



California Regulatory Notice Register

REGISTER 2003, NO. 34-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

AUGUST 22, 2003

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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.

CALIFORNIA REGULATORY NOTICE REGISTER (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by the Office of State Publishing and is offered by subscription for \$302.00 (annual price). To order, call (916) 445-5391. Periodicals postage paid at Sacramento, CA and additional mailing offices. **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Customer Coordinator, Office of State Publishing, 344 N. 7th Street, Room 104, Sacramento, CA 95814-0212.

**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. DEPARTMENT OF
PERSONNEL ADMINISTRATION**

ARTICLE 25. HEARINGS

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Personnel Administration (DPA) proposes to adopt, amend, or renumber regulations as described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

PUBLIC HEARING

DPA will hold a public hearing on **October 8, 2003, starting at 9:00 a.m.**, at 1515 "S" Street, First Floor, American Room, Sacramento, CA 95814. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. DPA requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DPA. The written comment period closes at **5:00 p.m. on October 6, 2003**. DPA will consider only comments received at DPA by that time. Please submit comments to:

Myrna Gregory, Policy Analyst
Department of Personnel Administration
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814

AUTHORITY

Sections 19815.4(d) and 19816, Government Code (GC)

GC Section 19815.4(d) gives authority to DPA to formulate, adopt, amend, or repeal rules and regulations. GC Section 19816 gives DPA the authority to succeed the State Personnel Board (SPB) in those duties, purposes, responsibilities, and jurisdiction previously exercised by SPB with respect to the administration of salaries, hours, and other personnel-

related matters, training, performance evaluations, layoffs, and grievances. The existing provisions rely on the authority set forth in these two statutes. The new provisions also rely upon the same authority.

REFERENCE

Section 19815.4, GC

The existing reference for each section in Article 25, Title 2. Administration, California Code of Regulations (CCR), is GC Section 18670. GC Section 18670 provides authority for SPB to hold hearings and make investigations regarding civil service matters. DPA's power to hold hearings, subpoena witnesses, administer oaths, and conduct investigations concerning all matters relating to its jurisdiction is set forth at GC Section 19815.4. The Director's authority to delegate this power is also set forth at GC Section 19815.4. This section should be the primary reference for each section of Article 25; and the incorrect reference to SPB's authority should be deleted.

Sections 11400 through 11470.50, GC

The Administrative Procedures Act (APA) regulates formal and informal administrative hearings by State agencies. GC Sections 11400 through 11470.50, contained within the APA, are applicable specifically to DPA's administrative hearing processes. Therefore, they should be added as reference for amended CCR Section 599.898 dealing with administrative adjudication provisions.

Sections 19996.2 and 19842.5, GC—Requests for Reinstatement After Automatic Resignation.

Section 19997.14, GC—Appeals from Layoff and Demotions/Transfers in Lieu of Layoff.

Section 19994.3, GC—Protests of Geographic and Non-Geographic Transfer.

Section 19996.1, GC—Petitions to Set Aside Resignation.

Sections 19832 and 19836, GC—Appeals from Denial of Merit Salary Adjustment.

Sections 19992 through 19992.14, GC—Appeals from Performance Appraisal.

Section 19859, GC—Appeals from Denial of Sick Leave.

Sections 19818.16 and 19818.8, GC—Appeals from Denial of Out-of-Class Claim.

The above listed sections of the GC specifically identify the appeal rights for each type of appeal which generates an investigation or hearing at DPA. They are added as a reference for new CCR Section 599.906. Hearings and Decisions.

Johnston v. DPA (1987) 191 Cal.App.3d 1218

The Court in *Johnston v. DPA* determined that the right to appeal a transfer not only applied to transfers requiring relocation, but also to nongeographic trans-

fers. *Johnston v. DPA* is added as a reference for new CCR Section 599.906. Hearings and Decisions.

Bidwell v. State of California (1985) 164 Cal.App.3d 213

Gonzalez v. SPB (1977) 76 Cal.App.3d 364

The Court in *Bidwell v. State of California* determined that there can be no exception to the 30-day time limit for filing a petition to set aside a resignation. Therefore, the exception for good cause, set forth in CCR Section 599.904. Time of Filing, is not applicable to petitions to set aside resignation. The Court in *Gonzalez v. SPB* defines “good cause” for a late appeal. Both are added as reference for CCR Section 599.904. Time of Filing.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

DPA has authority to hold hearings, subpoena witnesses, administer oaths, and conduct investigations concerning all matters relating to its jurisdiction. Shortly after its creation, DPA adopted regulations implementing its authority to consider appeals and hold evidentiary hearings on nonmerit issues. The regulations, which are set forth at Title 2, Article 25, Hearings, were adopted September 6, 1983. They define terms, identify the elements of a proper appeal, and set forth time limits for filing appeals, dismissing appeals, and finalizing decisions on appeal.

The proposed changes clarify the parties entitled to appeal under DPA’s process and the types of appeals which merit investigation and/or hearing. They formalize two longstanding practices of DPA, which are as follows: (1) DPA considers an appeal filed on the date it is postmarked or received, whichever is earlier; and (2) DPA allows an employee or appointing power to file a request for rehearing within 30 days following a decision. The latter provision has already been adopted as a regulation applicable to excluded employees. (See CCR Section 599.859. Grievance and Appeal Procedure—Excluded Employees.)

The proposed changes also adopted those portions of the APA effective July 1, 1997, applicable to State agencies holding administrative hearings. They also reference and incorporate the following case law: *Bidwell v. State of California* (1985) 164 Cal.App.3d 213 (limiting the time for filing a petition to set aside a resignation to the statutory time frame); *Gonzalez v. DPA* (1977) 76 Cal.App.3d 364 (defining what constitutes good cause for a late appeal); and *Johnston v. DPA* (1987) 191 Cal.App.3d 1218 (expanding the right to appeal nongeographic transfers as well as geographic transfers).

Finally, the general reference for each section has been changed from GC Section 18670 to GC Section 19815.4 to more properly reflect DPA’s authority. GC Section 18670 vests SPB with authority to hold

hearings and make investigations regarding civil service matters. GC Section 19815.4 vests DPA with authority to hold hearings, subpoena witnesses, administer oaths, and conduct investigations concerning all matters relating to its jurisdiction.

These regulatory changes only apply to State civil service employees and their appointing authorities and only come into play when an employee has appealed a nonmerit action affecting his/her employment. Therefore, DPA does not expect any significant fiscal or other impact, as set forth below.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

Mandate on local agencies and school districts:

DPA has determined that since these rules pertain only to State civil service employees, they do not impose a mandate on local agencies or school districts.

Cost or savings to any State agency:

The changes to Article 25 are not anticipated to add any costs to State agencies since they merely implement existing laws and procedures applicable to DPA’s appeal and hearing processes.

DPA has also determined that this proposal does not:

- Cause costs or savings for local agencies or school districts;
- Impose nondiscretionary costs or savings on local agencies; or
- Cause 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:

The regulations covered by this proposal have no impact on small businesses because they apply only to State civil service employees.

Cost impacts on a representative private person or business:

DPA has determined that this proposed rulemaking action does not have a significant adverse economic impact on California business. The rulemaking action does not impact private persons in this State. Specifically, it will not:

- Affect the ability of California businesses to compete with businesses in other states.
- Create or eliminate jobs in California.
- Create, expand, or eliminate businesses in California.
- The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Housing impact:

This rulemaking action will not affect housing costs.

CONSIDERATION OF ALTERNATIVES

In order to take this action, DPA must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out this rulemaking action or would be as effective and less burdensome to the affected persons than this action.

DPA 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:

Myrna Gregory, Policy Analyst
Department of Personnel Administration
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814
Telephone: (916) 322-3748

The back-up contact person for these inquiries is:

Sydney Perry, Policy Analyst
Department of Personnel Administration
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814
Telephone: (916) 324-2763

AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS

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

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, DPA may adopt the proposed regulations substantially as described in this notice. If DPA makes modifications that 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 adopting the regulations as revised. Please send requests for copies of any modified regulations to the attention of Myrna Gregory at the address indicated

above. DPA will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL
STATEMENT OF REASONS

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

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and the text of the regulations in strikeout format, as well as the Final Statement of Reasons once it is completed, can be accessed through DPA's website at www.dpa.ca.gov.

PROPOSED REGULATORY ACTION

DPA intends to amend the following regulations set forth at Subchapter 1, Chapter 3 of Title 2 of the CCR Article 25 (Article 25):

Section 599.903. Appeal

Section 599.904. Time of Filing

DPA intends to renumber CCR Section 599.898. Respondent as CCR Section 599.897, and amend.

DPA intends to renumber CCR Section 599.906. Dismissal of Appeals not Brought to Hearing as CCR Section 599.908, and amend.

DPA intends to adopt the following new regulations at Article 25:

Section 599.893. Scope of Article

Section 599.898. Administrative Adjudication Provisions

Section 599.906. Hearings and Decisions

Section 599.907. Rehearing

Section 599.909. Reserved

DPA intends to amend the reference for each of the amended sections and the following additional sections:

Section 599.894. Definitions

Section 599.895. Appeal

Section 599.896. Appellant

Section 599.905. Answer

Section 599.910. Decision Becomes Final When

**TITLE 10. DEPARTMENT
OF INSURANCE**

NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING

File No. RH 03031326

Notice Date: July 30, 2003

Proposed Revisions to the Insurance Commissioner's Regulations pertaining to the Classification of

Risks; Recording and Reporting of Data; Statistical Reporting and Experience Rating; and Approval of Advisory Pure Premium Rates.

SUBJECT OF HEARING

Notice is hereby given that the insurance commissioner will hold a public hearing to consider (1) the approval of advisory pure premium rates developed by the designated rating organization; (2) amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995; and (3) amendments to the Miscellaneous Regulations for the Recording and Reporting of Data; and (4) amendments to the California Workers' Compensation Experience Rating Plan—1995. The hearing will be held in response to a filing, submitted on July 30, 2003, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB").

AUTHORITY AND REFERENCE

Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations were promulgated by the insurance commissioner pursuant to the authority granted by Insurance Code Section 11734.

Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for submission to the insurance commissioner for issuance or approval. The Insurance Code provisions regarding State rate supervision operative January 1, 1995 do not authorize the insurance commissioner to require insurers to use the pure premium rates submitted by the designated rating organization and issued or approved by the insurance commissioner. Accordingly, the pure premium rates issued or approved by the insurance commissioner are advisory only.

Advisory Rating Plans

Pursuant to Insurance Code Sections 11750.3(a) and 11750.3(c), a licensed rating organization may promulgate advisory plans in connection with pure premium rates and the administration of classification and rating systems and present them to the insurance commissioner for review.

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the matters proposed in the WCIRB's filing, at the following date, time and place:

September 12, 2003—9:30 AM
22nd Floor Hearing Room
45 Fremont Street
San Francisco, California

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11734 11751.5, the insurance commissioner has designated the WCIRB as his rating organization and statistical agent. As the designated rating organization and statistical agent, the WCIRB has developed and submitted for the insurance commissioner's approval pure premium rates and revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and California Workers' Compensation Experience Rating Plan—1995. The pure premium rates will be advisory only; however, adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan—1995, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995 is mandatory. With regard to the standard classification system developed by the designated rating organization and approved by the insurance commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the insurance commissioner 30 days prior to its use and is not disapproved by the insurance commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the uniform statistical reporting plan or the classification system developed by the WCIRB and approved by the insurance commissioner.

The pure premium rate revision amendments to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, which contains the standard classification system developed by the WCIRB, the Miscellaneous Regulations for the Recording and Reporting of Data, and the California Workers' Compensation Experience Rating Plan—1995, are detailed in the WCIRB's filing letter and summarized below.

APPROVE PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the insurance commis-

sioner to be effective January 1, 2004 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2004. The proposed advisory pure premium rates are 12.0% greater than the July 1, 2003 advisory pure premium rates approved by the insurance commissioner.

The proposed pure premium rates applicable to 2004 policies are based on (a) insurer losses incurred during 2002 and prior accident years valued as of March 31, 2003, (b) insurer loss adjustment expenses for 2002 and prior years, (c) the cost impact of Assembly Bill No. 749, (d) the provision for earthquake exposure, (e) the experience rating off-balance correction factor, and (f) classification payroll and loss experience reported for policies issued during 2000 and prior years.

AMEND THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN—1995

The WCIRB recommends the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, which includes the standard classification system and unit statistical reporting requirements, as well as policy document filing requirements and general administrative procedures. These changes are proposed to become effective January 1, 2004 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2004.

