations and to include “Reapproval” at the end of the title.

- Subdivision (a) is replaced in its entirety with proposed language to require that all MPNs approved prior to January 1, 2014 must file modifications to become compliant with the current regulations by January 1, 2015 or sooner through a reapproval filing, if applicable.
- Subdivision (b) is replaced in its entirety with the new requirement that an MPN applicant shall file a complete application for reapproval at least six months prior to the expiration of the MPN's four-year approval.
- Subdivision (b)(1) is replaced with new text that specifies for MPNs approved prior to January 1, 2014, the four-year date of approval begins from the most recent approved filing prior to January 1, 2014.
- Subdivision (b)(2) is replaced with new text that specifies for MPNs approved after January 1, 2014, the first four-year date of approval begins from the date the original application is approved.
- Subdivision (b)(3) is replaced with new text that specifies after an MPN has been reapproved, the expiration of reapproval will be four years from the date of the most recent reapproval.
- Subdivision (b)(4) is replaced with new text that specifies each application for reapproval shall meet all requirements for a new MPN original application.
- Subdivision (b)(5) is replaced with new text that specifies each filing for reapproval shall use geocoding software to create a separate map for each specialty for all listed providers within the service area to establish compliance with the access standards for the MPN geographic service area.
- Proposed subdivision (b)(6) specifies the time frames for the review process for an application for reapproval will be the same as for an original application.
- Proposed subdivision (b)(7) specifies the potential actions the Administrative Director may take if an MPN filing for reapproval is not filed within the requisite six months prior to the expiration of approval or if an application for reapproval is filed less than 60 days prior to the approval expiration date.
- Subdivision (c) is deleted in its entirety as unnecessary.

Proposed Amendments to Section 9767.16 — Notice to Employee Upon Termination, Cessation of Use, or Change of Medical Provider Network

- Section 9767.16 sets forth the requirements for notice to employees when an MPN is terminated, ceases to be used or when there is a change of MPN.
- The section title is deleted in its entirety and replaced by the new subject matter of the section, "Medical Provider Network Complaints."
- The existing text for subdivisions (a) through (g) is deleted in its entirety and replaced by the new requirements for the Medical Provider Network Complaint process.
- Subdivision (a) is replaced by new text that specifies any person contending a Medical Provider Network is in violation of the statutory or regulatory MPN requirements shall submit a written complaint directly with the MPN Contact.
- Subdivisions (a)(1)(A)–(F) is replaced by next text that sets forth the requirements for a written complaint, including the specific statutory or regulatory provisions violated; when the alleged violation occurred; if the violation is still occurring; what attempts were made with the MPN to address the violation; what impact, if any, on an injured worker; and what remedy is sought for the alleged violation.
- Proposed new subdivisions (a)(2)(A)–(C) specify that an MPN shall have thirty (30) calendar days from the date the complaint was received to respond in writing to the complainant and how to determine when the complaint is deemed to have been received.
- Proposed new subdivisions (a)(3)(A)–(B) set forth the actions that an MPN can take within thirty (30) calendar days from the date the complaint was received. Specifically, the MPN can take reasonable actions to remedy the violation, state any additional actions it will be taking if more time is needed for a remedy, or deny there is a violation.
- Subdivision (b) is replaced with new text that sets forth the procedure to file a written complaint with the Division of Workers' Compensation against the MPN if the MPN has not responded to the alleged violation within thirty (30) calendar days. In addition, if the complainant can show imminent and serious threat to the health of an injured worker, a written complaint with the Division of

Workers' Compensation can be filed concurrently with the written complaint submitted to the MPN.

- Subdivision (b)(1) is replaced and new text requires that the DWC MPN Complaint Form set forth in California Code of Regulations, title 8, section 9767.16.5, be used to file a written complaint with DWC. The complainant shall provide written details of the MPN's violation along with documentary evidence that the MPN has been notified according to subdivision (a) of this section. A copy of the DWC MPN Complaint Form shall be served on the MPN Contact.
- Subdivision (b)(2) is replaced and new text states the Administrative Director may choose to investigate only complaints which provide credible evidence that a violation exists.
- Proposed new subdivision (b)(2)(A) allows the Administrative Director to request additional information or documentary evidence to investigate the allegations. The MPN or the complainant shall have thirty (30) calendar days from receipt of the Administrative Director's request to provide the requested information.
- Proposed new subdivision (b)(3) states that the Administrative Director shall notify the MPN Contact in writing if violations are found. This subdivision also specifies the procedures the Administrative Director shall follow if the MPN fails to remedy the violation as required.

Proposed Section 9767.16.5 — DWC Medical Provider Network Complaint Form 9767.16.5

- This section is the complaint form to be filed with DWC by any person contending a Medical Provider Network is in violation of MPN requirements. The form contains identifying information regarding the complainant and identifying information regarding the MPN. The form requires specific information regarding the alleged MPN violation(s) and requests a brief description of the complaint including a citation of the specific statutory or regulatory provisions violated; when the alleged violation occurred; if the violation is still occurring; what attempts were made with the MPN to address the violation; what impact, if any, on an injured worker; and what remedy is sought for the alleged violation. The form includes instructions for proper submission of the complaint.

Proposed Section 9767.17 — Petition for Suspension or Revocation of a Medical Provider Network

- Proposed new section 9767.17 sets forth the requirements for a third-party Petition for Suspension or Revocation of a Medical Provider Network.
- Proposed new subdivisions (a)(1) and (2) require the DWC Petition for Suspension or Revocation of a Medical Provider Network Form 9767.17.5 to be filed with DWC by any person who can show either an MPN applicant failed to maintain its qualifying status to have an MPN, or that an MPN systemically fails to meet MPN access standards for each commonly used specialty in at least two specific locations within the MPN geographic service area.
- Proposed new subdivision (b) clarifies that inclusion or exclusion of a provider in an MPN is not grounds to file a Petition for Suspension or Revocation of a Medical Provider Network.
- Proposed new subdivisions (c)(1) through (3) require the petitioner to include all supporting documentation, verified under penalty of perjury and with proof of service directly to the Administrative Director. The petitioner shall concurrently serve a copy of the petition and all supporting documentation on the MPN's authorized individual. The petition shall include details that show a violation; and documentation showing all attempts to contact the MPN to address the alleged violation; the results of petitioner's attempts to determine if the MPN has met the MPN requirements at issue; and what impact the violation has had on injured workers.
- Proposed new subdivision (d) sets forth the time frame of thirty (30) calendar days after the date of service of the petition for the MPN to submit a verified response to the allegations in the petition. The response shall be served concurrently on the Administrative Director and on the petitioner.
- Proposed new subdivision (e) specifies that the Administrative Director has thirty (30) calendar days from the last day for the MPN to file a response to make reasonable requests for additional information from the MPN or the petitioner.

- Proposed new subdivision (e)(1) gives the MPN or the petitioner thirty (30) calendar days from receipt of the Administrative Director’s request to provide the requested information.
- Proposed new subdivision (f) specifies that the Administrative Director will issue an administrative Decision and Order either granting or denying the petition within sixty (60) calendar days of receipt of all the requested information or additional evidence.
- Subdivision (g) once the Administrative Director issues a Decision and Order, the procedures set forth in section 9767.14 and/or section 9767.19 may apply.
- Proposed new subdivision (a) states the Administrative Director may conduct random reviews of any approved Medical Provider Network to determine if the requirements of this article and Labor Code section 4616 through 4616.7 are being satisfied.
- Proposed new subdivision (a)(1) limits random reviews to once in a two–year period, but clarifies that an MPN may still be subject to investigation by the Administrative Director for good cause.
- Proposed new subdivisions (a)(2)(A) and (B) set forth the procedure for DWC to initiate a random review. A “Notice of Random Review” shall be issued to an MPN’s authorized individual specifying the parameters of the review, including the time frame and scope of review. Reasonable requests for information or documentary evidence by DWC may include, but not be limited to: proof the MPN applicant is eligible to have an MPN; a copy of the MPN’s most recent approved plan submission; a copy of the most current network provider listing; the URL address for the provider listing; a copy of the telephone call logs tracking the calls and the contents of the calls made to and by the MPN medical access assistants and the MPN Contact during the last thirty (30) calendar days preceding the date of the DWC request; and copies of the written MPN physician acknowledgments.

Proposed Section 9767.17.5. DWC Petition for Suspension or Revocation of a Medical Provider Network Form 9767.17.5

- This section is the petition form to be used by any person who can show that an MPN applicant failed to maintain its qualifying status to have an MPN, or that an MPN has a systematic failure to meet access standards for each commonly used specialty in at least two specific locations within the MPN geographic service area. This form is comprised of Part A for the petition itself and Part B for the response to the petition.
- Part A is to be completed by the petitioner. Part A contains identifying information regarding the petitioner and identifying information regarding the MPN. The form requires the petitioner to check the basis for the petition and, if the violation is a failure to meet access standards under 9767.5(a) through (d), then to provide the locations where the access standards are not met. Part A then requires the petitioner to state the reasons for the petition and then provides a verification section under penalty of perjury and instructions to include a proof of service.
- Part B is the MPN response to the Petition for Suspension or Revocation of a Medical Provider Network. Part B contains identifying information regarding the MPN and then asks the MPN to explain why the Petition should not be granted. Part B then provides a verification section under penalty of perjury and instructions to include a proof of service.

Proposed Section 9767.18 — Random Reviews

- Proposed new section 9767.18 sets forth the requirements for random reviews by the Administrative Director of any approved Medical Provider Network.

- Proposed new subdivision (a)(3) gives the MPN thirty (30) calendar days from receipt of the Administrative Director’s request, to provide DWC with the requested information.
- Proposed new subdivision (a)(4) states that if the random review reveals a violation of MPN requirements the Administrative Director shall notify the MPN applicant in writing of the specific violations(s) found and may follow the procedures set forth in section 9767.14 and/or section 9767.19.