- Amend the plan requirements for clarity, consistency, and ease of use.
- Amend the minimum and maximum annual payroll for executive officers, partners, and sole proprietors to increase the maximum from \$79,300 to \$81,900, and the minimum from the \$28,600 to \$29,900, as well as to other payroll limitations relevant to specific classifications (e.g., athletic teams, entertainment classifications, taxicabs, etc.), to reflect wage inflation since the last time the amount was adjusted.
- Amend the thresholds in most dual wage construction classifications (excluding the roofing and painting classifications) by \$1 to reflect wage inflation since the last time the thresholds were amended.
- Amend the Complaints and Appeals regulations for clarity and compatibility with the California Code of Regulations and Insurance Code.
- Amend to delete the classification for lead manufacturing and establish a classification for lead manufacturing as a cross-reference to battery manufacturing.
- Amend the store classification applicable to video media rental for clarity.

- Amend the canvas goods manufacturing classification for clarity.
- Amend the retail stores classification to add a cross reference to apply to firms that specialize in providing product demonstrators and sample distributors to operators of retail stores.
- Amend the classifications pertaining to the manufacture of metal doors and windows and metal door and widow frames to include the manufacture of such products using plastic.
- Amend to add a rule regarding the reporting of post-liquidation data.
- Amend to clarify that policy assessments are not to be included in the final premium reported on unit statistical reports.
- Amend to indicate that loss corrections must be filed when there has been a mistake in reporting, other than error of judgment, even if the loss correction coincides with a normal valuation of losses.

The WCIRB recommends the following revision to the California Workers' Compensation Uniform Statistical Reporting Plan—1995, to become effective on policies expiring after December 31, 2003.

- Amend the requirement for physical audits from \$12,000 to \$21,000 effective on policies expiring after December 31, 2003 to reflect wage inflation and rate increases since threshold was last adjusted.

AMEND MISCELLANEOUS REGULATIONS FOR THE RECORDING AND REPORTING OF DATA

The WCIRB recommends the following revisions to the Miscellaneous Regulations for the Recording and Reporting of Data to become effective January 1, 2004 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2004:

- Amend the Complaints and Appeals regulations for clarity and compatibility with the California Code of Regulations and Insurance Code.
- Amend to eliminate the requirement that the WCIRB file excess policies with the California Department of Insurance.

AMEND CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN—1995

The WCIRB recommends the following revisions to the California Workers' Compensation Experience Rating Plan—1995 to become effective January 1, 2004 with respect to new and renewal policies with anniversary rating dates on or after January 1, 2004:

- Amend the Plan for consistency with changes being proposed to the Uniform Statistical Reporting Plan.

- Amend the expected loss rates, D-ratios, and the average death value effective January 1, 2004 to reflect more current experience.
- Amend the Experience Rating Eligibility from \$35,590 to \$40,600 to reflect wage inflation and the proposed January 1, 2004 pure premium rate change.
- Amend the Plan to specify that all post-liquidation data be excluded from experience rating and to provide for a process whereby such data may be included if the Department of Insurance verifies that the data is accurate and complete and certifies it for use in an experience modification.
- Amend the Complaints and Appeals regulations for clarity and compatibility with the California Code of Regulations and Insurance Code.

UNITED STATES LONGSHORE AND HARBOR WORKERS' SUPPLEMENT

The WCIRB has adopted the following revisions to the United States Longshore and Harbor Workers' Supplement of the California Workers' Compensation Uniform Statistical Reporting Plan—1995. The changes will become effective January 1, 2004:

- Amend the Supplement for clarity and to conform to changes made to the Uniform Statistical Reporting Plan.
- Amend the Supplement to indicate that the final premium for policies that pertain only to USL&H Act coverage should be reported using statistical code 0999 for the classification code.

COSTS OR SAVINGS RESULTING FROM THE REGULATIONS

The Insurance Commissioner is authorized by law to promulgate advisory loss cost rates. These rates may or may not be adopted by insurance companies. To the extent that they are adopted, they will result in higher costs. However, the Insurance Commissioner has no authority to change underlying system costs or to regulate rates for workers' compensation. The only way these costs will be contained is if the legislature adopts quantifiable, immediate, and concrete reforms to the workers' compensation system.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The insurance commissioner has determined that there may be a cost increase but there will not be any new programs mandated on any local agency or school district as a result of the proposed regulations, if adopted as proposed herein and implemented by insurers.

IMPACT ON HOUSING COSTS

The insurance commissioner has determined that the proposed regulations may have a significant effect on housing costs if adopted by insurers.

IMPACT ON SMALL BUSINESSES

The insurance commissioner has determined that the proposed regulations, if adopted by insurers, may have a significant effect on small businesses.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The insurance commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the insurance commissioner expects that the proposed regulations may have a significant effect on private persons or entities, if adopted by insurers.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies, insofar as those agencies are self-insured, except for the State Compensation Insurance Fund.

REIMBURSABLE COSTS

There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

The facility to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make special arrangements, if necessary.

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the insurance commissioner prior to the public

hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attention: Larry C. White, Senior Staff Counsel
45 Fremont Street, 24th Floor
San Francisco, California 94105
(415) 538-4423

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the insurance commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the insurance commissioner at the address listed above no later than 5:00 PM on September 15, 2003.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The insurance commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may also be accessed on the WCIRB's website at www.wcirbonline.org/filings.

ACCESS TO RULE MAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to this filing, the statement of reasons thereof, and any supplemental information contained in the rule-making file upon application to the contact person (listed above). The rule-making file will be available for inspection at 45 Fremont Street, 22nd Floor, San Francisco, California 94105, between the hours of 9:00 AM and 4:30 PM, Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the insurance commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the insurance commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the insurance commissioner's action will be sent to all persons on the insurance commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the commissioner's action.

TITLE 10. MANAGED RISK MEDICAL INSURANCE BOARD

NOTICE OF PROPOSED REGULATIONS R-3-02

NOTICE IS HEREBY GIVEN that the Managed Risk Medical Insurance Board (MRMIB) proposes to permanently adopt changes to Chapter 5.8 of Title 10 of the California Code of Regulations. The changes are for the most part focused on the enrollment and disenrollment procedures of the Healthy Families Program, as impacted by changes in State law and federal regulations. MRMIB has scheduled a public hearing in Sacramento, California for October 8, 2003 from 1:00 pm to 2:00 pm at the following address:

1000 G Street, Suite 450
Large Conference Room
Sacramento, CA 95814

It is requested, but not required, that any person wishing to present testimony should register at 1:00 pm on October 8, 2003. The hearing will be adjourned immediately following the completion of oral and written testimony presentations. This public hearing is for the purpose of considering regulations. The MRMIB upon its own motion, or at the instance of any interested persons, may adopt the proposals substantially as presented.

The MRMIB may modify the regulations after public hearing and adopt the modified regulations if the regulations as modified are sufficiently related to the text made available to the public, so that the public was adequately placed on notice that the regulations as modified could result from the proposed regulatory action. The text of any regulation as modified will be mailed to all persons who testify or submit written comments at the public hearing; submit written comments during the public comment period; and all persons who request notification, at least 15 days prior to the date on which the MRMIB adopts the regulations. A request for a copy of any regulations as modified should be addressed to Dennis Gilliam at the address below.

Any person interested may present statements or arguments relating to the proposals in writing to:

Managed Risk Medical Insurance Board
Attn: Dennis Gilliam
1000 G Street, Suite 450
Sacramento, CA 95814

Statements or arguments relating to the proposals can also be faxed to Dennis Gilliam at (916) 327-6580 or e-mailed to dgilliam@mrmib.ca.gov.

Such written statements must be received by 5:00 pm on October 8, 2003. Written testimony received after October 8, 2003 may not be assured of consideration unless otherwise expressly stated by the hearing officer. It is requested, but not required, that persons making oral presentations at the hearing provide a written statement at the conclusion of their remarks. The above facility is accessible to persons with mobility impairments. If you are in need of a language interpreter, including sign language, at the hearing, or have other special needs, please notify MRMIB at least two weeks prior to the hearing.

The greater part of these regulations have been approved as emergency regulations by the Office of Administrative Law and are effective for 180 days after the approval, until January 28, 2004.

An Informative Digest/Policy Statement Overview for the proposed regulation changes, including a Fiscal Impact Statement and other required determinations are included below. These regulations are written in plain English. An Initial Statement of Reasons for the proposed action has been prepared. These, and copies of the proposed regulations, may be requested by telephone, or by writing to the above address. In addition, the Board has available, a rulemaking file, which contains all the information upon which the proposed regulations are based. This file is available for public perusal at the MRMIB office (see address above), during normal office hours, 8:00 am to 5:00 pm, Monday through Friday. The pertinent documents (proposed regulations and Initial Statement of Reasons) pertaining to this rulemaking can be obtained on MRMIB's website at www.mrmib.ca.gov. The final Statement of Reasons can be obtained when available, after the public hearing and final adoption, by contacting Dennis Gilliam at (916) 324-4695 or dgilliam@mrmib.ca.gov.

Please address questions and requests for available information concerning the proposed regulations to Dennis Gilliam at (916) 324-4695 or Donald Minnich at (916) 327-7978 at the address listed above. Either person can answer questions regarding the substance of the proposed regulations or can direct the question to the appropriate person within the Board. Dennis Gilliam is designated as the small business advocate contact person for the Board.

AUTHORITY AND REFERENCE

The law the Board seeks to make specific by this filing is Part 6.2 of Division 2 of the Insurance Code, Sections 12693.02, 12693.03, 12693.045, 12693.06, 12693.065, 12693.08, 12693.09, 12693.10, 12693.11, 12693.12, 12693.13, 12693.14, 12693.16, 12693.17, 12693.21, 12693.43, 12693.45, 12693.46, 12693.60, 12693.61, 12693.62, 12693.63, 12693.70, 12693.71, 12693.73, 12693.74, 12693.75, 12693.77, 12693.85, 12693.86, 12693.87, and 12693.89, 12693.91, 12693.98, 12693.105, 12693.615, 12693.755 and 12693.981, Insurance Code and 42 CFR Section 457.1170.

Title 10, Chapter 5.8

Amended: 2699.6500, 2699.6600, 2699.6607, 2699.6611, 2699.6705, 2699.6715, 2699.6717, 2699.6725, 2699.6813, 2699.6815 and 2699.6819

Adopted: 2699.6612 and 2699.6827

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Laws and Regulations

Insurance Code Section 12693, et seq., established the Healthy Families Program (HFP) in 1997, under the direction of the Managed Risk Medical Insurance Board (MRMIB).

Title 10, California Code of Regulations, Chapter 5.8 implements the Healthy Families Program.

POLICY STATEMENT OVERVIEW

In August 1997, the Federal Government established a new program, the State Children's Health Insurance Program (SCHIP), by adding Title XXI to the Social Security Act. The purpose of the program is to provide health services to uninsured, low-income children. The program is targeted to serve children whose family's income, although low, is too high to qualify for the Title XIX Medicaid Program, called Medi-Cal in California. The Legislature passed, and the Governor signed AB 1126, resulting in Chapter 623, Statutes of 1997 (AB 1126). Under that law, California has taken the option of both expanding its Medi-Cal Program and establishing a new stand alone children's health insurance program, the Healthy Families Program (HFP). The Department of Health Services (DHS) administers the Medi-Cal expansion through its own regulations. The Managed Risk Medical Insurance Board (MRMIB) administers the HFP. The basic structure of the HFP is set out in regulations approved by the Office of Administrative Law, which established Chapter 5.8 of Title 10 of the California Code of Regulations.

The budget trailer bill, AB 442 (Chapter 1161, Statutes of 2002), directed the Board and the Department of Health Services to implement pre-

enrollment procedures into the HFP and the Medi-Cal for Families Program by establishing a streamlined enrollment process from the Child Health and Disability Prevention Program (CHDP). The pre-enrollment (CHDP Gateway) will be administered by the Department of Health Services to provide full-scope benefits pursuant to the Medi-Cal Program's no-cost fee-for-service program. The pre-enrollment will be funded from Title XIX and Title XXI moneys. The CHDP Gateway will increase access to on-going, comprehensive health, dental and vision care for children, who currently only receive periodic health screening and limited health treatment services through CHDP. Beginning July 1, 2003, CHDP conducts a preliminary eligibility review and automatically screens children into either no-cost Medi-Cal or the HFP. These children now have access to complete health, dental and vision services for up to two months through the Medi-Cal no-cost fee-for-service program. Subsequently, the family will have to apply for continued coverage (12 months of eligibility) in Medi-Cal or HFP for their children via the joint Healthy Families/ Medi-Cal for Children mail-in application. To allow successful implementation of the CHDP Gateway, AB 442 included the following provisions:

- elimination of retroactive disenrollment when families are disenrolled due to non-payment,
- requirement that applicants must pay arrears for health coverage provided within the prior twelve months,
- and changes to the family contribution sponsor regulations to allow a sponsor to pay monthly premiums for a HFP family for any twelve months of coverage.

In addition, in order to make the changes in AB 442 work, the HFP regulations requiring a six month wait period before a family can re-apply after the family is disenrolled due to non-payment or per an applicant's request are deleted.

Regulations mandated that the HFP disenroll a family retroactively after two consecutive months of non-payment of monthly premiums. This means that if a family does not pay the monthly premium for two consecutive months, disenrollment will occur at the end of the second month of non-payment but the children's coverage will be terminated retroactively back to the last month in which the premiums were paid. This regulation was in place to balance the statutory requirement to collect premiums from HFP families with the need to allow time for collection before disenrolling the subscriber. During these

months, the State was contractually obligated to pay one month of the capitated payments to the health, dental, and vision plans. The plans were allowed to collect any costs incurred during the final month from the family. It is necessary to eliminate the retroactive disenrollment regulations to conform to AB 442.

The elimination of the retroactive disenrollment regulations created the need to include regulations to authorize the collection of the previous twelve months of arrears prior to re-enrollment. In these proposed regulations, when a family is disenrolled for non-payment, they will have received two months of health coverage for which the HFP did not receive the premium payments. With the amended regulations on the payment of arrears, the HFP now is able to recoup the premium payment for those unpaid months. The collection of arrears is limited to the twelve months prior to enrollment because the Legislature established a standard time of twelve months away from the HFP to be considered as closure of an HFP account. If a family is out of the HFP for twelve months, they have disconnected from HFP services and are clearly disenrolled.

The family contribution sponsor regulations are amended to state that the sponsor may make contributions for a family during any twelve month period as required by AB 442. The current regulations stipulate that the family contribution sponsor may make contributions on behalf of a family only in the applicant's first twelve months in the program. The ability to sponsor a family for any twelve month period will give more families access to continued health care.

The regulations had a six month wait period for families who disenrolled by request before they could rejoin the program. This was originally established to discourage families from coming into the HFP only when they needed services. The intent of the six month wait period is to eliminate the "revolving door" and to encourage families to receive preventive health care and to have continued access to health care. We have learned that the HFP families do not use this "revolving door" and most remain in the program for the duration of their twelve months of eligibility, so these regulations delete the six month penalty. The deletion of the six month penalty for disenrollment due to non-payment or per an applicant's request is necessary for successful implementation of the CHDP Gateway. If the six month penalty remains in place, a family that uses a CHDP provider will be blocked from enrollment into the HFP during this timeframe. This change will help to achieve the goal of the HFP and the CHDP Gateway which is to ensure children have more continuity in accessing health coverage.

In addition to the regulatory changes made in accordance with AB 442, the Board is including in this package related regulations which make changes required by Federal regulations under Title XXI for the SCHIP which funds the HFP. These regulations, 42 CFR, Parts 431, 433, 435, and 457 became final on January 11, 2001 and further interpret Title XXI. These Federal regulations require continued enrollment in the HFP during the review of an appeal prior to losing coverage. These enrollee protections are consistent with the objectives of the CHDP Gateway because they further insure continuous enrollment while an appeal is in process and they are therefore included in the same package.

Section 2699.6827, Payment of State Supported Services, is added to require that abortions that are not the result of incest or rape and are not necessary to save the life of the mother are to be paid for with State funds only. Federal funds provided to the State under title XXI can not be used to pay for these services. This Subsection and the definition of State Supported Services in Subsection 2699.6500(jj) are added to identify which services are not to be paid for with federal funds. This is necessary to be able to make distinctions in the Board's contracts with health plans for federally funded services and the new, separate contracts which fund only non-federally eligible abortion services, as required by 42 CFR 457.475.

These regulations were reviewed by the Managed Risk Medical Insurance Board at their November 20, 2002 meeting and approved at their December 18, 2002 meeting. The bulk of the regulations were approved by the Office of Administrative Law on July 31, 2003 as emergency regulations. However changes to the following sections are being Noticed for the first time, as explained in the Initial Statement of Reasons:

DETERMINATIONS

In accordance with Government Code Section 11346.5 (A)(13), the Managed Risk Medical Insurance Board must determine that no alternative considered by the Board or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

The Managed Risk Medical Insurance Board has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

FISCAL IMPACT ESTIMATE

There are no non-discretionary costs or new costs to local agency school districts.

There is no impact on California housing costs.

There is no significant statewide adverse economic impact on California directly affecting business including the ability of California business to compete in other states. The Healthy Families and Medi-Cal programs impacted by these regulations are for private families. There is a positive impact on private families, who can get earlier access to coverage through the CHDP gateway, and retain coverage longer through the elimination of retroactive disenrollment and retention of coverage during an appeal.

STATE AND FEDERAL FISCAL IMPACT

The Healthy Families Program is funded through the federal Title XXI State Children's Health Insurance Program (SCHIP), which is generally be funded at a 35/65 state/federal funding ratio. There are cost impacts for following changes resulting from the Trailer Bill and the federal SCHIP regulations: cost of administering the implementation of the parental expansion:

Eliminating retroactive disenrollment will result in an additional monthly payment to contracted plans while collection activities are ongoing. The cost in the 2003-04 State Fiscal Year is estimated to be \$4,502,301 (\$1,575,805 State and \$2,926,496 Federal).

Eliminating the six month penalty for re-enrolling is estimated to cost \$289,724 in State Fiscal Year 2003-04 (\$101,403 State and \$188,321 Federal).

The cost of implementing the federal requirement for continued enrollment during an appeal in State Fiscal Year 2003-04 is estimated at \$1,543,627 (\$540,269 State and \$1,003,358 Federal).

There is no known Fiscal impact on extending the ability to provide voluntary sponsorship of HFP enrolled children beyond one year, or in establishing the definition of State Supported Services.

These costs are included in the May revision to the 2003-04 Governor's Budget.

BUSINESS IMPACT STATEMENT

The Board has assessed the impact of these regulatory changes on California businesses, including small businesses. The changes involve individuals who are applying for and receiving health coverage through the HFP. Health, dental, and vision plans may have increased business due to the eligibility time extension provided under these regulations. However, the amount of funds distributed to providers will not be significant enough to either create new jobs or businesses or eliminate existing jobs or businesses or affect the expansion of businesses currently doing business within California.

**TITLE 14. CALIFORNIA
INTEGRATED WASTE
MANAGEMENT BOARD**

NOTICE OF PROPOSED RULEMAKING

- TITLE 14. NATURAL RESOURCES**
- DIVISION 7. CALIFORNIA WASTE
MANAGEMENT BOARD**
- CHAPTER 4. RESOURCE
CONSERVATION
PROGRAMS**
- ARTICLE 3. REGULATIONS FOR THE
RIGID PLASTIC
PACKAGING CONTAINER
PROGRAM**
- SECTION 17946 DOCUMENTATION
REQUIREMENTS**
- SECTION 17949 VIOLATIONS AND
PENALTIES**

PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board (CIWMB) proposes to modify existing regulations pertaining to assessment of administrative civil penalties for noncompliance with the RPPC law by adding clarifying language to Section 17946 and by deleting Sections 17949 (c) (1)(2) and adding clarifying language in Section 17949 (c) and (d).

The proposed regulations are intended to establish five clearly defined violations with the associated range of penalties for noncompliance with the Rigid Plastic Packaging Container (RPPC) Law by amending existing regulations.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the CIWMB. **The written comment period for this rulemaking ends at 5:00 p.m. on October 6, 2003.** The CIWMB will also accept written comments during the public hearing described below. Please submit your written comments to:

Michelle Marlowe
California Integrated Waste Management Board
Waste Prevention and Market
Development Division
P.O. Box 4025, MS 12
Sacramento, CA 95812-4025
Phone: (916) 341-6512
FAX: (916) 319-7317
E-mail: mmarlowe@ciwmb.ca.gov

PUBLIC HEARING

CIWMB staff will conduct a public hearing at the Joe Serna, Jr. Cal/EPA Building, 2nd Floor, Sierra Hearing Room, Sacramento, CA on **October 7, 2003**. The hearing will begin at 1:30 p.m. and conclude after all testimony is given. The CIWMB requests that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The Sierra Hearing Room is wheelchair accessible.

INFORMATIVE DIGEST

The Integrated Waste Management Act (Act) [AB 939 (Sher), Stats. 1989, c. 1095] and Public Resources Code (PRC) Section 40000 et seq., provides for the protection of public health and safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC Section 40502 requires the CIWMB to adopt rules and regulations to implement this Act. PRC Section 42322 sets out the statutory authority for assessing fines and penalties under the RPPC Law. Administrative civil penalties may be assessed for violations of the law only after a hearing is held before an Administrative Law Judge. Section 42322 allows assessment of \$50,000 per violation, with a maximum annual assessment for a company of \$100,000. The Board adopted general penalty criteria, which was used for one RPPC hearing held in the past. However, neither the statute, existing regulations, nor the existing general penalty criteria address a critical aspect of assessing these penalties, i.e., what constitutes a "violation." The proposed regulations would establish five clearly defined violations with the associated range of penalties. This more specific penalty structure is crucial to assist the Administrative Law Judge and the Board in fairly and equally assessing administrative civil penalties for noncompliance with the RPPC Law.

POLICY STATEMENT OVERVIEW

The CIWMB has determined that the existing regulations are not specific enough and need to be amended in order to assure that accused violators have fair and equal treatment when administrative civil penalties are imposed

PLAIN ENGLISH REQUIREMENTS

CIWMB staff prepared the proposed final regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Section 11342.580 and 11346.2(a)(1). The proposed final regulations are considered non-technical and are written to be easily understood by those parties that will use them.

AUTHORITY AND REFERENCES

PRC Sections 40502, 42325 provide authority for these regulations. The purpose of the proposed regulations is to implement, interpret, and make specific PRC Sections 42310, 42321, and 42322.

FEDERAL LAW OR REGULATIONS MANDATE

Federal law or regulations do not contain comparable requirements.

**LOCAL MANDATE AND
FISCAL DETERMINATIONS**

CIWMB staff has determined that the proposed regulations do not impose: 1) a mandate on local school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

CIWMB staff made an initial determination that the proposed regulations will not have a significant effect on housing costs.

EFFECT ON BUSINESSES

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

EFFECT ON SMALL BUSINESSES

Although the proposed regulations would establish a structure for imposing penalties against violators of the RPPC law, the penalty amounts already exist in stature, i.e., \$50,000 per violation with a maximum assessment of \$100,000 per compliance year. The proposed penalty structure would simply establish what constitutes a violation and set out penalty ranges for each of those violations so that the regulated companies will have more certainty regarding how the penalties could be assessed. Therefore, the CIWMB has determined that the regulatory proposal will have no significant adverse economic impact on business or small business.

**EFFECT ON CREATION OR ELIMINATION OF
JOBS, EXISTING OR NEW BUSINESS IN THE
STATE OF CALIFORNIA**

CIWMB staff has determined that the proposed regulatory action will not affect: 1) the creation or elimination of jobs within the State of California; 2) the creation of new businesses or the elimination of

existing businesses within California; or 3) the expansion of businesses currently doing business with the state.

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSONS OR BUSINESSES**

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

CONSIDERATION OF ALTERNATIVES

The CIWMB must determine that no reasonable alternative considered by the CIWMB or that has otherwise been identified and brought to the attention of the CIWMB would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The CIWMB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSONS

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

Michelle Marlowe, Integrated Waste
Management Specialist
California Integrated Waste Management Board
Waste Prevention and Market
Development Division
P.O. Box 4025, MS 12
Sacramento, CA 95812-4025
Phone: (916) 341-6512
FAX: (916) 319-7317
E-mail: mmarlowe@ciwmb.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

Deborah Borzelleri, Staff Counsel
California Integrated Waste Management Board
Legal Office
P.O. Box 4025
Sacramento, CA 95812-4025
Phone: (916) 341-6056
FAX: (916) 319-7594
E-mail: dborzell@ciwmb.ca.gov

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

The CIWMB will have the entire rulemaking file, and all information upon which the proposed regulations are based, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this

notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Michelle Marlowe at the address, e-mail, or telephone number listed above. For more timely access to the proposed text of the regulations, and in the interest of waste prevention, interested parties are encouraged to access the CIWMB's website at <http://www.ciwmb.ca.gov/Rulemaking/RgUpdate.htm>

Additionally, the Final Statement of Reasons will be available at the above listed Internet address or you may call the contact persons named above.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

The CIWMB may adopt the proposed regulations substantially as described in this notice. If the CIWMB makes modifications which are sufficiently related to the proposed text, it will make the modified text—with changes clearly indicated—available to the public for at least 15 days before the CIWMB adopts the regulations as revised. Requests for the modified text should be made to the contact person. The CIWMB will mail any modified text to all persons who testify at a public hearing if one is held; all persons who submit written comments at a public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes. The CIWMB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 14. RESOURCES AGENCY

**NOTICE OF PUBLIC HEARINGS AND
NOTICE OF PROPOSED AMENDMENT
OF REGULATIONS IMPLEMENTING THE
CALIFORNIA ENVIRONMENTAL
QUALITY ACT**

NOTICE IS HEREBY GIVEN that the Resources Agency proposes to adopt and amend regulations implementing Division 13 of the Public Resources Code, the California Environmental Quality Act (CEQA), as described below.