Proposed Section 9767.19. — Administrative Penalty Schedule; Hearing

- Proposed new section 9767.19 sets forth the administrative penalties that may be assessed against a Medical Provider Network for a violation of Labor Code sections 4616 through 4616.7 and of Title 8, California Code of Regulations, sections 9767.1 *et seq.*
- Proposed new subdivisions (a)(1)(A)–(G) set forth the penalties if an MPN violates the filing requirements with DWC.

- Failure to file an original Notice of MPN Plan Modification within fifteen (15) business days of a change in the name of the MPN or the MPN applicant, \$500 initially and for each seven calendar days thereafter if the failure continues, up to \$5,000.
- Failure to file an original Notice of MPN Plan Modification within five (5) business days of a change in the MPN applicant's eligibility status, \$2,500.
- Failure to file an original Notice of MPN Plan Modification within fifteen (15) business days of a change in DWC liaison or authorized individual, \$500 initially and for each seven calendar days thereafter if the failure continues, up to \$5,000.
- Failure to file an original Notice of MPN Plan Modification for a material change in any of the employee notification materials, including but not limited to a change in MPN contact information or a change in provider listing access or website information required by section 9767.12, \$2,500.
- Failure to file an original Notice of MPN Plan Modification for all other material changes that require the filing of a Modification of MPN plan as set forth in §9767.8, \$1,000.
- Failure to file an original application for MPN reapproval within the time frames set forth in §9767.15, \$2,500.
- Failure to include geocoding of its current provider listing with the MPN reapproval application, \$1,000 for each 30 days or part thereof that the failure continues after the date of submission of the reapproval application.
- Proposed new subdivisions (a)(2)(A)–(D) set forth the penalties if an MPN violates the MPN notice requirements.
 - Failure to provide the written MPN employee notification to an injured covered employee pursuant to §9767.12(a), \$1,000, per occurrence.
 - Failure to provide a complete or correct MPN notice required under section 9767.12 to an injured covered employee, \$250 per occurrence up to \$10,000.
- Failure to provide an injured covered employee who is still treating under an MPN written notice of the date the employee will no longer be able to use the MPN, \$1,000.
- Failure to provide the MPN Independent Medical Review notice, \$500 for each employee for whom the notice is not provided when required.
- Proposed new subdivisions (a)(3)(A)–(G) set forth the penalties if an MPN violates network access requirements.
 - Failure to perform at least quarterly updates to confirm the accuracy of the medical and ancillary provider listings, for each inaccurate entry, \$250, up to a total of \$10,000 per quarter.
 - Failure to update reported inaccuracies in the network provider listing within thirty (30) days of notice to the MPN through the contact method stated on the provider listings, \$500, up to a total of \$5,000, per month.
 - Failure to meet the access standards, including approved alternative access standards or approved out-of-network treatment, for a specific location within the MPN geographic service area or areas described in its MPN plan \$5,000 for each geographic service area affected, up to a total of \$50,000.
 - Failure to respond to calls made to the MPN medical access assistant by the next day, excluding Sunday and holidays, \$250 for each occurrence and \$50 for each additional day a response is not provided, up to a total of \$1,000 per occurrence.
 - Failure to ensure an appointment for non-emergency services for an initial treatment is available within 3 business days of the MPN applicant's receipt of a request for treatment within the MPN, \$500 for each occurrence.
 - Failure to ensure an appointment for non-emergency specialist services is available within 20 business days of the MPN applicant's receipt of a referral to a specialist within the MPN, \$500 for each occurrence.

- Failure to provide at least a regional area listing of MPN providers or specialists to an injured covered employee upon request, \$2,500 for each occurrence.
- Subdivision (a)(4) sets forth the penalties if an MPN fails to cooperate with DWC’s requests for information or documentary evidence.
 - Failure to respond to a request for information or documentary evidence pursuant to an MPN complaint, Petition for Suspension or Revocation of an MPN, random review, or investigation within thirty (30) calendar days of DWC’s request, \$2,500.
- Proposed new subdivision (b) sets forth the procedures if an MPN violation is found. The MPN applicant will have ten days after notice of the violation to correct the violation and respond within ten days. If the Administrative Director determines that the violation has not been cured, he or she shall issue a Notice of Action to the MPN applicant that specifies the time period in which the administrative penalty will take effect by U.S. Mail.
- Proposed new subdivision (c) allows an MPN applicant to submit a written request to the Administrative Director for mitigation of penalties. Factors to be considered for mitigation include the MPN’s attempts to address the violation(s), the responsiveness and good faith of the MPN, the frequency of violations found, the history of violations by the MPN, the medical harm or consequences of the violations(s) on an injured worker(s), and any extraordinary circumstances that may be relevant to mitigation of the penalties, when strict application of this mitigation provision would be clearly inequitable.
- Proposed new subdivision (d) sets forth the procedures for an MPN applicant to request a re-evaluation of the Administrative Director’s penalty decision within 20 days of the issuance of the Notice of Action.
- Proposed new subdivisions (e)(1)(2) states that the Administrative Director will respond within 45 days of receipt of the request for re-evaluation by either issuing a Decision and Order affirming the Notice of Action or issuing a Decision and Order rescinding the Notice of Action.

- Proposed new subdivision (f) allows the Administrative Director to extend the 45-day response for an additional 30 days and may order a party to submit additional documents or information.
- Proposed new subdivision (g) sets forth the procedure for the MPN applicant to appeal the Administrative Director’s decision and order. Within twenty (20) days of the issuance of the decision and order, an MPN applicant may file a “Petition Appealing Administrative Director’s Medical Provider Network Determination” with the Workers’ Compensation Appeals Board pursuant to WCAB Rule 10959 and concurrently serve a copy of the petition on the Administrative Director.

Objective and Anticipated Benefits of the Proposed Regulations:

The objective of the proposed regulations is to make the MPN system more effective by addressing provider and access concerns, by streamlining the notice requirements, and by increasing administrative authority to ensure proper compliance with MPN regulations.

The proposed regulations will be beneficial to the health and welfare of California residents, worker safety, and the state’s environment by enabling significant numbers of injured workers in California to have a more effective and streamlined method of obtaining reasonable and necessary medical treatment to help injured workers return to work in a more cost-effective manner for employers and insurers.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Acting Administrative Director has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Acting Administrative Director has concluded that these are the only regulations that concern Medical Provider Networks for purposes of Labor Code section 4616.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Acting Administrative Director has made the following initial determinations:

- Mandate on local agencies and school districts: None.

- Cost or savings to any state agency: state agencies in their capacity as employers will have savings by assuring that their MPNs have the capacity to deliver medical care for injured workers and will have reduced frictional cost (litigation cost) in the provision of medical benefits to injured workers. Net savings will offset increased operational costs.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.
- Cost impacts on a representative private person or business: The Acting Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. These representative private persons or directly affected businesses are insurance companies or self-insured employers. The regulations allow the insurers and self-insured employers to have more control over the providers who will treat the injured workers and should reduce medical costs if they choose to establish an MPN.
- Significant, statewide adverse economic impact directly affecting businesses and individuals: The proposed regulations change existing procedures and forms to comply with statutory changes. Minor transactional costs will be offset by the streamlining of notice requirements. Therefore, the Acting Administrative Director concludes that the regulations will not have a significant, adverse economic impact directly affecting business, nor affect the ability of California businesses to compete with businesses in other states.
- Significant effect on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Acting Administrative Director concludes that it is (1) likely the proposal will create some jobs within the State of California, (2) unlikely that the proposal will eliminate any jobs within the State of California, (3) likely that the proposal will create some new businesses within the State of California, (4) unlikely that the proposal will eliminate any existing businesses within the State of California, and (5) unlikely the proposal would cause the expansion of businesses currently doing business within the State of California.

Benefits of the Proposed Action: The benefit anticipated from the regulations is to make the Medical Provider Network scheme more effective and efficient. The proposed regulations provide the forms and make specific the procedures to implement mandatory statutory changes under SB 863 to Medical Provider Networks.

Small Business Determination: The Acting Administrative Director has determined that the proposed regulations will not affect small businesses to a significant degree. The regulations apply predominantly to insurance companies and self-insured employers, which are not considered small businesses.

CONSIDERATION OF ALTERNATIVES

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

The Acting Administrative Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period, or at the public hearing.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rule-making notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
 Regulations Coordinator
 Department of Industrial Relations
 Division of Workers’ Compensation
 P.O. Box 420603
 San Francisco, CA 94612
 E-mail: mgray@dir.ca.gov
 Telephone: (510) 286-7100

**CONTACT PERSON FOR
SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Yu–Yee Wu or John Cortes
Division of Workers’ Compensation
P.O. Box 420603
San Francisco, CA 94142
Email: yu–yeewu@dir.ca.gov
jcortes@dir.ca.gov
Telephone: (510) 286–7100

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

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this Notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, pre–rulemaking comments and the Economic Impact Statement (Form STD 399). In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division’s website at www.dir.ca.gov. To access them, click on the “Proposed Regulations — Rulemaking” link and scroll down the list of rulemaking proceedings to find the Medical Provider Network (MPN) link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers’ Compensation, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

After considering all timely and relevant comments received, the Acting Administrative Director may adopt the proposed regulations substantially as de-

scribed in this notice. If the Acting Administrative Director makes modifications which are sufficiently related to the originally proposed text, the Acting Administrative Director will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Acting Administrative Director adopts the regulations as received.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this Notice or may be accessed on the Division’s website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director’s mailing list.

If adopted, the regulations as amended, will appear in California Code of Regulations, title 8, commencing with section 9767.1. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.