STATUTORY AUTHORITY

Public Resources Code section 21083 mandated adoption of regulations (CEQA Guidelines) implementing CEQA. The CEQA Guidelines are codified in California Code of Regulations (CCR), Title 14, sections 15000 -15387. Public Resources Code section 21087 requires the Resources Agency, in consultation with the Office of Planning and Research, to certify and adopt guidelines, and any amendments thereto, at least once every two years.

PROPOSED REGULATORY ACTION

The proposed action is intended to clarify and update the CEQA Guidelines. These Guidelines explain and implement the requirements of CEQA regarding the review by public agencies of the environmental impact of proposed projects and the preparation and review of environmental impact reports (EIRs), negative declarations, and mitigated negative declarations. The Resources Agency proposes to amend and add the following sections of Title 14, CCR:

Amend sections 15023, 15041, 15062, 15063, 15064, 15064.5, 15065, 15075, 15082, 15085, 15087, 15088, 15088.5, 15094, 15097, 15126.4, 15130, 15152, 15183, 15205, 15206, 15252, 15313, 15325, 15330, 15378, Appendix C, and Appendix D, and adopt sections 15333 and Appendix L.

PUBLIC HEARING

The Agency will conduct two public hearings to receive comments, objections, and recommendations regarding the proposed action. Both hearings will be held at the Resources Building Auditorium, 1416 Ninth Street, in Sacramento. The first hearing will begin at 9:00 a.m. on September 30, 2003. The second hearing will begin at 9:00 a.m. on October 6, 2003.

At the hearings, any person interested may present comments orally or in writing, or both, that are relevant to the proposed regulations. Persons wishing to testify are asked to notify the Agency as early as possible by calling Linda Green at (916) 653-5481 so that a schedule for the presentation of comments may be prepared. Advance notification is not a requirement, however, for a person to present comments at the hearing. The hearing will be closed when all persons present have had an opportunity to comment on the proposed regulations. Time limits may be placed on oral comments to ensure that all persons wishing to comment have an opportunity within the available time for the hearing.

WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed revisions to the Resources Agency. Written comments must be received by the Resources Agency no later than 5:00 p.m. on October 6, 2003 in order to be considered by the Agency. Written comments may be delivered, mailed, or transmitted by facsimile or electronic mail. Written comments should be addressed as follows:

Margret J. Kim
Deputy Secretary and General Counsel
The Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Facsimile: (916) 653-8123

Electronic Mail:

ceqa.rulemaking@resources.ca.gov

INQUIRIES AND ADDITIONAL INFORMATION

Inquiries relating to the proposed administrative action may be directed to Linda Green or, if she is unavailable, to Nathan Goedde at (916) 653-5481.

The Agency has prepared an Initial Statement of Reasons for the proposed action that provides an explanation of the purpose and justification for the proposed rulemaking. Anyone may view and print a copy of the statement or the text of the proposed revisions by accessing the following page on the Agency's Internet website: www.ceres.ca.gov/ceqa/index.html. Copies of the initial statement and text of the regulations are also available upon request from Linda Green at (916) 653-5481. The entire rulemaking file is available for public inspection at 1416 Ninth Street, Suite 1311, Sacramento, California 95814.

The Agency will post the Final Statement of Reasons and any future notices related to the proposed action on the Agency's Internet website. Anyone wishing to receive future notices related to the proposed action and/or receive a copy of the Final Statement of Reasons once it has been prepared should submit a written request containing his or her postal mailing address to Linda Green, Resources Agency, State of California, 1416 Ninth Street, Suite 1311, Sacramento, California 95814. These requests can also be submitted by fax at (916) 653-8123.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

CEQA (Pub. Res. Code Section 21000 et seq.) requires public agencies to identify potential environmental effects of activities that they propose to carry out, fund, or approve, and to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects that are identified. CEQA compliance usually involves preparation by a public agency of either a negative declaration, mitigated negative declaration, or an environmental impact report. CEQA requires the Secretary for Resources, in consultation with the Governor's Office of Planning and Research (OPR), to periodically adopt, amend, and repeal the CEQA Guidelines. Thirty sections have been identified for adoption or amendment during this rulemaking. It is the intent of the Secretary for Resources that the proposed revisions shall clarify the Guidelines, provide guidance to public agencies and project proponents, streamline the CEQA process where appropriate, update the Guidelines consistent with statutory revisions and court decisions, and avoid duplication.

The following summaries describe existing laws and regulations related to the proposed action and explain the effect of the proposed revisions. Also included, where appropriate, are the specific objectives of the revisions:

15023. OFFICE OF PLANNING AND RESEARCH (OPR)

CCR Section 15023 provides a general overview of OPR's CEQA responsibilities.

Public Resources Code (PRC) Sections 21080.4, 21108, 21092 and 21161 provide that various notices shall be filed with the Office of Planning and Research (OPR), including notices of exemption, notices of preparation, notices of determination, and notices of completion.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendment to CCR Section 15023 will implement and make specific Senate Bill (SB) 761, (Chapter 716, Statutes of 2000), amending Section 21159.9 of the PRC. SB 761 requires OPR to establish and maintain a central repository for the collection, storage, retrieval, and dissemination of specified notices provided to OPR, and to make the notices available through the Internet. By requiring OPR to post notices on the Internet and maintain a central repository of notices, the proposed amendment will foster public involvement early in the CEQA process. The reference for this section will also be updated.

15041. AUTHORITY TO MITIGATE

CCR Section 15041 explains the authority granted to lead and responsible agencies to require mitigation measures that substantially lessen or avoid significant effects on the environment.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. This amendment implements, interprets, and makes specific PRC Section 21002, which provides that public agencies should not approve projects as proposed when there are feasible alternatives or mitigation measures available that would lessen the project's significant environmental effects.

Subsection (a) provides guidance for agencies regarding the limits of their authority to impose mitigation measures. The proposed amendment will move three case citations and add an additional potentially applicable statutory citation to the reference for this section. Moving the citations from the text is intended to avoid the potential misperception that these cases apply to all mitigation measures or that they have a special character unique to CEQA. Finally, non-substantive changes to the text have been made to clarify its meaning. The reference citation will also be updated to reflect recent statutory changes.

15062. NOTICE OF EXEMPTION.

CCR Section 15062 describes the use and minimum content of the notice of exemption (NOE) when a public agency approves or determines to carry out a project that is exempt from CEQA.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. This amendment implements, interprets, and makes specific PRC subsections 21152(b) and 21108(b), which describe the circumstances and requirements for filing an NOE by a public agency.

The proposed amendment to CCR Section 15062 will provide additional guidance to public agencies regarding the location information that must be included in the NOE. Project location information is already requested on the NOE form provided in Appendix E of the Guidelines. By clarifying the types of location information to be included, the revision will facilitate a more informative public notice regarding basic project information.

15063. INITIAL STUDY.

CCR Section 15063 describes the process, contents, and use of the Initial Study that is used to provide the factual and analytical basis for a negative declaration or mitigated negative declaration or to focus a draft EIR on the potentially significant effects of a project. This section also explains that consultation by the lead agency during the Initial Study process will provide access to the expertise of other agencies in evaluating the potential impacts of a project.

CCR subsection 15082(c) states that the lead agency may request a meeting with representatives of responsible and trustee agencies to assist the lead agency in determining the scope and content of the environmental information that may be required. CCR Section 15083 authorizes and encourages early consultation with the public. Meetings and consultation in accordance with these two sections are commonly referred to as “scoping” or “scoping meetings.”

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendment to CCR Section 15063 will implement and make specific Assembly Bill (AB) 1532, (Chapter 867, Statutes of 2001), amending PRC Sections 21081.7, 21083.9, and 21159.9. AB 1532 requires the lead agency to call at least one scoping meeting for a project of statewide, regional, or areawide significance and specifies who should receive notice of such meetings. Furthermore, AB 1532 requires the lead agency, upon request of the Department of Transportation, to call a scoping meeting for projects that may affect highways or other facilities under the jurisdiction of the Department of Transportation.

The intent of the revision is to clarify and implement the new statutory requirements to hold a scoping meeting for projects of statewide, regional or areawide significance and to hold a scoping meeting upon the request of the Department of Transportation in specified circumstances. The reference for this section will also be updated.

15064. DETERMINING THE SIGNIFICANCE OF THE ENVIRONMENTAL EFFECTS CAUSED BY A PROJECT.

CCR Section 15064 clarifies the process that lead agencies follow when determining whether a project may have significant environmental effects.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. This amendment implements, interprets and makes specific PRC subsection 21080(d), which requires preparation of an EIR if there is substantial evidence in the record that a project may have a significant effect on the environment.

The proposed revisions clarify cumulative impacts analysis and the definitions of “probable future projects” and “cumulatively considerable.” New language from the *Communities for a Better Environment v. Resources Agency* decision will be added to subsection (h)(3) clarifying the applicability of the fair argument standard.

15064.5. DETERMINING THE SIGNIFICANCE OF IMPACTS ON HISTORICAL AND UNIQUE ARCHEOLOGICAL RESOURCES.

CCR Section 15064.5 establishes rules for the analysis of historical resources, including archeological resources, to determine whether a project may have a significant impact on the resource.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. This amendment implements, interprets and makes specific PRC subsection 21083.2(c), which states that mitigation measures shall be required for unique archeological resources that are not preserved in place or are not left in an undisturbed state. The proposed amendments to CCR Section 15064.5 provide guidance and clarification that curation may be an appropriate mitigation measure if an artifact must be removed during a project. PRC Section 5020.5, which required the California Historical Resources Commission to adopt curation guidelines for the reasonable and feasible collection, storage, and display of archaeological specimens, has been added to the reference for this section for further clarity.

15065. MANDATORY FINDINGS OF SIGNIFICANCE.

CCR Section 15065 mandates a finding of significance and preparation of an EIR if a project results in specific environmental effects.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. This amendment implements, interprets and makes specific PRC Section 21083, which requires the Guidelines to require significance findings in specific circumstances, and PRC subsection 21001(c), which declares the policy of the state to prevent the elimination of fish or wildlife species.

The proposed amendments clarify the applicability of the fair argument standard to determine whether this section is triggered, allow for some habitat loss or reductions in numbers of endangered, rare or threatened species without mandating a significance finding, provide an incentive for regional biological planning through the natural community conservation planning (NCCP) and habitat conservation planning (HCP) process, clarify applicability of the mandatory findings beyond the initial decision whether to prepare an EIR, and dispel the misperception that the potential to trigger a mandatory finding requires an EIR even when mitigation will either avoid any significant effect on the environment or mitigate significant effects to the point where clearly no significant effects on the environment would occur. Finally, non-substantive changes to the text and reference citation will clarify this section.

15075. NOTICE OF DETERMINATION ON A PROJECT FOR WHICH A PROPOSED NEGATIVE OR MITIGATED NEGATIVE DECLARATION HAS BEEN APPROVED.

CCR Section 15075 describes the filing, use and contents of the notice of determination (NOD) for which a proposed negative or mitigated negative declaration has been approved.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. This amendment implements, interprets and makes specific PRC Section 21108, which describes the process for filing a NOD when a state agency, board, or commission approves or determines to carry out a project subject to CEQA. It also implements PRC Section 21152, which describes the process for filing a NOD when a local agency approves or determines to carry out a project subject to CEQA.

The proposed revisions of this section, along with the proposed changes to CCR Section 15094, make the NOD filing requirements consistent between EIRs and negative declarations. Additionally, the amendments clarify the contents and format of the NOD and enhance consistency with statutory provisions. The

revisions also clarify the timing and other requirements for filing the NOD with OPR. Finally, non-substantive changes to the text throughout this section will clarify its meaning.