**TITLE 14. DEPARTMENT OF
CONSERVATION**

The California Department of Conservation (Department) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action. With this rulemaking the Department will renumber Title 14, Chapter 6, sections 3000 through 3015 to: Title 14, Chapter 6, Article 1, sections 3100 through 3115, and add these proposed regulations as Title 14, Chapter 6, Article 2, sections 3100 through 3118.

PUBLIC HEARING

At this time, no public hearing has been scheduled concerning the proposed regulation. Any interested person or the person’s representative may request a public hearing; he or she must do so no later than September 15, 2013, by contacting the Contact Person set forth below.

WRITTEN COMMENT PERIOD

Any person, or his or her authorized representative, may submit written statements, arguments, or com-

ments related to the proposed regulatory action to the Department. Comments may be submitted by mail to the contact person noted below, or may be submitted by facsimile (FAX) to (916) 327-3430 or by email to solar.ag.comments@conservation.ca.gov. The written comment period closes at 5:00 p.m. on September 30, 2013. The Department will consider only comments received at the Department's offices by that time. Submit comments to:

John Lowrie
 Department of Conservation
 801 K Street, MS 18-01
 Sacramento, CA 95814

AUTHORITY AND REFERENCE

Government Code sections 51191, 51191.3, and 51191.8 authorize the Department to adopt these regulations. The proposed regulations implement, interpret, and make specific Government Code sections 51190, 51191, 51191.3, 51191.5, and 51192.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

As our State, nation, and the world have developed, so has the need for energy to operate our homes, businesses, and industries. Much of the energy used is electrical energy, and, historically, much or most of that electricity has been produced by burning fossil fuels. It is now widely accepted that the burning of fossil fuels results in the production of carbon dioxide and other "greenhouse gasses." As a result of the many catastrophic projections of the future, if greenhouse gasses continue to accumulate in the atmosphere, the state has adopted a number of goals and strategies to encourage the production of electricity from renewable resources and thereby reduce the production of greenhouse gasses. One of those strategies is to encourage the use of photovoltaic energy to produce electricity,

In order to meet its renewable energy goals, it has been estimated that photovoltaic panels will need to be installed on 100,000 or more acres of land, and possibly ranging up to 1 million acres to meet the 2050 greenhouse gas reduction targets. Unfortunately, many of the same attributes that make land useful as farmland, such as an abundance of sun and flat, wide open spaces, make the land attractive to developers of photovoltaic facilities.

SB 618 (Wolk, Chapter 596, Statutes of 2011) encourages the development of photovoltaic facilities on marginal and impaired farmland by creating solar-use easements. These easements balance the benefits arising

from the development of photovoltaic electricity generation facilities, which are renewable resources, and the value of prime farmland. The Legislature found that "encouraging utility scale photovoltaic energy facilities on marginally productive or physically impaired land by providing expedited termination of Williamson Act contracts, without penalty, will protect the many statewide benefits of the program while providing significant economic incentives for new solar power development." In addition to enacting SB 618 and creating solar-use easements, the Legislature also empowered the Department to adopt regulations to implement the provisions of the bill.

This rulemaking action clarifies, interprets, implements, and makes specific the procedural and substantive requirements that a landowner, applicant, or project proponent must satisfy in order to place land under a solar-use easement. These regulations will also clarify, interpret, implement, and make specific the roles of cities, counties, and the Department in processing proposals and applications for solar-use easements.

The Regulations

Government Code (GC) 51191 requires the Department, in consultation with the Department of Food and Agriculture, to determine whether a parcel or parcels are eligible for a solar-use easement. GC 51191(c) requires the Department, also in consultation with the Department of Food and Agriculture, to review the landowner's or applicant's (landowner, applicant) proposed management plan for the solar-use easement parcel(s). GC 51191(e) authorizes the Department to establish a fee to be paid by the landowner to recover the Department's estimated costs to conduct the consultations.

Proposed regulation section 3100 would specify a one-time fee of \$7,100 to be charged by the Department to conduct the consultation provided by GC 51191. Section 3100 would allow the landowner or applicant to pay that fee in two components; one component would be for the determination of eligibility of the parcel(s) for placement into a solar-use easement, and the other component would cover the estimated cost to the Department for its review and consultation upon the landowner, applicant's proposed management plan for the solar-use easement land. If the Department determines that the parcel(s) are not eligible for placement under a solar-use easement, the landowner or applicant may rescind their application and need not pay the second component.

Section 3101 will adopt definitions for "solar-use easement project," "project," "solar-use easement landowner," "solar-use easement land," "solar-use easement statutes," "operator," and "applicant" which are terms utilized repeatedly in the regulations.

Section 3102 states, in one place, the information that must be included in all applications for solar-use easements. This section makes clear that the written narrative required by new GC 51191(b)(1) and section 3103 of this Article, is a required component of all applications. Subdivisions (1.) through (6.) list information that identifies and describes the nature of the project. This regulation also clarifies that the information listed in sections 3104 through 3107 will only be required to the extent that the information is applicable to the application.

Section 3103 prescribes the information that will be required for the written narrative referenced in GC 51191(b)(1) and require the narrative to be a component of all applications.

Section 3104 clarifies the requirements for a soil test report. This regulation will also clarify that a soil test report is only required when eligibility is based upon reduced productivity of the proposed solar-use easement's soil.

Section 3105 describes the information that will be required in a water availability analysis. This regulation will also clarify that this analysis is only required if eligibility is premised upon an insufficiency of water that would be needed for continued agricultural production.

Section 3106 describes the information required for a water quality analysis. This section will clarify that it is only applicable if an applicant landowner asserts that the quality of the water available to the proposed solar-use easement land significantly reduces agricultural productivity.

Section 3107 will describe the information necessary to determine whether the crops and yield on the site demonstrate impairment of the soil. This regulation will require landowners who are basing eligibility upon reduced crop yield to disclose the crop and yield history on the solar-use easement site.

Once the requirements of section 3102 through 3107 have been satisfied, to the extent applicable, the Department can make a determination whether the site is eligible for a solar-use easement.

Section 3108 establishes the requirements for a soil management plan and a site restoration plan. Section 3108(a) requires that the soil management plan include the soil management practices to be utilized while the solar-use project is occurring on the easement land. The practices to be included are construction, grading, soil removal techniques, irrigation, and erosion protection. The plan must also disclose the effect of soil removal activities upon the easement's soil. Section 3108(b) describes the information that will be required for the site restoration plan, which the solar-use easement statutes require as part of a management plan. Section 3108(c) will require a landowner who proposes to change their project in such a way as the management plan will no

longer be adequate to restore the easement land, to submit a proposed amended plan to the city or county and the Department. Section 3108(d) will require the landowner to amend their management or restoration plan when the city or county or the Department determine that a management or restoration plan is not adequate to ensure restoration of the easement land.

Section 3109 re-states provisions in the solar-use easement statutes that allow the Department, cities and counties to place restrictions, conditions, and covenants on solar-use easements that are in addition to the restrictions, conditions, and covenants specifically denominated in the statutes.

Section 3110 provides cities and counties with authority to inspect the uses on solar-use easement lands. Inspection authority is necessary to ensure compliance with the easement requirements and enable the city or county to take any necessary enforcement actions.

Sections 3111 through 3116 establish the requirements for posting financial securities, as authorized and required by GC 51191.3(b)(3) and (c), to ensure restoration of the easement site to the same general condition as existed prior to the easement.

Section 3111 prescribes the methods for determining the proper amount of restoration security to be provided by the landowner or operator.

Section 3111(a) clarifies and implements GC 51191.3(b)(3) of the solar-use easement statutes in that it states that cities and counties may, but do not need to, require restoration securities for solar-use easements that are perpetual.

Section 3111(b) will re-state the statutory requirement that a landowner must post financial securities to ensure restoration of land that will be entered into easements that are not perpetual in that the easement will expire after some period or will only continue until such time as the easement is not renewed. This regulation will clarify that the security be in effect from the date of the establishment of the easement until restoration is complete. Subsections (c) through (f) will require that the security be in an amount adequate to ensure restoration, be made payable to the city or county, and be submitted for review and approval by the city or county in consultation with the Department prior to commencement of any operations on the easement land. Subsection (g) will require the landowner to review the security at least every five years, or as often as the city or county determines is necessary to keep the security current.

Section 3112 will describe the amount and type of financial instruments that satisfy the requirements for restoration securities. Section 3112(a) will indicate that cities and counties have discretion to determine what constitutes adequate restoration security for perpetual easements. Section 3112(b) describes the types of secu-

rities that can satisfy the requirements for term easements and self-renewing easements. Section 3112(c) will require that the security be in an amount sufficient to cover restoration of the easement land. Section 3112(d) will clarify that restoration security constitutes an obligation by the landowner to the city or county.

Section 3113 will require that cities and counties proposing to enter into a term easement or a self-renewing easement submit a copy of a proposed restoration security instrument to the Department along with the calculation of restoration security amount.

Section 3114 will establish requirements that must be met in order for a restoration security amount to be reduced or the security released. Section 3114(a) will allow cities and counties to determine when and under what conditions restoration security can be reduced or released for perpetual easements. Section 3114(b) will require the submission of information regarding the status of the easement to the Department before the security can be reduced or released. Section 3114(c) will allow the Department to review and comment upon proposals to reduce or release restoration security.

Section 3115 will require submission by the landowner to the Department of any proposal to amend a management plan or restoration plan, and require the payment of a fee to cover the Department's estimated cost to review the proposed amendment. The fee shall be not more than the Department's actual cost to review the amendment, but not exceed the \$2,200 fee for review of an initial management plan.

Section 3116 will provide explicit grounds for forfeiture of restoration security. This regulation will explicitly allow cities and counties to require a landowner to forfeit their restoration security under certain conditions.

Sections 3117 will provide criteria to determine whether a landowner applicant is financially capable of completing restoration.

Section 3118 will ensure that landowners be provided a public hearing before their restoration security is forfeited. It will allow the city or county to determine the hearing process when they conduct the hearing. When the Department conducts the hearing, this regulation will prescribe use of the Informal Hearing process established in the State's Administrative Procedures Act.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

The regulation will benefit the welfare of the people of this State by encouraging the development of utility-scale photovoltaic facilities of farmland that is either marginally productive or physically impaired instead of on prime farmland or farmland that provides the people

of this state, this nation, and the world with a steady supply of high-quality, low-cost fresh foods.

CONSISTENCY WITH FEDERAL STATUTE AND REGULATION

There are no federal regulations addressing or regulating the development of photovoltaic solar electricity generation facilities on farmland. Therefore, the proposed regulation would not conflict or duplicate federal law, or otherwise be inconsistent or incompatible with existing federal regulations.

CONSISTENCY WITH EXISTING STATE REGULATIONS

The authority to establish solar-use easements was enacted by the statutes included within SB 618. There are no other state statutes or regulations that regard creation of solar-use easements. Therefore, this regulation would not be inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: The statute implemented by the proposed regulation allows the Department to recover its estimated cost to conduct the consultation mandated by GC 51191. Therefore, the regulation will save the Department the costs that it would otherwise incur to carry out the consultations mandated to it by GC 51191.

The Department of Food and Agriculture is likely to incur some costs in its consultation with the Department regarding eligibility of parcel(s) for solar-use easements and on proposed management plans. However, the consultation to be provided by the Department of Food and Agriculture is required by GC 51191, not these regulations. Therefore, these regulations will not impose costs or result in savings to any other state agency.

Costs to any local agency or school district that must be reimbursed in accordance with GC 17500 through 17630: None.

Other non-discretionary cost or savings imposed on local agencies: Costs will only be incurred by those cities and counties that elect to establish solar-use easements; therefore, these regulations will not impose any costs or savings on any local agency that does not agree to take on the costs. To the degree that cities and counties incur costs, the costs will likely be incurred to col-

lect and review information regarding proposed and ongoing solar–use easements, and to police the easements.

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

COST IMPACTS ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department anticipates that these regulations will result in one–time costs to a representative private person or business that are not likely to significantly exceed \$10,000. The costs include \$7,100 for the initial eligibility determination and review of the management and restoration plan. There may be additional costs, likely to be in the range of \$3,000, for acquisition and submission of information to support the application for a solar–use easement.

The additional \$3,000 in costs is based upon, and consistent with, the Department’s estimation that the cost for the soil survey will be \$2,425. Instead of a soil survey, a landowner might incur costs to acquire and submit other of the requisite application information. However, the Department anticipates that that information will typically already be in possession of a landowner and, therefore, the landowner will incur no cost to collect and submit the information. If there is a cost to acquire and submit the information, the Department anticipates that the cost would likely be no more than the cost of a soil survey. Consequently, the total cost to a representative private person or business would not likely be much more than a one–time cost of \$10,000.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states: The Department has determined that a private person or business that chooses to enter into a solar–use easement would incur one–time costs not likely to significantly exceed \$10,000 in compliance with the proposed action. The Department has initially determined that this cost would be borne by owners of agricultural land that seek to develop solar electricity generation facilities on their land, or developers of solar electricity generation facilities.

The Department has made an initial determination that the adoption of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with business in other states. In making this determination, the Department has relied on the fact that the onetime costs imposed by this regulation would be *de minimis* in relation to the multimillion dollar cost to develop a utility scale photovoltaic electricity generation facility on land to be covered by a solar–use easement.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Since the adverse economic impact on business is not likely to exceed \$10,000, and the total cost to develop the utility–scale solar facilities will run from \$2 million to upwards of \$2 billion, the Department anticipates that these regulations are: (1) not likely to eliminate any jobs associated with development of solar photovoltaic facilities in this state; and, (2) not likely to eliminate any existing businesses.

The Department has made an initial determination that the adoption of this regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with business in other states. In making this determination, the Department has relied upon the assumption that the costs imposed by these regulations would be *de minimis* in relation to the multimillion dollar cost to develop a utility–scale photovoltaic electricity generation facility on land to be covered by a solar–use easement.

Since the costs to be imposed by these regulations is *de minimis* in relation to the multimillion dollar cost to develop a solar facility, this regulation would not result in the creation of new business, the elimination, or the expansion of existing businesses within this state. Similarly, since the regulations would have no significant impact upon business, it would not result in the creation or elimination of jobs in this state.

BENEFITS OF THE PROPOSED REGULATION

The regulation will benefit the welfare of the people of this State by encouraging the development of utility–scale photovoltaic facilities on farmland that is either marginally productive or physically impaired instead of on prime farmland or farmland that provides the people of this state, this nation, and the world with a steady supply of high–quality, low–cost fresh foods. In addition, imposition of the one–time fees to conduct the eligibility determination and review and comment upon the statutorily required management plan will provide the Department with funds to cover the cost of the consultation to be conducted by the Department. The provision of these funds will, therefore, not require the redirection of funds and resources from other responsibilities of the Department’s Division of Land Resources Protection.

HOUSING COSTS

The proposed regulation will have no significant effect on housing costs.

BUSINESS REPORTING REQUIREMENT

These regulations will require the submission of information to cities, counties, and the Department by businesses that propose to, or do, operate photovoltaic facilities. However, the Department finds that it is necessary for the health, safety, or welfare of the people of this state that the submission of information required by these regulations applies to the affected businesses.

SMALL BUSINESS DETERMINATION

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

CONSIDERATION OF ALTERNATIVES

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

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at any hearing scheduled to take statements or arguments that are relevant to the proposed action.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

John M. Lowrie
Acting Assistant Director
Department of Conservation
Division of Land Resource Protection
801 K Street; MS 18-01
Sacramento, CA 95814
Telephone: (916) 324-9013
Fax: (916) 327-3430

The backup contact person for these inquiries is:

Meri Meraz
Williamson Act Program
Department of Conservation
Division of Land Resource Protection
801 K Street; MS 18-01
Sacramento, CA 95814
Telephone: (916) 324-0850
Fax: (916) 327-3430

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

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

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, the initial statement of reasons, and a standard form 399. The rulemaking file also includes the information upon which the proposed rulemaking is based, which includes the Lawrence Berkeley National Laboratory study: Tracking the Sun IV: An Historical Summary of the Installed Cost of Photovoltaics in the United States from 1998 to 2010, September 2011. The rulemaking file also includes Harvesting Clean Energy; How California Can Deploy Large-Scale Renewable Energy Projects on Appropriate Farmland, October, 2011. In addition, the Department conducted a study to ascertain the likely estimated cost of a soil survey; the results of that study are included in the rulemaking file. In estimating the cost to conduct the consultations mandated by GC 51191 and addressed in sections 3100 through 3108 of these proposed regulations, the Department assumed that its cost to process an application for a solar-use easement would roughly equate with the cost it incurs to process a petition to cancel a Williamson Act contract. Consequently, the Department approximated the number of staff hours necessary to process a cancellation and utilized that calculation to estimate its costs to process a proposal for a solar-use easement. The results of that study are also in the rulemaking file.

Copies of these documents may be obtained by contacting Meri Meraz at the address and phone number listed above.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After the written comment period and any hearing that may be conducted by the Department to accept comments and evidence regarding the adoption of these proposed regulations, the Department will consider all timely and relevant comments received, thereafter the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the original proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Meri Meraz at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT
OF REASONS

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

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikethrough can be accessed through our website at: <http://www.conservation.ca.gov/dlrp/lca/Pages/Index.aspx>.

**TITLE 14. STATE MINING AND
GEOLOGY BOARD**

**PROPOSED NEW REGULATION FOR
MANDATORY NOTIFICATION AND
RECERTIFICATION OF AMENDED
MINING ORDINANCES**

NOTICE IS HEREBY GIVEN that the State Mining and Geology Board (SMGB) proposes to add a new regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

REGULATORY ACTION

The SMGB, pursuant to the Surface Mining and Reclamation Act (SMARA) Public Resources Code (PRC) Section 2774.3, reviews lead agency ordinances which establish permit and reclamation procedures to determine whether each ordinance is in accordance with state policy. In addition, the SMGB certifies each ordinance to assure that the ordinance is in accordance with state policy if the ordinance adequately meets, or imposes requirements more stringent than the California surface mining and reclamation policies and procedures established by the SMGB. Procedures are set forth pursuant to PRC Section 2774.5(a), 2774.5(b) and 2774.5(c), should the SMGB find an ordinance upon review not to be in accordance with state policy. However, there is no mandatory notification to the SMGB, nor mandatory review and recertification, of an amended ordinance which may or may not be in accordance with existing state policy. The SMGB proposes new regulations which would add Article 16 to Title 14 of the California Code of Regulations (CCR), and provide 1) mandatory notification to the SMGB of mining ordinances that have been previously certified by the SMGB, and subsequently amended, and 2) mandatory recertification by the SMGB.

PREVIOUS PUBLIC HEARINGS

At its December 13, 2012 meeting of the Policy and Legislation Committee (Committee), the Executive Officer recommended that the Committee consider discussion of preliminary regulatory language for mandatory notification and recertification of surface mining ordinances being amended by a lead agency. The Committee concurred with such recommendation and directed its Executive Officer to work with the SMGB's legal counsel in developing regulatory language for consideration and further discussion by the Committee.

At its February 13, 2013 meeting, the Committee reviewed draft language for mandatory notification of mining ordinances being amended by the local lead agency as defined under SMARA, and mandatory review and recertification of amended mining ordinances by the SMGB. The Committee subsequently moved to recommend approval of the proposed regulatory language to the whole SMGB. The SMGB, at its April 11, 2013 regular business meeting, approved the proposed regulatory language for mandatory notification to the SMGB of amended mining ordinances, and recertification by the SMGB.