15082. NOTICE OF PREPARATION AND DETERMINATION OF SCOPE OF EIR.

CCR Section 15082 describes the consultation process, including the use of a notice of preparation of a draft EIR (NOP), between a lead agency and responsible and trustee agencies where the lead agency is preparing an EIR that will be used by these agencies in reviewing and approving a project. CCR subsection 15082(c) states that the lead agency may request a meeting with representatives of responsible and trustee agencies to assist the lead agency in determining the scope and content of the environmental information that may be required. CCR Section 15083 authorizes and encourages early consultation with the public. Meetings and consultation in accordance with these two sections are commonly referred to as "scoping" or "scoping meetings."

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments to CCR Section 15082 will implement and make specific AB 1532, (Chapter 867, Statutes of 2001), amending PRC Sections 21081.7, 21083.9, and 21159.9. AB 1532 requires the lead agency to call at least one scoping meeting for a project of statewide, regional, or areawide significance.

The proposed amendments to Section 15082 are also intended to implement and make specific AB 1807, (Chapter 738, Statutes of 2000), amending PRC Sections 21080.4 and 21081.7. AB 1807 requires all NOPs to be sent to the State Clearinghouse within OPR. The reference for this section will also be updated.

15085. NOTICE OF COMPLETION

CCR Section 15085 describes the contents and use of the notice of completion.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. This amendment implements, interprets and makes specific PRC Section 21161, which directs lead agencies to submit to OPR a notice of completion (NOC) for EIRs. The information that lead agencies provide in their NOC forms is used by OPR to create the environmental database pursuant to the requirements of PRC Section 21159.9, from which OPR generates the electronic notices that it posts on the Internet. The information in OPR's database is dependent upon the project information provided by lead agencies on the NOC form.

The proposed amendments direct lead agencies to use the NOC form, which will standardize the data lead agencies submit to OPR, assist OPR in maintain-

ing an accurate and consistent database of environmental documents, and facilitate the Internet noticing requirements of PRC subsection 21159.9(c).

Additionally, the proposed amendments will provide guidance to public agencies regarding the location information that should be included in the NOC. By clarifying the types of location information that should be included, the revision will facilitate a more informative public notice regarding basic project information. Finally, non-substantive changes to the text throughout this section will clarify its meaning and cross-reference the appropriate forms available in the appendices to the Guidelines.

15087. PUBLIC REVIEW OF DRAFT EIR

CCR Section 15087 combines the statutory notice requirements with other regulatory requirements that apply to the public review of draft EIRs.

The proposed amendment identifies Appendix L as a sample local NOC form used to provide public notice. The authorities for the proposed amendments are PRC Sections 21083 and 21087. This amendment implements, interprets and makes specific PRC Sections 21092, 21152, and 21153. The reference for this section will also be updated.

15088. EVALUATION OF AND RESPONSE TO COMMENTS

CCR Section 15088 explains the minimum process a lead agency must follow to evaluate and respond to comments on a draft EIR. This section also explains the different ways in which the responses to comments shall be prepared.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. This amendment implements, interprets and makes specific PRC Section 21092.5, which requires the lead agency to provide a written proposed response to comments made by another public agency at least ten days prior to certifying an EIR. The reference for this section will also be updated.

15088.5. RECIRCULATION OF AN EIR PRIOR TO CIRCULATION

CCR Section 15088.5 provides guidance regarding conditions that would necessitate recirculation of an EIR prior to certification.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21092.1, which addresses the situation where significant new information is added to an EIR after notice and consultation but prior to certification. The proposed revision clarifies the contents of the notice required by PRC Section 21092.1 and clarifies the recirculation process.

15094. NOTICE OF DETERMINATION

CCR Section 15094 describes the filing, use, and contents of the NOD for a project that has been approved following preparation of an EIR.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21108, which describes the process for filing a NOD when a state agency, board, or commission approves or determines to carry out a project subject to CEQA. It also implements PRC Section 21152, which describes the process for filing an NOD when a local agency approves or determines to carry out a project subject to CEQA.

The proposed revisions of this section, along with the proposed changes to CCR Section 15075, make the NOD filing requirements consistent between EIRs and negative declarations. Additionally, the amendments clarify the contents and format of the NOD and enhance consistency with statutory provisions. The revisions also clarify the timing and other requirements for filing the NOD with OPR. Finally, non-substantive changes to the text have been made throughout this section to clarify its meaning.

15097. MITIGATION MONITORING OR REPORTING

CCR Section 15097 describes the mitigation monitoring and reporting program requirements of PRC Sections 21081.6 and 21081.7.

The proposed amendments to CCR Section 15097 are intended to implement and make specific AB 1807 (Chapter 738, Statutes of 2000) amendments to PRC Section 21081.7. AB 1807 requires transportation information generated by reporting or monitoring programs for projects of statewide, areawide, or regional importance to be submitted to the California Department of Transportation in addition to local transportation planning agencies. The authorities for the proposed amendments are PRC Sections 21083 and 21087.

15126.4 CONSIDERATION AND DISCUSSION OF MITIGATION MEASURES PROPOSED TO MINIMIZE SIGNIFICANT EFFECTS

CCR Section 15126.4 describes the selection, implementation, and discussion of mitigation measures.

PRC Section 21002 provides that public agencies should not approve projects as proposed when there are feasible alternatives or mitigation measures available that would lessen the project's significant environmental effects.

Consistent with the proposed amendments to CCR Section 15041, the revisions to this section would move three case citations and add an additional

potentially applicable statutory citation to the reference for this section. Moving the citations from the text is intended to avoid the potential misperception that these cases apply to all mitigation measures or that they have a special character unique to CEQA.

PRC subsection 21083.2(c) states that mitigation measures shall be required for unique archeological resources that are not preserved in place or are not left in an undisturbed state. The California Historical Resources Commission has adopted "Guidelines for the Curation of Archeological Resources" pursuant to PRC subsection 5020.5(b).

Consistent with the proposed amendments to CCR Section 15064.5, the proposed revisions to this section provide guidance and clarification that curation may be an appropriate mitigation measure if an artifact must be removed during a project. This amendment is intended to clarify the need for alternative mitigation measures in those situations where the avoidance, deeding, capping or inclusion in open space of an archaeological resource constitutes insufficient mitigation to achieve a less than significant impact. PRC Section 5020.5 has been added to the reference for this section for further clarity. Finally, non-substantive changes to the text have been made throughout this section to clarify its meaning.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Sections 21002 and 21083.2(c).

15130. DISCUSSION OF CUMULATIVE IMPACTS

CCR Section 15130 provides guidance to lead agencies for the analysis of cumulative impacts and the discussion of cumulative impacts within EIRs.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC subsection 21083(b), which requires lead agencies to find that a project may have a significant effect on the environment if the effects of a project are individually limited but cumulatively considerable. Pursuant to PRC subsection 21083(b)(2), "cumulatively considerable" means the incremental effects of an individual project are "considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."

The proposed amendments are intended to clarify cumulative impacts analysis by defining "probable future projects" using a reasonably foreseeable standard. Other proposed changes enhance consistency with the proposed revisions to Section 15152.

15152. TIERING

CCR Section 15152 encourages tiering and provides guidance to lead agencies on how and when to tier environmental analyses. Tiering is the incorporation of the analysis of a broader EIR within later EIRs and negative declarations on narrower projects.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Sections 21003, 21093, and 21094. PRC 21003 declares the State of California's policy that environmental review should be carried out in the most efficient and expeditious manner in order to conserve governmental resources. In order to fulfill this policy, PRC Sections 21093 and 21094 state that EIRs should be tiered whenever possible and that later projects shall use the information found in the documents of previous projects, when applicable.

Although CCR Section 15152 was originally intended to provide for greater utilization of the tiering process, it has been criticized as being confusing in its current form. The proposed revisions create a roadmap for lead agencies to use in tiering environmental review, and they are intended to clarify this process and encourage greater use of this streamlining opportunity.

15183. PROJECTS CONSISTENT WITH A COMMUNITY PLAN, GENERAL PLAN, OR ZONING

CCR Section 15183 allows more limited environmental review for projects that are consistent with existing zoning, community plan, or general plan policies for which an EIR was certified.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21083.3, which states that if a parcel has been zoned or has been designated in a community plan and an EIR was certified for that zoning or planning action, then the agency may use a restricted CEQA analysis of projects that are consistent with that zone or plan.

The proposed revisions to this section enhance its clarity and consistency with other Guidelines provisions. Some language is deleted to avoid duplication of CCR Section 15152.

15205. REVIEW BY STATE AGENCIES

CCR Section 15205 describes the process for submitting draft EIRs and negative declarations to the State Clearinghouse to facilitate review by state agencies.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC

Sections 21091, 21104, and 21153, which require lead agencies to consult and solicit comments from responsible agencies prior to completing an EIR.

The proposed amendments clarify that the NOC form must be submitted to OPR with the copies of the EIR, and agencies can use the Internet NOC form or the form in Appendix C. The proposed amendments also require a sufficient number of copies of EIRs and negative declarations to be submitted to the State Clearinghouse to facilitate state responsible and trustee agency review. The revisions also enhance consistency with other provisions of the Guidelines that specify the use and contents of the NOC form. The reference citation for this section will also be updated.

15206. PROJECTS OF STATEWIDE, REGIONAL, OR AREAWIDE SIGNIFICANCE

CCR Section 15206 provides guidance for lead agencies to determine whether a project is of statewide, regional, or areawide significance. It requires draft EIRs or negative declarations for such projects to be submitted to the State Clearinghouse for distribution to state agencies.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21083, which requires the Guidelines to contain criteria for determining whether a project is of statewide, regional, or areawide significance. The proposed amendments also implement and make specific AB 1532 amendments to PRC Section 21083.9, requiring lead agencies to call at least one scoping meeting for projects of statewide, regional, or areawide significance. Consistent with other Guidelines provisions, the proposed amendments clarify that the NOC form must be submitted with the copies of the EIR and that agencies can use the Internet NOC form or the form in Appendix C. The reference citation for this section will also be updated.

15252. SUBSTITUTE DOCUMENT

CCR Section 15252 describes the contents of substitute documents produced as part of a certified regulatory program and used in place of an EIR or negative declaration.

The authorities for the proposed amendments are PRC Sections 21083 and 21080.5. The proposed amendments implement and make specific PRC Section 21080.5, which allows use of a substitute document in lieu of an EIR for regulatory programs that are certified by the Secretary for Resources. PRC Section 21080.5 details the requirements for certification, the certification process, and how previously certified programs can be reviewed or challenged.

The proposed amendment is intended to clarify the existing statutory requirement that lead agencies approving projects in accordance with certified regu-

latory programs shall file a notice of the decision on the proposed activity with the Secretary for Resources.

15313. ACQUISITION OF LANDS FOR WILDLIFE CONSERVATION PURPOSES

CCR Section 15313 defines class 13 exemptions. It exempts land acquisitions for wildlife conservation purposes and lists three examples of such conservation purposes.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21804, which requires the CEQA Guidelines to list classes of projects that have been determined not to have a significant effect on the environment.

The proposed revision to this section would provide structure and clarity to this section by labeling each of the three examples without changing any existing language or punctuation.

15325. TRANSFERS OF OWNERSHIP IN LAND TO PRESERVE EXISTING NATURAL CONDITIONS AND HISTORICAL RESOURCES

CCR Section 15325 defines class 25 exemptions. It exempts transfers of ownership interests in land made to preserve open space, habitat, or historical resources from the requirement to prepare environmental documents.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21804, which requires the CEQA Guidelines to list classes of projects that have been determined not to have a significant effect on the environment.

The proposed revision to this section would clarify that transfers of interests intended to preserve open space or lands for park development are included within this class.

15330. MINOR ACTIONS TO PREVENT, MINIMIZE, STABILIZE, MITIGATE OR ELIMINATE THE RELEASE OR THREAT OF HAZARDOUS WASTE OR HAZARDOUS SUBSTANCES

CCR Section 15330 defines class 30 exemptions. It exempts certain minor hazardous waste or hazardous substance cleanup actions as a class from the requirement to prepare environmental documents.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21804, which requires the CEQA Guidelines to list classes of projects that have been determined not to have a significant effect on the environment.

The proposed revision to this section would remove the thermal desorption provision from this section because this type of project is accompanied by air emissions that may affect area residents. The term "off-site disposal" has been added with the intent to further clarify which state and local environmental permitting requirements are applicable. Further, non-substantive revisions have been made to improve the clarity of this section.