During these public hearings, no specific comments were received. The hearing facility was barrier free in accordance with the Americans with Disabilities Act. At the hearing, an opportunity for any person to present

statements or arguments orally or in writing relevant to the proposed action was available. The SMGB requested, but did not require, that persons who made oral comments at the hearing also submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the SMGB. Comments may also be submitted by facsimile (FAX) at (915) 445-0738 or by e-mail to stephen.testa@conservation.ca.gov. The 45-day comment period will commence on August 16, 2013, and closes at 5:00 p.m. on September 30, 2013. The SMGB will consider only comments received at the SMGB office by that time. No public hearing is scheduled, but any person can request a public hearing no later than 15 days before the close of the written comment period.

AUTHORITY AND REFERENCE

The SMGB proposes to adopt a new regulation, Article 16 of the California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, pursuant to its authority granted in PRC Sections 2755, 2756, 2757, 2758, 2759 and 2760 (Reference PRC Section 2774.5(a), (b) and (c)).

INFORMATIVE DIGEST

Under SMARA, a lead agency is defined as a city, county, San Francisco Bay Conservation and Development Commission, or the SMGB, which has the principal responsibility for approving a surface mining operation or reclamation plan. Pursuant to SMARA, surface mining ordinances are adopted by the lead agency and subsequently certified by the SMGB. Every lead agency is required to adopt ordinances in accordance with state policy which establish procedures for the review and approval of reclamation plans and financial assurances and the issuance of a permit to conduct surface mining operations (PRC Section 2774(a)). Any lead agency without an active surface mining operation in its jurisdiction may defer adopting an implementing ordinance until the filing of a permit application.

Procedurally and administratively, ordinances establish procedures requiring at least one public hearing and are periodically reviewed by the lead agency and revised, as necessary, to ensure that the ordinances continue to be in accordance with state policy. Following adoption by the lead agency, the SMGB reviews the ordinance which establishes permit and reclamation pro-

cedures to determine whether each ordinance is in accordance with state policy, and certifies the ordinance if it adequately meets, or imposes requirements more stringent than, SMARA and the SMGB's regulations (PRC Section 2774.3).

Procedures exist when the SMGB finds that an ordinance, upon review, is not in accordance with existing state policy (PRC Sections 2775.4(a) and 2774.5(b)). Under such circumstances, sufficient time is provided for a lead agency to amend an ordinance to the satisfaction of the SMGB. The SMGB serves as the lead agency when a lead agency does not have a certified ordinance (PRC Section 2774.5(c)).

POLICY STATEMENT OVERVIEW: Surface mining ordinances are amended frequently; however, such amended ordinances rarely come to the attention of the SMGB unless a lead agency requests a review, or via concerns expressed by stakeholders or the public. The proposed new regulatory language would require mandatory notification and recertification of amended mining ordinances, and assure that such amendments remain in accordance with state policy. Mandatory notification and recertification would assure that all surface mining ordinances, both new and amended, will be reviewed and certified by the SMGB to assure that the ordinances remain in accordance with state policy. Administrative procedures associated with the review by the SMGB of ordinances, new or amended, would be consistent with existing procedures pursuant to PRC Sections 2774(a), 2774.5(a), 2774.5(b) and 2774.5(c).

The SMGB has considered any other possible related regulations, and found that these are the only regulations dealing with this subject area (i.e., certification of surface mining ordinances), and therefore, the SMGB finds that the proposed new regulations are compatible and consistent with the intent of the Legislature, as well as with existing state regulations.

The specific benefits anticipated by the proposed new regulation provide nonmonetary benefits to the all stakeholders, and do not conflict with the protection of public health and safety, worker safety, and the prevention of discrimination. The proposed new regulation promotes fairness and social equity, and increases openness and transparency in business and government, among other things.

CEQA COMPLIANCE: The SMGB has determined that this rulemaking action is not a project as defined in the California Environmental Quality Act (CEQA) and is exempt from the requirements of CEQA, Title 14, CCR, Section 15061(b)(3).

DISCLOSURES REGARDING THE PROPOSED ACTION: The SMGB's Executive Officer has made the following preliminary determinations:

Mandate on local agencies and school districts: The adoption of this proposed new regulation does not

impose any new mandates on local agencies or on local school districts.

Costs or savings to any State agency: The proposed new regulation imposes no savings or additional expenses to state agencies.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: The proposed new regulation does not impose any additional cost obligations on local agencies or on local school districts.

Other non-discretionary costs or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies are imposed by the proposed new regulation.

Cost or savings in Federal funding to the State: There are no costs or savings in Federal funding to the State.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: No statewide adverse impacts to California businesses, including the ability of California businesses to compete with businesses in other states, will result from the adoption of this proposed new regulatory language.

Potential cost impact on private persons or directly affected businesses: No potential cost impacts on private persons or directly affected businesses will result from the adoption of this proposed new regulatory language.

Small Businesses: The proposed new regulation pertains to SMARA lead agencies (Counties and cities that have surface mining operations within their respective jurisdictions). When a lead agency amends its mining ordinance, the proposed new regulation would require the lead agency to simply notify the SMGB that its mining ordinance has been amended. The SMGB would subsequently consider recertification of the ordinance per current administrative procedures already set forth in statute. The proposed new regulation does not in any way affect small businesses.

Results of Economic Impact Analysis: The purpose of the proposed new regulation is to require mandatory notification and recertification of amended mining ordinances, and assure that such amendments remain in accordance with state policy.

The adoption of this proposed new regulation will not:

- Create nor eliminate jobs within California;
- Create new nor eliminate existing businesses within California;

- Expand businesses currently doing business in California.

Create or Elimination of Jobs Within the State of California: The purpose of the proposed new regulation is to require mandatory notification and recertification of amended mining ordinances, and assure that such amendments remain in accordance with state policy. No jobs in California will be created or eliminated in regards to the proposed regulation.

Creation of New or Elimination of Existing Businesses Within the State of California: The purpose of the proposed new regulation is to require mandatory notification and recertification of amended mining ordinances, and assure that such amendments remain in accordance with state policy. The imposition of the proposed amendment will have no cost impact on small businesses. The SMGB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no costs related to or associated with the proposed new regulatory language.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California: The purpose of the proposed new regulation is to require mandatory notification and recertification of amended mining ordinances, and assure that such amendments remain in accordance with state policy. The imposition of the proposed new regulation will have no cost impact on small businesses, and no existing businesses in California will be expanded or eliminated.

Significant effect on housing costs: The adoption of this proposed new regulation will have no significant effect on housing costs.

Benefits of the Regulation: The purpose of the proposed new regulation is to require mandatory notification and recertification of amended mining ordinances, and assure that such amendments remain in accordance with state policy. The proposed amendment will not adversely affect the health and welfare of California residents, worker safety, or the State's environment. The adoption of this proposed new regulation will benefit the health and welfare of California residents and the state's environment by assuring that all ordinances are in accordance with state policy.

CONSIDERATION OF ALTERNATIVES: The SMGB must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to af-

ected private persons and equally effective in the statutory policy or other provision of law. The SMGB's Executive Officer has not identified any adverse impacts resulting from the proposed regulation.

No alternatives have been considered by the SMGB at this time that would be more effective in carrying out the purpose for which the regulatory action is proposed, nor have any other alternatives been proposed that would be as effective and less burdensome to affected private persons, lead agencies, or small businesses.

CONFLICT WITH FEDERAL REGULATIONS

This regulation change does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the SMGB, SMARA and federal law are coordinated to eliminate duplication.

GENERAL PURPOSE AND CONDITION ADDRESSED

The SMGB proposes regulations which would add Article 16 to Title 14 of the California Code of Regulations (CCR), and provide 1) mandatory notification to the SMGB of mining ordinances that have been previously certified by the SMGB, and subsequently amended, and 2) mandatory recertification by the SMGB. Mandatory notification and recertification would assure that all surface mining ordinances, both new and amended, will be reviewed and certified by the SMGB to assure that the ordinances remain in accordance with state policy. Administrative procedures associated with the review and certification of ordinances by the SMGB, new or amended, would be consistent with existing procedures pursuant to PRC Sections 2774(a), 2774.5(a), 2774.5(b) and 2774.5(c).

SPECIFIC PURPOSE

The proposed new regulation is intended to assure that all surface mining ordinances, both new and amended, will be reviewed and certified by the SMGB to assure that the ordinances remain in accordance with state policy. Specifically, upon adoption of a new mining ordinance, or amendment of an existing mining ordinance, a lead agency shall, within 30 days of such action, provide written notice of the complete text of the resulting mining ordinance to the SMGB to enable the Board to review the ordinance in accordance with PRC

2774.3, 2774.5(a) and 2774.5(b). In addition, when a lead agency has not provided the SMGB with timely notice of the complete text of its mining ordinance, the mining ordinance shall not be considered to be in accordance with state policy until the mining ordinance is certified by the SMGB as being in accordance with state policy. Administrative procedures associated with the review and certification of ordinances by the SMGB, new or amended, would be consistent with existing procedures pursuant to PRC Sections 2774(a), 2774.5(a), 2774.5(b) and 2774.5(c).

STATEMENT OF NECESSITY

Surface mining ordinances are amended frequently; however, such amended amendments rarely come to the attention of the SMGB unless a lead agency request a review, or via concerns expressed by stakeholders or public. Therefore, the SMGB has no administrative mechanism which allows for the SMGB to determine when an ordinance has been amended, and thus an opportunity to review such ordinance.

IDENTIFICATION OF TECHNICAL THEORETICAL/EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED

Statewide there are 15 mining ordinances certified by the SMGB (Reference: <http://www.conservation.ca.gov/smgb>) reflecting lead agencies that have surface mines within their jurisdiction. No specific technical, theoretical or empirical studies, reports or documents have been relied upon in considering the proposed new regulation.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT
OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Stephen Testa at the address provided below.

CONTACT PERSON

An interested person may request a copy of the proposed amended regulation and the Initial Statement of Reasons. Questions about the proposed regulation and Initial Statement of Reasons can be directed to the SMGB's office. All supplemental information, upon which the regulation is based, is contained in the rule-making file.

The rulemaking file is available for inspection at the SMGB Office at 801 K Street, Suite 2015, Sacramento, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday except during state holidays. Copies of the proposed regulation and the Initial Statement of Reasons may be requested by writing to the above address, or viewed on the SMGB's Internet Web Site at: <http://www.conservation.ca.gov/smgb>

Inquiries concerning the substance of the proposed amended regulation should be directed to:

Mr. Stephen M. Testa,
Executive Officer
State Mining and Geology Board
801 K Street, Suite 2015
Sacramento, California 95814
Phone: (916) 322-1082
Fax: (916) 445-0738
Stephen.Testa@conservation.ca.gov

OR

Amy Scott, Executive Assistant
State Mining and Geology Board
801 K Street, Suite 2015
Sacramento, CA 95814
Phone: (916) 322-1082
Fax: (916) 445-0738
Amy.Scott@conservation.ca.gov

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FISH AND
WILDLIFE**

CESA CONSISTENCY DETERMINATION
REQUEST FOR
Ameresco Interconnection Project
(2080-2013-008-03)
Alameda, County

The Department of Fish and Wildlife (CDFW) received a notice on August 2, 2013, that PG&E proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action involves the reconductoring of three miles of an existing circuit to connect the generating station with PG&E's electric transmission and distribution system. It also includes new pole installation and existing pole replacement. The proposed project will occur north of the City of Livermore, Alameda County, California.

The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal biological opinion (Service File No. 08ESMF00-2013-F-0470-1)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on August 1, 2013, which considered the effects of the project on the state and federally threatened California tiger salamander (*Ambystoma californiense*) and San Joaquin kit fox (*Vulpes macrotus mutica*).

Pursuant to California Fish and Game Code section 2080.1, PG&E is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed project. If the CDFW determines the BO and ITS are consistent with CESA for the proposed project, PG&E will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the project.

**DEPARTMENT OF FISH AND
WILDLIFE**

CESA CONSISTENCY DETERMINATION
REQUEST FOR
Mitchell Creek Riparian Restoration and Fish
Passage Improvement Project (2080-2013-007-03)
Contra Costa, County

The Department of Fish and Wildlife (CDFW) received a notice on July 31, 2013, that the California De-

partment of Parks and Recreation proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed action involves habitat restoration and water quality improvement. The proposed project will occur within Mount Diablo State Park, in Contra Costa County, California.

The U.S. Fish and Wildlife Service (Service) issued a “no jeopardy” federal biological opinion (Service File No. 81420–2011–F–0287–2)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on July 30, 2013, which considered the effects of the project on the state and federally endangered Alameda whipsnake (*Masticophis lateralis euryxanthus*).

Pursuant to California Fish and Game Code section 2080.1, the California Department of Parks and Recreation is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed project. If the CDFW determines the BO and ITS are consistent with CESA for the proposed project, the California Department of Parks and Recreation will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the project.

DEPARTMENT OF HEALTH CARE SERVICES

THE DEPARTMENT OF HEALTH CARE SERVICES IS CHANGING THE MEDI-CAL REIMBURSEMENT METHODOLOGY FOR HOSPITAL INPATIENT SERVICES PROVIDED BY NONDESIGNATED PUBLIC HOSPITALS

This notice is to provide information of public interest about the California Department of Health Care Services’ (Department) intent to change the Medi-Cal reimbursement methodology for acute care inpatient services provided by nondesignated public hospitals, as defined in Section 14166.1 of the Welfare and Institutions Code.

Section 14105.28 of the Welfare and Institutions Code authorizes the creation of a diagnosis related group reimbursement methodology for general acute care inpatient services for reasons identified in the section. The diagnosis related group reimbursement methodology is the All Patient Refined — Diagnosis Related Grouping (APR–DRG), which will replace the nondesignated public hospitals’ two current Medi-Cal fee-for-service (FFS) acute care inpatient reimbursement methodologies. The two methodologies that will be replaced are the Selective Provider Contracting Program (SPCP) (Article 2.6 of the Welfare and Institutions

Code, commencing with section 14081), and the non-SPCP, cost-based FFS reimbursement (Section 14087 of the Welfare and Institutions Code).

This methodology change will take effect for all admissions to nondesignated public hospitals on and after January 1, 2014.

The APR–DRG reimbursement methodology was implemented July 1, 2013 for acute care inpatient services provided by private hospitals.

The Department is implementing this methodology following significant analysis and review of stakeholder feedback.

PUBLIC REVIEW AND COMMENTS

Copies of the State Plan Amendment that amends California’s Medicaid State Plan may be requested, in writing, from Ms. Jennifer Brooks, Department of Health Care Services, Safety Net Financing Division, MS 4518, P.O. Box 997436, Sacramento, CA 95899–7436.

Written comments concerning the proposal may be mailed to Ms. Brooks at the above address and must be received on or before September 30, 2013.

DISAPPROVAL DECISION

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

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

PHYSICAL THERAPY BOARD OF CALIFORNIA

**State of California
Office of Administrative Law**

**In re:
Physical Therapy Board of California**

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

Adopt sections: 1398.14 and 1399.80

Amend sections: 1399.98

Repeal sections:

DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2013-0617-06S

SUMMARY OF REGULATORY ACTION

On June 17, 2013, the Physical Therapy Board of California (the Board) submitted to the Office of Administrative Law (OAL) its proposed regulatory action to adopt sections 1398.14 and 1399.80 and to amend section 1399.98 in Title 16 of the California Code of Regulations (CCR). These regulatory provisions would require licensees to submit a full set of fingerprints to the Department of Justice as a condition of license renewal. Licensees would also be required to disclose to the Board their criminal history information, the existence of any settlement, judgment or arbitration award of over \$3,000 for which they were subject to, and whether they have been denied a license or disciplined by another licensing authority.

On July 30, 2013, OAL notified the Board that OAL disapproved the proposed regulations because the regulations failed to follow procedural requirements of the California Administrative Procedure Act (APA), failed to comply with the necessity and clarity standards of Government Code section 11349.1, and failed to summarize and respond to each comment. This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DECISION

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

1. The Board failed to meet the APA procedural requirement to prepare an economic impact assessment in the rulemaking file in compliance Government Code section 11346.3;
2. The proposed regulations failed to comply with the necessity standard of Government Code section 11349.1, subdivision (a)(1), and title 1 of the California Code of Regulations, section 10, subdivision (b);
After the hearing closed, Dr. Syms also inquired as to the need of this regulation to

require fingerprinting. The Board indicated this is addressed in the rulemaking file.

Although Dr. Syms framed his objections and recommendations in the form of questions, the questions are nevertheless comments. In other words, Dr. Syms commented on the necessity for a 30-day time frame, the clarity of when the 30-day begins and when it ends, and the necessity for a fingerprint requirement. These comments were not summarized or responded to in the final statement of reasons. The Board is required to summarize and respond to these comments before resubmitting the rulemaking action to OAL for review.

CONCLUSION

For the reasons stated above, OAL disapproved this regulatory action proposed by the Board. If you have any questions, please contact me at (916) 323-6824.

Date: August 5, 2013 /s/
Thanh Huynh
Staff Counsel

FOR:
DEBRAM. CORNEZ
Director

Original: Jason Kaiser
Copy: Sarah Conley

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# 2013-0627-02
AIR RESOURCES BOARD
On-Board Diagnostic System Requirements

This regulatory action modifies the monitoring and performance requirements of On Board Diagnostic (OBD) II systems in diesel fueled medium-duty vehicles, the monitoring and performance requirements of heavy-duty OBD systems, and the enforcement provisions applicable to both systems.

Title 13
 California Code of Regulations
 AMEND: 1968.2, 1968.5, 1971.1, 1971.5
 Filed 07/31/2013
 Effective 07/31/2013
 Agency Contact: Amy Whiting (916) 322-6533

File# 2013-0625-04
BOARD OF PAROLE HEARINGS
 Name Change or Agency Name Change

The Board of Parole Hearings submitted this Section 100 action to change the agency's name from the Board of Prison Terms to the Board of Parole Hearings wherever it appears in title 15, California Code of Regulations, section 2000 and in the CCR heading for title 15, division 2. The name of the agency was change from the Board of Prison Terms to the Board of Parole Hearings in a 2005 legislative amendment to Penal Code section 5075.

Title 15
 California Code of Regulations
 AMEND: 2000
 Filed 08/06/2013
 Agency Contact:
 Anne M. Cervantes (916) 445-5277

File# 2013-0729-03
CALIFORNIA COASTAL COMMISSION
 Filing Fees for Processing Applications and Other Filings

The California Coastal Commission (CCSC) proposed to amend section 13055 of title 14 of the California Code of Regulations as a change without regulatory effect to reflect the increase in fees for permit applications and other filings pursuant to title 14, California Code of Regulations, section 13055(c), which allows CCSC to annually adjust the fees set forth in title 14, section 13055, effective July 1st, based on an increase in the California Consumer Price Index for Urban Consumers.