15333. SMALL HABITAT RESTORATION PROJECTS [NEW SECTION]

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21804, which requires the CEQA Guidelines to list classes of projects that have been determined not to have a significant effect on the environment.

The addition of CCR Section 15333 is intended to encourage small habitat restoration projects and provide sufficient safeguards to ensure that no significant environmental effects may occur as a result. The purpose of the proposed revision is to create a new categorical exemption that would allow small restoration projects to proceed without preparation of an EIR or negative declaration.

15378. DEFINITION OF PROJECT

CCR Section 15378 provides guidance to lead agencies in determining whether an action is a "project" subject to CEQA.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21065, which provides the statutory definition of the term "project," as applied in CEQA.

The proposed amendments are intended to update the language to reflect case law developments and to enhance the clarity of this section.

APPENDIX C

The existing Appendix C of the Guidelines contains the NOC for use by a local agency to notify the public that a draft EIR has been prepared. Lead agencies have used the NOC form required by the State Clearinghouse interchangeably with the local NOC form. This revision deletes the existing Appendix C for local agencies and replaces it with the form required by the State Clearinghouse. An NOC form for local agencies will be adopted as Appendix L.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21161.

Adoption of the State Clearinghouse NOC form will standardize the NOC form lead agencies must submit to OPR; assist OPR in maintaining an accurate and

consistent database of environmental documents; and facilitate the Internet noticing requirements of PRC subsection 21159.9(c). Furthermore, this proposed change is consistent with the proposed changes to CCR Sections 15085, 15205 and 15206 regarding the use of the NOC.

APPENDIX D

Appendix D of the Guidelines is a sample of the NOD form that a lead or responsible agency must use when that agency approves or determines to carry out a project or action subject to CEQA.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Sections 21108 and 21152.

The proposed revisions to the NOD incorporate the required mitigation monitoring information and findings a lead or responsible agency must make in accordance with PRC Sections 21081, 21081.6, 21108 and 21152.

Furthermore, this proposed amendment is consistent with the proposed changes to CCR Sections 15075 and 15094 regarding the required contents of the NOD. Additionally, non-substantive changes to the format and layout of the NOD have been made to improve readability and clarity.

APPENDIX L [NEW SECTION]

Appendix L of the Guidelines is a sample of the local NOC form used by a lead agency for local public notice purposes. This proposed form is very similar to the existing Appendix C. Together, the proposed revisions to Appendices C and L separate the two NOC forms into their own Appendices for clarity. Furthermore, this proposed amendment is consistent with the proposed changes to CCR Sections 15085, 15087, 15205 and 15206 regarding the use of the Notice of Completion.

The authorities for the proposed amendments are PRC Sections 21083 and 21087. The proposed amendments implement and make specific PRC Section 21152.

FEDERAL REGULATION AND STATUTE

CEQA is similar in some respects to the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq. (NEPA), but NEPA requires environmental review of federal actions by federal agencies while CEQA requires environmental review of state and local projects by state and local agencies in California. The proposed Guideline amendments do not duplicate or conflict with any federal statutes or regulations.

DISCLOSURES REGARDING THE
PROPOSED ACTION

The Agency has made the following determinations concerning the proposed changes to the Guidelines:

Mandates on Local Agencies and School Districts

The Agency has determined that the proposed revisions to the CEQA Guidelines will not impose a mandate on local agencies or school districts.

Costs or Savings to Local Agencies and School Districts or Federal Funding to the State

No costs or savings have been identified from the proposed action for any state agency, local agency, or school district. No reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

Significant Adverse Economic Impacts on Business

The Agency has initially determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The factual basis for this conclusion is that the revisions will update, clarify, and streamline the way that public agencies administer the CEQA process.

Cost Impacts on a Representative Person or Business

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

Effect on Housing Costs

The Agency has made an initial determination that the proposed action will not have an adverse impact on housing costs.

Assessment of Potential to Create or Eliminate Jobs or Businesses Within the State

The Agency has assessed the potential for the proposed action to adversely affect California business enterprises and individuals, including whether it will affect the creation or elimination of jobs or the creation, elimination or expansion of businesses, as required by subdivision (b) of Government Code Section 11346.3. The proposed action is not expected to have a positive or adverse effect on the creation or elimination of jobs or businesses within California. The Agency has also concluded that the proposed amendments will not affect the expansion of businesses currently doing business within the state.

The Agency's complete Economic and Fiscal Impact Statement (Form Std 399) for the proposed action is part of the rulemaking file, and it is available from the agency contact person named in this notice.

Effect on Small Businesses

The proposed actions will not affect small business because the revisions will update, clarify, and streamline the way that public agencies administer the CEQA process.

CONSIDERATION OF ALTERNATIVES

In accordance with subsection 11346.5(a)(13) of the Government Code, the Agency must determine that no reasonable alternative considered by the Agency or otherwise identified and brought to the Agency'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.

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

If the Agency makes changes in the text of any proposed regulation, the revised text will be available to the public at least fifteen (15) days prior to the date when the Agency considers the proposed regulations for adoption, amendment, or repeal, unless the change is nonsubstantial or solely grammatical in nature. Changes must be sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed action.

PLAIN ENGLISH DETERMINATION AND
AVAILABILITY OF TEXT

The proposed final regulations were prepared pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). The proposed regulations are considered non-technical and were written to be easily understood by the parties that will use them. The purpose of the proposed changes to the Guidelines is to interpret the requirements of CEQA and to provide a comprehensive point of reference for those who are affected by CEQA's mandates, both in government and the private sector. Specifically, the proposed changes will make it more clear what lead agencies and project applicants must do to comply with CEQA.

The text of the proposed changes to the Guidelines has been drafted, and is available in plain English. The text is available through the contact address and telephone number listed herein or on the CEQA website at www.ceres.ca.gov/ceqa/index.html.

TITLE 16. CALIFORNIA ARCHITECTS BOARD

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS

NOTICE IS HEREBY GIVEN that the California Architects Board (“Board”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the California Architects Board, 400 R Street, Suite 4000, Sacramento, California, at 10:00 a.m. on October 8, 2003. Written comments must be received by the Board at its office at the above address not later than October 7, 2003 at 5:00 p.m. or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in the Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE CITATIONS

Pursuant to the authority vested by Section 5526 of the Business and Professions Code, and to implement, interpret, or make specific Sections 5550 and 5552 of said Code, the California Architects Board is considering changes to Division 2 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Amend Section 109—Filing of Applications

Section 5526 of the Business and Professions Code authorizes the Board to adopt, amend, modify, or repeal rules and regulations governing examinations and other rules and regulations as may be necessary. Sections 5550 and 5552 entitles any person who meets the qualifications set forth in the article to an examination for a license to practice architecture subject to the rules and regulations governing examinations.

Existing regulations specify the procedures for filing of applications.

This proposal would amend the regulations in order to

- Clarify language relating to definitions.

- Effective January 1, 2005, adopt completion of the Intern Development Program (IDP) of the National Council of Architectural Registration Boards (NCARB) or the Intern Architect Program (IAP) of Canada as a requirement for the California Supplemental Examination and licensure, plus a Board-specified documentation requirement as specified in the *Comprehensive Intern Development Program (CIDP) Handbook*.
- Provide an exemption from the IDP/IAP/CIDP requirement for architects licensed in qualifying foreign countries when specific requirements are met.
- Incorporate by reference the following documents: the most recent edition of NCARB’s *Intern Development Program Guidelines* (currently the 2002–2003 edition), the Intern Architect Program (IAP) of Canada (currently the 1999 edition), and the *Comprehensive Intern Development Program Handbook* (currently the 2005 edition).

In addition, nonsubstantive changes are being made for clarifying and consistency purposes.

Amend Section 116—Eligibility for Examination

Section 5526 of the Business and Professions Code authorizes the Board to adopt, amend, modify, or repeal rules and regulations governing examinations and other rules and regulations as may be necessary. Sections 5550 and 5552 entitles any person who meets the qualifications set forth in the article to an examination for a license to practice architecture subject to the rules and regulations governing examinations.

Existing regulations specify the eligibility requirements for examinations.

This proposal would amend the regulations in order to

- Revise the eligibility point for the California Supplemental Examination from seven and one-half years of education and/or work experience to eight years of education and/or work experience for exams administered after January 1, 2005.

In addition, nonsubstantive changes are being made for clarifying and consistency purposes.

Amend Section 117—Experience Evaluation

Section 5526 of the Business and Professions Code authorizes the Board to adopt, amend, modify, or repeal rules and regulations governing examinations and other rules and regulations as may be necessary. Sections 5550 and 5552 entitles any person who meets the qualifications set forth in the article to an examination for a license to practice architecture subject to the rules and regulations governing examinations.

Existing regulations specify that education and training credit shall be granted pursuant to the provisions of the Table of Equivalents.

This proposal would amend the regulations in order to

- Reformat the Table of Equivalents to create a column in subsection (a) that specifies the maximum amount of credit that may be granted for education and work experience to candidates who are subject to the IDP/IAP/CIDP requirement effective January 1, 2005.

In addition, nonsubstantive changes are being made for clarifying and consistency purposes.

Amend Section 121—Form of Examinations; Reciprocity

Section 5526 of the Business and Professions Code authorizes the Board to adopt, amend, modify, or repeal rules and regulations governing examinations and other rules and regulations as may be necessary. Sections 5550 and 5552 entitles any person who meets the qualifications set forth in the article to an examination for a license to practice architecture subject to the rules and regulations governing examinations.

Existing regulations specify the requirements that all candidates take the Architect Registration Examination (ARE) and the California Supplemental Examination and lists provisions for those who may be eligible without having passed both examinations.

This proposal would amend the regulations in order to

- Clarify that an examination prepared by NCARB must be comparable to the ARE, as determined by the Board, in order for it to qualify under the listed provisions for those candidates who may be eligible without having successfully completed the ARE.
- Adopt completion of IDP/IAP as a requirement for licensure for reciprocal candidates effective January 1, 2005.
- Provide an exemption from the IDP/IAP requirement for reciprocal candidates when specific requirements are met.
- Incorporate by reference the following documents: the most recent edition of NCARB's *Intern Development Program Guidelines* (currently the 2002–2003 edition) and the Intern Architect Program (IAP) of Canada (currently the 1999 edition).

LOCAL MANDATE

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

FISCAL IMPACT ON PUBLIC AGENCIES/STD 399

The proposed regulatory action will not result in costs or savings to any state agency, costs or savings to any local agency or school district that is required to be reimbursed under Part 7 of Division 4 (commencing with Section 17500), other nondiscretionary costs or savings on local agencies, or costs or savings in federal funding to the state.

COST IMPACT ON AFFECTED PRIVATE PERSONS

The proposed regulatory action may have minor cost impact on affected private persons, because interns will be required to pay a \$285 fee to NCARB for establishment and maintenance of an IDP record for a three-year period.

HOUSING COSTS

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

EFFECT ON SMALL BUSINESS

The proposed regulatory action will not affect small businesses because they only affect licensure candidates. Participation by businesses is voluntary. Those businesses that choose to participate in IDP/CIDP may have a minor economic impact, because some of them may choose to modify their internal procedures to document interns' work experience. But they should also realize a benefit in better prepared and more committed employees.

CONTACT PERSON

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

California Architects Board
400 R Street, Suite 4000
Sacramento, CA 95814
Attn: Betsy Figueira
(916) 445-3394
(916) 445-8524 (FAX)
betsy_figueira@dca.ca.gov

The backup contact person is:

Vickie Mayer
(916) 445-3394
(916) 445-8524 (FAX)
vickie_mayer@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Betsy Figueira at (916) 445-3394.

COMMENT PERIOD

Written comments must be received by the Board at the California Architects Board, 400 R Street, Suite 4000, Sacramento, CA 95814 not later than October 7,

2003 at 5:00 p.m. or must be received by the Board at the hearing to be held in the Board office at 10:00 a.m. on October 8, 2003.

AVAILABILITY OF MODIFICATIONS

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

REFERENCE TO TEXT AND INITIAL STATEMENT OF REASONS

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

BUSINESS IMPACT

The Board has made an initial determination that the proposed regulatory action may not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with business in other states, because participation by businesses is voluntary. Those businesses that choose to participate in IDP/CIDP may have a minor economic impact, because some of them may choose to modify their internal procedures to document interns' work experience. But they should also realize a benefit in better prepared and more committed employees.

IMPACT ON JOBS/NEW BUSINESSES

The proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within in the State of California.

PUBLIC HEARING

A public hearing will be held at the California Architects Board, 400 R Street, Suite 4000, Sacramento, California, at 10:00 a.m. on October 8, 2003.