Title 14
 California Code of Regulations
 AMEND: 13055
 Filed 08/06/2013
 Effective
 Agency Contact: Susan Hansch (415) 904-5202

File# 2013-0716-02
CALIFORNIA GAMBLING CONTROL COMMISSION
 State Dept of Alcohol and Drug Program & Gambling Addiction Program Fee

This change without a regulatory effect makes the administration of the Gambling Addiction Program Fund consistent with AB 75 (Committee on Budget, Chapter 22, Statutes of 2013).

Title 4
 California Code of Regulations
 AMEND: 12357, 12463, 12464
 Filed 07/31/2013
 Agency Contact: James Allen (916) 263-4024

File# 2013-0718-02
CALIFORNIA HORSE RACING BOARD
 Exchange Wagering

This regulatory action is to implement interpret and make specific Business and Professions Code section 19604.5, which permits exchange wagering in California as part of SB 1072 (Statutes of 2010, Chapter 283). This action creates regulations regarding a license to provide exchange wagering, the required operating plan to do so, requirements to establish and conduct an exchange wagering account, disciplinary action and related matters.

Title 4
 California Code of Regulations
 ADOPT: 2086, 2086.1, 2086.5, 2086.6, 2086.7, 2086.8, 2086.9, 2087, 2087.5, 2087.6, 2088, 2088.6, 2089, 2089.5, 2089.6, 2090, 2090.5, 2090.6, 2091, 2091.5, 2091.6, 2092, 2092.5, 2092.6, 2093
 Filed 08/06/2013
 Effective 08/06/2013
 Agency Contact: Harold Coburn (916) 263-6397

File# 2013-0718-04
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
 Peace Officer Psychological Evaluation

The Commission on Peace Officer Standards and Training proposed to amend section 1955 of title 11 of the California Code of Regulations concerning peace officer psychological evaluations.

Title 11
 California Code of Regulations
 AMEND: 1955
 Filed 08/06/2013
 Effective 09/01/2013
 Agency Contact: Melani Singley (916) 227-4258

File# 2013-0723-01
CONTRACTORS STATE LICENSE BOARD
 Fees; Class C-5, C-6, C-14, & C-35; & Renewal Fee/Reactivation Credit

This action without regulatory effect eliminates outdated regulatory language.

Title 16
California Code of Regulations
AMEND: 811, 832.05, 832.06, 832.35
REPEAL: 832.14, 854
Filed 08/07/2013
Agency Contact: Betsy Figueria (916)255-3369

File# 2013-0625-03
DELTA STEWARDSHIP COUNCIL
Regulatory Policies Contained in the Delta Plan

This rulemaking action implements the Sacramento-San Joaquin Delta Reform Act of 2009. It enables the enforcement of the regulatory policies of the Delta Plan through a Certification of Consistency process which local and state government agencies will use concerning any covered activities taking place in the Delta which the agencies fund, carry out, or approve. The rulemaking action adopts regulations in Title 23 of the California Code of Regulations which specify the standards of consistency with the Delta Plan for these various Delta Plan regulatory policies.

Title 23
California Code of Regulations
ADOPT: 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013, 5014, 5015, 5016
Filed 08/07/2013
Effective 09/01/2013
Agency Contact: Chris Stevens (916)445-0441

File# 2013-0621-05
DEPARTMENT OF INSURANCE
Annual CAARP Commerical Rate Application Submission

This File/Print action updates the California Automobile Assigned Risk Plan (CAARP) Rules and Rates Manual by amending Rules 57, 73, 75, 123, and 124. The amendments revise rates for commercial auto assigned risk insurance policies by an overall 10.8 percent. This action is exempt from OAL review per the APA "rates, prices, or tariffs" exemption contained in GC section 11340.9(g).

Title 10
California Code of Regulations
AMEND: 2498.5
Filed 08/05/2013
Effective 08/05/2013
Agency Contact: Mike Riordan (415)538-4226

File# 2013-0621-07
DEPARTMENT OF INSURANCE
Annual Low Cost Rate Application Submission

This action amends Title 10, section 2498.6, by updating the "Exhibit E Private Passenger Automobile Liability Rates" by county. The updated rates show an overall decrease of 2.8% for 2013. This action is a file/print rulemaking exempt from OAL review per the APA "rates, prices, or tariffs" exemption contained in GC section 11340.9(g).

Title 10
California Code of Regulations
AMEND: 2498.6
Filed 07/31/2013
Effective 07/31/2013
Agency Contact: Mike Riordan (415)538-4226

File# 2013-0621-01
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
Aerosol Transmissible Diseases Respirator Exception

This rulemaking by the Occupational Safety and Health Standards Board (OSHSB) amends section 5199, in title 8 of the California Code of Regulations. Specifically, this rulemaking amends Exception 2 to subdivision (g)(3)(B) of section 5199, by adding R100 and N100 respirators as permitted equipment for use by emergency medical personnel under specified conditions.

Title 8
California Code of Regulations
AMEND: 5199(g)(3)(B)
Filed 08/01/2013
Effective 10/01/2013
Agency Contact: Marley Hart (916)274-5721

File# 2013-0625-01
PHYSICIAN ASSISTANT BOARD
Sponsored Free Health Care Events

This regulatory action establishes some requirements for health care events at which free care is offered to uninsured and under-insured individuals by volunteer health care practitioners where those practitioners may include individuals who may be licensed in one or more states, but are not licensed in California. Specifically, it establishes application requirements, recordkeeping procedures, forms to be used, and denial and appeal procedures for both sponsoring entities and out-of-state practitioners who wish to participate in the sponsored events.

Title 16
California Code of Regulations
ADOPT: 1399.620, 1399.621, 1399.622, 1399.623
Filed 08/07/2013
Effective 10/01/2013
Agency Contact: Glenn L. Mitchell (916)561-8783

File# 2013-0805-01
 PHYSICIAN ASSISTANT BOARD
 Technical Clean up (Section 100 changes)

This action makes minor non-substantive changes to several sections as a result of SB 1236 (Chapter 332, Statutes of 2012), which changed the name of the Physician Assistant Committee to the Physician Assistant Board, effective January 1, 2013. It also repeals one section due to the repeal of the authorizing statute that it was implementing. A few reference citations are corrected as well to reflect this repeal.

Title 16

California Code of Regulations

AMEND: 1399.501, 1399.502, 1399.503,
 1399.506, 1399.507, 1399.507.5, 1399.511,
 1399.512, 1399.520, 1399.521, 1399.521.5,
 1399.523, 1399.523.5, 1399.526, 1399.527,
 1399.530, 1399.540, 1399.543, 1399.545,
 1399.547, 1399.557, 1399.570, 1399.571,
 1399.572, 1399.610, 1399.612, 1399.616,
 1399.617, 1399.618, 1399.619
 REPEAL: 1399.512
 Filed 08/07/2013
 Agency Contact: Glenn L. Mitchell (916) 561-8783

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN March 13, 2013 TO
 August 7, 2013**

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

07/24/13 AMEND: 599.500, 599.508
 07/23/13 AMEND: 35101
 06/25/13 ADOPT: 1859.97 AMEND: 1859.2,
 Form SAB 50-02, 1859.90.2
 06/24/13 AMEND: 18247.5, 18413, 18427.1
 06/03/13 AMEND: 43000, 43001, 43002, 43003,
 43004, 43005, 43006, 43007, 43008,
 43009
 05/16/13 ADOPT: 59740
 05/15/13 AMEND: 599.500, 599.501, 599.502,
 599.508
 04/16/13 AMEND: 23000

04/12/13 ADOPT: 51.4, 52.11, 56.5, 58.12, 58.13,
 61 AMEND: 51.2, 51.6, 52.1, 52.4, 52.8,
 53.2, 53.3, 54.1, 55.2, 56.3, 56.4, 57.1,
 58.2, 59.1, 59.3, 60.1, 60.3

03/29/13 REPEAL: 26100

03/26/13 ADOPT: 20202, 20203, 20208, 20212,
 20217, 20220.5, 20249.5 AMEND:
 20200, 20201, 20203, 20204, 20205,
 20206, 20207, 20208, 20209, 20210,
 20211, 20212, 20213, 20214, 20215,
 20216, 20220, 20221, 20222, 20223,
 20224, 20225, 20226, 20227, 20230,
 20235, 20236, 20245, 20247, 20249,
 20250, 20251, 20252, 20253, 20254,
 20255, 20256, 20257, 20258, 20259,
 20260, 20261, 20262, 20265, 20266,
 20267 REPEAL: 20237, 20238

03/25/13 ADOPT: 1859.90.3 AMEND: 1859.2,
 1859.51, 1859.61, 1859.90.2, 1859.90.4,
 1859.104, 1859.164.2, 1859.184.1

03/20/13 AMEND: 1897

Title 3

07/30/13 AMEND: 3435(b)
 07/11/13 AMEND: 3591.12(a)
 07/08/13 AMEND: 1701, 1701.1, 1701.2, 1702,
 1703.2, 1703.3 REPEAL: 1703.4, 1703.5
 07/02/13 AMEND: 1310
 06/26/13 AMEND: 2751(b)
 06/19/13 AMEND: 3435(b)
 06/19/13 AMEND: 3435(b)
 05/23/13 ADOPT: 6558, 6577, 6880, 6884, 6886
 AMEND: 6452, 6452.2, 6452.4
 (renumbered to 6881), 6890 (renumbered
 to 6864)
 05/22/13 AMEND: 3434(b)
 05/20/13 AMEND: 3434(b)
 05/06/13 ADOPT: 1350 AMEND: 1354
 04/16/13 AMEND: 3435(b)
 04/04/13 AMEND: 3435(b)
 04/02/13 AMEND: 3435(b)

Title 4

08/06/13 ADOPT: 2086, 2086.1, 2086.5, 2086.6,
 2086.7, 2086.8, 2086.9, 2087, 2087.5,
 2087.6, 2088, 2088.6, 2089, 2089.5,
 2089.6, 2090, 2090.5, 2090.6, 2091,
 2091.5, 2091.6, 2092, 2092.5, 2092.6,
 2093
 07/31/13 AMEND: 12357, 12463, 12464
 07/25/13 AMEND: 5170, 5190, 5205, 5212, 5230,
 5250
 07/22/13 AMEND: 8072
 07/22/13 AMEND: 10322, 10325, 10326
 07/08/13 ADOPT: 5342, 5343, 5344, 5345, 5346,
 5347, 5348

06/03/13 AMEND: 12101, 12120, 12122, 12126, 12130, 12132, 12140, 12142, 12200, 12200.3, 12200.5, 12200.6, 12200.10B, 12200.14, 12200.20, 12202, 12203, 12203A, 12203.2, 12203.3, 12205.1, 12218, 12218.7, 12218.8, 12218.9, 12220, 12220.3, 12220.5, 12220.6, 12220.14, 12220.20, 12222, 12223, 12225.1, 12233, 12235, 12238, 12239, 12301, 12301.1, 12302, 12303, 12304, 12305, 12309, 12310, 12342, 12345, 12349, 12350, 12351, 12352, 12354, 12357, 12358, 12359, 12370, 12372, 12401, 12402, 12403, 12404, 12464, 12480, 12492, 12496, 12500, 12503, 12505, 12508, 12591

06/03/13 AMEND: 5170, 5190, 5205, 5212, 5230, 5250

05/23/13 ADOPT: 12364 AMEND: 12004

05/22/13 ADOPT: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060

05/16/13 AMEND: 10192, 10193, 10194, 10195, 10196, 10197, 10198

05/16/13 ADOPT: 5255, 5256 AMEND: 5170, 5230, 5250, 5560, 5580

05/03/13 AMEND: 1843.2

05/02/13 AMEND: 1658

04/23/13 AMEND: 8035(e)

04/08/13 ADOPT: 8035.5

04/02/13 AMEND: 10032, 10033, 10034, 10035

03/21/13 AMEND: 10178, 10179, 10181, 10182, 10185, 10188

03/20/13 AMEND: 1462

03/19/13 AMEND: 10302, 10315, 10322, 10323, 10325, 10326, 10327, 10337

Title 5

07/10/13 AMEND: 80021.1, 80023, 80023.1, 80023.2, 80025.5 REPEAL: 80024.1, 80024.2, 80024.2.1, 80024.3.2, 80024.4, 80024.5

06/12/13 ADOPT: 19847 AMEND: 19816, 19816.1, 19818, 19824, 19829, 19837.3

06/05/13 AMEND: 19816, 19816.1, 19839

05/23/13 ADOPT: 30000.5, 30010, 30040, 30040.2, 30040.6, 30041, 30041.5, 30042, 30042.5, 30044.5 AMEND: 30000, 30001, 30002, 30005, 30009, 30020, 30021, 30022, 30030, 30032, 30033

05/14/13 ADOPT: 30737, 30738 AMEND: 30730, 30731, 30733, 30734, 30736

05/01/13 AMEND: 80054

04/03/13 ADOPT: 41906.6

03/13/13 AMEND: 20135, 20136, 20140 REPEAL: 20145, 20300, 20301, 20302, 20303, 20304, 20305, 20306, 20307, 20308, 20309, 20310, 20311, 20312, 20313, 20314, 20315, 20316, 20317, 20318, 20319, 20320, 20321, 20322, 20323, 20324, 20325, 20326, 20327, 20328, 20329, 20330, 20331, 20332

Title 8

08/01/13 AMEND: 5199(g)(3)(B)

07/23/13 AMEND: 1933, 5541, 5543, 5559, 5600, 6170

07/02/13 AMEND: 3329

07/01/13 ADOPT: 9792.5.4, 9792.5.5, 9792.5.6, 9792.5.7, 9792.5.8, 9792.5.9, 9792.5.10, 9792.5.11, 9792.5.12, 9792.5.13, 9792.5.14, 9792.5.15.

AMEND: 9792.5.1., 9792.5.3, 9793, 9794, 9795

07/01/13 AMEND: 5197

07/01/13 AMEND: 9795.1, 9795.3

07/01/13 ADOPT: 9785.5, 9792.6.1, 9792.9.1, 9792.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.7, 9792.10.8, 9792.10.9 AMEND: 9785, 9792.6, 9792.9, 9792.10, 9792.12

07/01/13 ADOPT: 37, 10159 AMEND: 1, 11, 11.5, 14, 17, 30, 31.2, 31.7, 33, 35, 35.5, 36, 38, 100, 105, 106, 10160

06/26/13 ADOPT: 10133.31, 10133.32, 10133.33, 10133.34, 10133.35, 10133.36 AMEND: 9813.1, 10116.9, 10117, 10118, 10133.53, 10133.55, 10133.57, 10133.58, 10133.60 REPEAL: 10133.51, 10133.52

06/26/13 ADOPT: 10206, 10206.1, 10206.2, 10206.3, 10206.4, 10206.5, 10206.14, 10206.15, 10207, 10208 AMEND: 10205, 10205.12

06/24/13 AMEND: 8352

05/30/13 AMEND: 4994

05/08/13 AMEND: 5004(d)(2)

05/07/13 AMEND: 17000 Appendix

05/06/13 AMEND: 1529, 1532, 1532.1, 1532.2, 1535, 5150, 5189, 5190, 5191, 5192, 5194, 5198, 5200, 5201, 5202, 5206, 5207, 5208, 5209, 5210, 5211, 5212, 5213, 5214, 5217, 5218, 5220, 8358, 8359

04/24/13 AMEND: 2940.8

04/15/13 AMEND: 354, 371.2, 373, 376.1, 386

03/29/13 AMEND: 9789.31, 9789.34, 9789.35, 9789.39

03/18/13 ADOPT: 32056, 32121, 32998, 93000, 93005, 93010, 93015, 93020, 93025, 93030, 93035, 93040, 93045, 93050, 93055, 93060, 93065, 93070, 93075, 93080 AMEND: 32150, 32155, 32300, 32305, 32310, 32315, 32320, 32350, 32360, 32370, 32375, 32380, 32410 REPEAL: 15800, 15805, 15810, 15815, 15820, 15825, 15830, 15835, 15840, 15845, 15850, 15855, 15860, 15865, 15870, 15875, 15875.1, 17300

03/18/13 ADOPT: 32091, 61215, 61255, 61275 AMEND: 32132, 32135, 32140, 32147, 32169, 32305, 32320, 32450, 32455, 32615, 32620, 32661, 32798, 61090, 61210, 61220, 61240, 61250, 61260, 61270 REPEAL: 32613, 32810, 32811, 32812, 32813

03/18/13 AMEND: 344, 344.1
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05/09/13 AMEND: 7156, 7158.8, 7159, 7160, 7160.5, 7161.5, 7162, 7163, 7211, 7263, 7302, 7310, 7312, 7320, 7321, 7322, 7330, 7332

03/13/13 AMEND: 7071.2, 7017.5, 7021, 7051, 7053

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08/05/13 AMEND: 2498.5
07/31/13 AMEND: 2498.6
07/17/13 AMEND: 2498.5
07/16/13 AMEND: 2498.6
07/15/13 ADOPT: 6650, 6652, 6654, 6658, 6660, 6662, 6664, 6666, 6668, 6670
07/10/13 ADOPT: 6410, 6420, 6422, 6424, 6440, 6442, 6444
07/03/13 AMEND: 2548.3, 2548.19, 2548.21, 2548.24, 2548.25
06/27/13 ADOPT: 6456
06/25/13 AMEND: 2698.401
06/13/13 ADOPT: 2594, 2594.1, 2594.2, 2594.3, 2594.4, 2594.5, 2594.6, 2594.7
05/20/13 AMEND: 2698.95(a)
05/13/13 AMEND: 2632.19
03/29/13 REPEAL: 2690.65
03/29/13 REPEAL: 2690.5
03/29/13 REPEAL: 2690.6
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03/29/13 ADOPT: 6426
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07/08/13 AMEND: 1005, 1007, 1008
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07/24/13 AMEND: 599
05/07/13 ADOPT: 426.00
04/18/13 AMEND: 1956.8

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08/06/13 AMEND: 13055
07/22/13 ADOPT: 18751.2.2, 18751.2.3 AMEND: 18751.2, 18751.2.1
06/28/13 AMEND: 228
06/26/13 AMEND: 1059(a)
06/25/13 AMEND: 354, 360, 361, 362, 363, 364, 708.9
06/19/13 AMEND: 816.01(c)(3), 826.01(c)(2), 870.21(d)
06/17/13 AMEND: 7.50
04/29/13 AMEND: 27.80
04/25/13 ADOPT: 709, 709.1
04/12/13 AMEND: 1.74, 701
03/27/13 ADOPT: 132.1, 132.2, 132.3, 132.4, 132.5
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08/07/13 AMEND: 811, 832.05, 832.06, 832.35 REPEAL: 832.14, 854
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07/24/13 ADOPT: 1398.15
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07/15/13 ADOPT: 1355.45

07/15/13 AMEND: 1833

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06/25/13 AMEND: 4102, 4114, 4122, 4141, 4163, 4181

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05/08/13 AMEND: 1380.1

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04/22/13 AMEND: 2268.2, 2271

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04/10/13 ADOPT: 1149, 1150, 1151, 1152, 1153

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03/25/13 ADOPT: 1823, 1888.1 AMEND: 1803, 1845, 1858, 1881

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03/13/13 AMEND: 3340.29

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07/16/13 ADOPT: 7000, 7002, 7004, 7006, 7008, 7010, 7012, 7014, 7016

07/01/13 AMEND: 100000

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03/25/13 AMEND: 97232

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