FEDERAL MANDATE

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

CONSIDERATION OF ALTERNATIVES

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

either more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome on affected private persons than the proposed regulatory action. The actual determination must be part of both the Initial and Final Statement of Reasons.

INCORPORATION BY REFERENCE

The proposed regulatory action includes incorporation by reference of the following documents: the most recent edition of NCARB's *Intern Development Program Guidelines* (currently the 2002-2003 edition), the Intern Architect Program (IAP) of Canada (currently the 1999 edition), and the *Comprehensive Intern Development Program Handbook* (currently the 2005 edition).

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Interested parties may obtain a copy of the Final Statement of Reasons once it has been prepared by making a written request to the contract person named above.

WEBSITE ACCESS

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

TITLE 22. DEPARTMENT OF HEALTH SERVICES

ACTION

Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT

Acute Inpatient Intensive
Rehabilitation/Manual of Criteria,
R-16-00

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice.

Comments: Any written statements, arguments or contentions (hereafter referred to as comments) must be received by the Office of Regulations, Department of Health Services, by 5 p.m. on October 7, 2003, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand-delivered be submitted in triplicate.

Note: DHS has moved to a new location. The U.S. Postal Service requires the use of the P.O. Box for mailed items.

Hand Delivery: Department of Health Services
Office of Regulations
1501 Capitol Avenue
MS 0015
Sacramento, CA

Mail Delivery: Department of Health Services
Office of Regulations
MS 0015
P.O. Box 942732
Sacramento, CA 94234-7320

Comments may be transmitted by email (regulation@dhs.ca.gov), through the "Making Comments" link on the Department website at <http://www.dhs.ca.gov/regulation/>, by regular mail, or by FAX at (916-440-7714). Comments must be received before 5:00 p.m. on October 7, 2003, the close of the written comment period. All comments, including email, website, or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

CONTACTS

In any of the following inquiries, please identify the action by using the Department regulation control number, R-16-00:

Materials regarding the proposed regulations (including this public notice, the proposed regulations, and the Initial Statement of Reasons) that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/> and then by clicking on the "Search Regulations" button.

1. In order to request a copy of this regulation package be sent to you, please call (916) 440-7695 or email regulation@dhs.ca.gov.
2. Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Phyllis Muchmore, R.N. of the Medi-Cal Benefits Branch, at (916) 552-9583.
3. All other inquiries concerning the action described in this notice may be directed to Marylyn Willis, R.N. of the Office of Regulations, or to the designated backup contact person, Barbara Gallaway, R.N., MSN; both can be reached at (916) 440-7695.

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Federal law, Section 1902(a)(30) of the Social Security Act (42 U.S.C. 1396a(a)(30)), requires state Medicaid agencies to include in their State Plans the methods and procedures that will be employed to safeguard against unnecessary utilization of care and services. Federal regulation, Section 456.3, Title 42, Code of Federal Regulations, requires state Medicaid agencies to implement a statewide surveillance and utilization control program that (a) safeguards against unnecessary or inappropriate use of Medicaid services and against excess payments; (b) assesses the quality of services; (c) provides for the control of the utilization of all services provided under the plan; and (d) provides for the control of the utilization of inpatient services.

State law, Section 14133, Welfare and Institutions (W&I) Code, defines the types of utilization controls that the Department of Health Services (Department) may apply to certain services provided under the Medi-Cal program. Among the specified utilization controls is "prior authorization." Section 14133 defines prior authorization in relevant part as: "(a) . . . approval by a department consultant, of a specific service in advance of the rendering of that service based upon a determination of medical necessity. . . ."

State law, Section 14133.9, W&I Code, establishes the requirements placed on the Department, if prior authorization is implemented. Among these is a requirement that for major categories of treatment subject to prior authorization, the Department shall publicize and continue to develop its list of objective criteria that indicate when authorization should be granted. Section 14133.9 further requires the Department to adopt and publish the objective medical criteria as regulations in accordance with the Administrative Procedure Act. The Manual of Criteria for Medi-Cal Authorization (MOC), which is incorporated by reference into Title 22, California Code of Regulations (CCR), Section 51003, is the method by which the Department has met these requirements.

State law, Section 14132, W&I Code, specifies the benefits covered under the Medi-Cal program. Included among these benefits are acute inpatient intensive rehabilitation services, subject to utilization controls.

As the result of a lawsuit, *Fresno Community Hospital and Medical Center v. State of California, et al.*, Fresno County Superior Court Case No. 555694-9 (1996), the Department is in the process of expanding and updating the MOC through a series of thirty or more regulation proposals. This action is the next in that series. Specifically, these proposed changes to Title 22, CCR will do the following:

- (1) Amend Section 51003 to change the date of the proposed revision of Chapter 5.5 of the MOC to May 28, 2003, and
- (2) Amend, expand, and adopt criteria for inclusion in the MOC Chapter 5.5 that indicate when authorization should be approved for acute inpatient intensive rehabilitation.

In addition to the need to update the Manual of Criteria due to the Fresno lawsuit, this package is necessary because the Department and the provider community refer to this service by a term of art (“acute inpatient intensive rehabilitation”) that differs from the authorizing statute (“inpatient intensive rehabilitation hospital services”). This regulation package will supply the needed clarification.

AUTHORITY

Sections 10725, 14105, 14124.5, 14132.22, 14132.5, and 14133, Welfare and Institutions Code; and Section 1267.7, Health and Safety Code.

REFERENCE

Sections 14053, 14064, 14081, 14087, 14088, 14088.16, 14088.2, 14103.6, 14105.12, 14132, 14132.22, 14132.25, 14132.5, 14132.42, 14132.8, 14133, 14133.1, 14133.25 and 14133.3, Welfare and Institutions Code; *Jeneski v. Meyers* (1984) 163 Cal. App. 3d 18, 209 Cal. Rptr. 178; *Duran v. Belshé*, San Diego County Superior Court Case No. 674204, (1995); and *Fresno Community Hospital and Medical Center v. State of California, et al.*, Fresno County Superior Court Case No. 555694-9, (1996).

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None.
- B. Fiscal Effect on State Government: None.
- C. Fiscal Effect on Federal Funding of State Programs: None.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which

reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The changes update and expand the Manual of Criteria for Medi-Cal Authorization (MOC), which is used by Department consultants to guide their decisions as to whether to approve requested services or items for Medi-Cal beneficiaries under the Medi-Cal program.

The Department has determined that the regulations would not significantly affect the following:

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

The Department has determined that the regulations may affect small business. The regulations expand the MOC to add objective medical criteria for the adjudication of requests for prior authorization of treatment for acute inpatient intensive rehabilitation.

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. A copy of the initial statement of reasons and a copy of the text of the proposed regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the proposed regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's

Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than the proposed action.

No hearing has been scheduled; however, any interested person or his or her duly authorized representative may request, in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

Sign language interpreting services at a public hearing or other reasonable accommodation will be provided upon request. Such request should be made no later than 21 days prior to the close of the written comment period, and addressed to the Office of Civil Rights within the Department of Health Services by phone (916-440-7370); FAX (916-440-7395); TDD (916-440-7399); or email (civilrights-ra@dhs.ca.gov).

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations (CCR), Section 311-1.

CONFLICT OF INTEREST CODE

NOTICE OF PROPOSED RULEMAKING

The Employment Development Department (Department) proposes to amend its Conflict of Interest Code, printed in CCR, Title 22, Section 311-1. The Department will adopt these amendments after considering all comments, objections, or recommendations regarding the proposed action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The existing Appendix to Section 311-1 lists those designated employees in the Department who are required to file statements of economic interest, pursuant to Government Code Sections 87100 through 87102, and the disclosure category for each of those designated employees. The proposed changes to the Appendix:

- (1) Add additional positions;

- (2) Delete from the list of designated employees positions which no longer exist within the Department; and
- (3) Correct the titles of designated employees for positions which have changed due to reorganization.

AUTHORITY AND REFERENCE

Authority: Sections 87300 and 87306, Government Code.

Reference: Sections 87300, 87301, 87302 and 87306, Government Code.

FISCAL IMPACT

Anticipated costs or savings in federal funding to the State: None

Anticipated costs or savings to any State Agency: None

Anticipated costs or savings to any local agency or school district: None

Significant statewide adverse economic impact: The Department does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, to private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The Department has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

The costs impact on representative persons or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory amendments.

Anticipated impact on housing costs: These proposed amendments will have no effect on housing costs.

Anticipated nondiscretionary costs or savings imposed upon local agencies: None

SMALL BUSINESS IMPACT

These proposed amendments will not have any impact upon small businesses because they will only affect employees of the Department.

LOCAL MANDATE DETERMINATION

The Department has determined that these proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with Section 17500), Division 4 of the Government Code.

CONSIDERATION OF ALTERNATIVES

In accordance with Section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory amendments.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action. **The written comments must be submitted via U.S. mail, fax, or e-mail (see below), to the Department no later than October 6, 2003, at 5 p.m.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

CONTACT PERSONS

Inquiries or comments should be directed to:
(Mailing address) Laura Colozzi
Employment Development
Department
P. O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280-0001
(Hand delivery) Laura Colozzi
Employment Development
Department
800 Capitol Mall
Legal Office, Room 5020
Sacramento, CA 95814
Telephone: (916) 654-7712
Fax: (916) 654-9069
E-mail: eddlegal@edd.ca.gov

Note: In the event Laura Colozzi is unavailable, inquiries should be directed to the following backup contact persons at the same address as noted above:

Name: Penny Ayers
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed amendments should be directed to:

Name: Dave Paulsen
Telephone No.: (916) 654-8410

PUBLIC HEARING

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on October 6, 2003.** A request for hearing can be made by contacting Laura Colozzi as noted above.

MODIFICATION OF PROPOSED ACTION

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

FINAL STATEMENT OF REASONS

After the close of the 45-day written comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact Laura Colozzi at (916) 654-7712.

FURTHER INFORMATION

The Department has prepared and has available for review, upon request, the text of the proposed regulatory amendments discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the amendments; and the information upon which the Department relied in proposing the amendments. (If you received this notice by mail, a copy of the text of the proposed amendments and the statement of reasons were enclosed.)

Copies of the proposed regulation may be obtained from the Legal Office of the Employment Development Department, 800 Capitol Mall, Room 5020, Sacramento, California, 95814, or by contacting Laura Colozzi at (916) 654-7712.

All the information upon which the proposed amendments are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact Laura Colozzi at (916) 654-7712.

**TITLE 28. DEPARTMENT OF
MANAGED HEALTH CARE**

NOTICE OF INTENT TO ADOPT REGULATIONS
REGARDING UNIVERSITY OF CALIFORNIA
ANALYSIS OF LEGISLATION MANDATING
HEALTH CARE BENEFITS AND SERVICES
SECTION 1011

NOTICE IS HEREBY GIVEN

The Director of the Department of Managed Health Care (Director), pursuant to the rulemaking authority granted by Sections 1344, 1346 and 127662 of the Health and Safety Code, proposes to implement, interpret and make specific Sections 1356, 127660, 127661, 127662, 127663, 127664 And Section 127665 of the Health and Safety Code by adopting Section 1011 in Title 28, California Code of Regulations (CCR) relating to University of California analysis of legislation mandating health care benefits and services.

PUBLIC HEARING

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received in writing by the Department of Managed Health Care (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD/
CONTACT PERSON

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person identified below on or before 5 p.m. on **October 6, 2003**. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day. Written communications may also be sent to Lyn Amor Macaraeg via electronic mail at lmacaraeg@dmhc.ca.gov or via facsimile at (916) 324-3968.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

AB 1996 (Chap. 795, Stats. 2002) added Chapter 7, commencing with Section 127660 of Part 2 of Division 107 of the Health and Safety Code. The

legislation requests the University of California to assess the public health, medical and financial impacts of legislation that proposes a mandated benefit or service. Funding for the University's work would be provided from fees assessed health care service plans and health insurers. Health and Safety Code Section 127662(b) requires the Department to determine through regulation the annual fee each health care service plan will pay into the Health Care Benefits Fund.

The addition of regulation Section 1011 clarifies for health care service plans, the manner in which the annual fee will be determined. The public will benefit because UC will prepare an analysis of the public health, medical and financial impacts of proposed benefit mandate legislation. This will provide current, accurate information on both the quality and cost of proposed legislation for the purpose of determining whether certain mandated benefits should be part of the basic health insurance benefit package, enabling the Legislature to be better informed when it makes decisions on mandated benefit legislative proposals.

California Health and Safety Code Sections 1344 and 1346 vest the Director with the power to administer and enforce the provisions of the Knox-Keene Health Care Service Plan Act of 1975 (Act).

California Health and Safety Code Section 1344 mandates that the Director have the ability to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules governing applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of the Act. Furthermore, the Director may waive any requirement of any rule or form in situations where in the Director's discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to this chapter. In addition, the Director may honor requests from interested parties for interpretive opinions.

California Health and Safety Code Section 1346 vests in the Director the power to administer and enforce the Act, including but not limited to recommending and proposing the enactment of any legislation necessary to protect and promote the interests of plans, subscribers, enrollees, and the public.

AUTHORITY

California Health & Safety Code Sections 1344, 1346, 127662.

REFERENCE

California Health & Safety Code Sections 1356, 127660, 127661, 127662, 127663, 127664, 127665.

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

The Department has prepared and has available for public review the following documents:

1. An initial statement of reasons for the new and amended regulations;
2. Text of the legally effective regulations; and,
3. All information upon which this proposal is based (rulemaking file).

A copy of any or all of these items is available upon request by writing to the Department of Managed Health Care, ATTN: Ms. Lyn Amor Macaraeg, 980 9th Street, Suite 500, Sacramento, California 95814, which address will also be the location of public records, including reports, documentation, and other material related to this notice of proposed action. Additionally, a copy of the final statement of reasons (when prepared) will be available upon request by writing to the same address.

INTERNET AVAILABILITY

Materials regarding this notice of proposed action that are available via the Internet may be accessed at the following website:

<http://www.dmhc.ca.gov/library/regulations>.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

ALTERNATIVES CONSIDERED

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the comment period.

FISCAL IMPACT

- Cost or savings to any state agency: None.
- Cost to any local agency or school district for which Cal. Gov't Code Section 17500-17630 requires reimbursement: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Costs or savings in federal funding to the state: None.
- Effect on housing costs: None.

DETERMINATIONS

The Director has determined that the proposed regulatory action:

- Has no economic impact on small businesses. Health care service plans are not a small business under Cal. Gov't Code Section 11342(h)(2).
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Cal. Gov't Code Section 17500 *et seq.*
- In this *initial* determination and pursuant to Cal. Gov't Code 11346.5(a)(8), will not have a significant statewide adverse economic impact directly affecting business, including the ability of California to compete with businesses in other states.
- The Department is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Per Cal. Gov't Code Section 11346.5(a)(10), does not significantly affect:
 - The creation of jobs in California;
 - The elimination of jobs in California;
 - The creation of new businesses in California;
 - The elimination of existing business in California;
 - The expansion of existing businesses in California.

CONTACT PERSON

Comments or inquiries and substantive questions concerning this proposed regulation may be directed to BRIAN J. BARTOW, Assistant Chief Counsel, Department of Managed Health Care, Office of Legal Services, 980 Ninth Street, Suite 500, Sacramento, California 95814, (916) 322-6727. The back up contact person is LYN AMOR MACARAEG, Depart-

ment of Managed Health Care, Office of Legal Services, 980 Ninth Street, Suite 500, Sacramento, California 95814, (916) 322-6727.

DEPARTMENT OF FISH AND GAME

**CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
CESA No. 2080-2003-014-BD**

GENERAL PUBLIC INTEREST

AIR RESOURCES BOARD

NOTICE OF CORRECTION FOR THE PUBLIC HEARING NOTICE TO CONSIDER THE ADOPTION OF EXHAUST AND EVAPORATIVE EMISSION CONTROL REQUIREMENTS FOR SMALL OFF-ROAD ENGINES LESS THAN OR EQUAL TO 19 KILOWATTS AND EQUIPMENT THAT USE SUCH ENGINES

On August 8, 2003, the Air Resources Board inadvertently published incorrect sections proposed for adoption in their Notice for Public Hearing to Consider Adoption of Exhaust and Evaporative Emission Control Requirements for Small Off-Road Engines Less than or Equal to 19 Kilowatts and Equipment that use Such Engines. The incorrect sections that were listed but are not proposed for adoption were: 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, and 2473, title 13, California Code of Regulations (CCR).

Please be advised of the correct sections affected:

Proposed adoption of sections 2405.1, 2405.2, and 2405.3, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, and 2773, title 13, California Code of Regulations (CCR). Proposed adoption of the incorporated "California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines," and the incorporated "Small Off-Road Engine Evaporative Emission Test Procedures, TP-901 and TP-902" and "Small Off-Road Engine Evaporative Emissions Control System Certification Procedures, CP-901 and CP-902." Proposed amendments to sections 2400, 2401, 2403, 2404, 2405, 2407, 2408, and 2409, title 13, CCR. Proposed amendments to the incorporated "California Exhaust Emission Standards and Test Procedures for 1995 and later Small Off-Road Engines," as last amended January 28, 2000, title 13, CCR.

For more information, contact Amy Whiting, Regulations Coordinator, Board Administration & Regulatory Coordination Unit, (916) 322-6533, or Alexa Malik, Regulations Coordinator, (916) 322-4011.

PROJECT

Settlement Agreement Among DWR, Solano County Water Agency, and the Cities of Fairfield, Vacaville, and Benicia for Purposes of Water Supply

LOCATION

North Bay Aqueduct, Barker Slough, near Dixon, California

NOTIFIER

Department of Water Resources

BACKGROUND

On February 12, 1993 (amended), and September 20, 2002, the National Marine Fisheries Service ("NMFS") issued biological opinions on Sacramento River winter-run Chinook salmon and Central Valley spring-run Chinook salmon, respectively, for the operation of the Central Valley Project and State Water Project (collectively, "projects"). On March 6, 1995, the U.S. Fish and Wildlife Service ("USFWS") issued a biological opinion on delta smelt for the projects. Winter- and spring-run Chinook salmon are listed as endangered and threatened, respectively, under the California Endangered Species Act ("CESA") (Fish & G. Code, § 2050 et seq.). Delta smelt are listed as threatened under CESA. On June 25, 2003, the Department of Fish and Game ("Department") received a written request by the Department of Water Resources ("DWR") to find that the biological opinions mentioned above (collectively, "biological opinions") cover the project described in the above-referenced settlement agreement ("agreement"), and are consistent with Fish and Game Code section 2081.

The project is the delivery of water by DWR to the Cities of Fairfield, Vacaville, and Benicia (collectively, "cities") in accordance with the terms of the agreement. Under the agreement, DWR will convey "Settlement Water" at the North Bay Aqueduct ("NBA") to the cities during "balanced" and "excess" conditions in the Delta, as the Coordinated Operations Agreement between DWR and the U.S. Bureau of Reclamation define those conditions. DWR will not provide Settlement Water during periods that

the State Water Resources Control Board's Standard Term 91 is in effect, generally during the summer months. Changes in the pumping rate at NBA due to the agreement would be about 60 cubic feet per second ("cfs") in September, 40 cfs in October, and about 10 cfs to 25 cfs in the subsequent months through April. The maximum amount of water to be provided in any one year will be 31,620 acre-feet.

DETERMINATION

Based on its review of the biological opinions, the Department has determined that the project is consistent with CESA because the mitigation measures in the biological opinions meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), which, when met, authorize the incidental take of species listed under CESA. Specifically, the Department finds that any take of winter- and spring-run Chinook salmon and delta smelt will be incidental to an otherwise lawful activity (i.e., delivery of water to the cities under the terms of the agreement) and the mitigation measures identified in the biological opinions will minimize and fully mitigate the impacts of the authorized take on winter- and spring-run Chinook salmon and delta smelt. Such measures include reducing the pumping rate at NBA when delta smelt are detected in Barker Slough.

Based on the Department's consistency determination, DWR does not need to obtain separate authorization in the form of an incidental take permit from the Department under CESA for take of winter- and spring-run Chinook salmon and delta smelt for the project, provided DWR complies with the mitigation measures and other conditions described in the biological opinions. However, if the project changes, NMFS or USFWS substantively amend the existing biological opinions as they relate to the project, or NMFS or USFWS prepare new biological opinions that replace the existing ones, DWR will need to obtain a new consistency determination or an incidental take permit from the Department.

FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

(CONTINUATION OF CALIFORNIA NOTICE
REGISTER JUNE 27, 2003, NO. 26-Z AND
JULY 11, 2003, NO. 28-Z AND MEETINGS OF
JUNE 20 AND AUGUST 2, 2003.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Section 355 of the Fish and Game Code and to implement, interpret or make specific

sections 355, 356 and 3005 of said Code, proposes to amend section 507(c), Title 14, California Code of Regulations, relating to waterfowl regulations.

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current regulation prohibits the use of electronic or mechanically operated spinning blade devices or spinning wing decoys when attempting to take waterfowl from the start of waterfowl season through November 30. **This regulation was adopted in 2001 as a means of further evaluating the possible effect of electronic or mechanically operated spinning blade devices or spinning wing decoys. Alternatives to the existing regulation include: 1) no change (continue the November 30 prohibition); 2) eliminate all regulation of electronic or mechanically operated spinning blade devices or spinning wing decoys; 3) eliminate the use of electronic or mechanically operated spinning blade devices or spinning wing decoys; and 4) prohibit the use of all self-powered devices for waterfowl hunting.**

Existing analyses suggest that spinning blade devices or spinning wing decoys increase duck harvest, and this technological advance may have increased duck harvests to higher levels than would have occurred under normal conditions. **The imposition of the mid-season (November 30) prohibition on the use of electronic or mechanically operated spinning blade devices or spinning wing decoys reduced direct recovery rates of mallards banded in California, and the 2003 estimated breeding population of mallards in California increased 27 percent.** Overall duck harvests have been declining in California. In California, mallards comprise about 25% of the total duck harvest and the vast majority, especially early in the hunting season, of these mallards originate in California. However, this correlative analysis does not prove that the decline in the breeding population estimate was solely due to the increased use of electronic or mechanically operated spinning blade devices or spinning wing decoys because other factors (breeding success and over-winter survival) may have changed coincidentally.

Editorial changes may also be proposed to improve the clarity and consistency of the regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in Flamingo Resort Hotel, Conference Center, 2777 4th Street, Santa Rosa, California on Thursday, August 28, 2003, at 10:00 a.m., or as soon thereafter as

the matter may be heard. It is requested, but not required, that written comments be submitted on or before August 28, 2003 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than August 28, 2003, at the hearing in Santa Rosa, CA. All written correspondence, including e-mail must include the true name and mailing address of the commenter.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Tracy L. Reed at the preceding address or phone number. Dan Yparraguirre, Department of Fish and Game, phone (916) 445-3685, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at http://www.dfg.ca.gov/fg_comm/index.html.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 355 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

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

IMPACT OF REGULATORY ACTION

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulation(s) are intended to provide additional recreational opportunity to the public. The response is expected to be minor in nature.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

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

DECISION NOT TO PROCEED

**DEPARTMENT OF MANAGED
HEALTH CARE**

August 6, 2003

RE: Assignment of Enrollees to Providers
OAL file # 02-0806-03

To The Office of Administrative Law:

Pursuant to Government Code section 11347, the Department of Managed Health Care (Department) is giving notice of its decision not to proceed with its proposed regulations regarding the Assignment of Enrollees to Providers, OAL file # 02-0806-03. This terminates the effect of the notice of proposed regulatory action regarding the above referenced file, which was published in the California Regulatory Notice Register on August 16, 2002.

The Department is not precluded from proposing a new regulatory action that is similar or identical to the above referenced regulation.

Sincerely,

Brian J. Bartow
Assistant Chief Counsel
Department of Managed Health Care

**RULEMAKING PETITION
DECISIONS**

**DEPARTMENT OF
HEALTH SERVICES**

July 31, 2003

Mr. C. Keith Greer, Esquire
Greer and Associates
16787 Bernardo Center Drive, Suite 14
San Diego, CA 92128

Re: California Podiatric Medical Association
Request for Reconsideration of Petition to Amend
Medi-Cal Regulations

Dear Mr. Greer:

This is in response to your June 24, 2003, request for reconsideration of the Department of Health Services' (Department) decision to deny portions of a petition to amend Medi-Cal regulations filed by the California Podiatric Medical Association (CPMA). We have concluded that the information and arguments in the request for reconsideration have not changed the

Department's view that current regulations concerning Medi-Cal reimbursement of Doctors of Podiatric Medicine (D.P.M.s) are necessary and appropriate. Therefore, your request for reconsideration is denied. Each of the issues raised in the petition for reconsideration is addressed below.

Allied Health Profession Classification

The first issue raised in the petition for reconsideration concerns a "ruling" on whether D.P.M.s should be removed from the "Allied Health Profession classification." The CPMA's October 11, 2002, petition to amend Medi-Cal regulations recognized that there are no regulations that place D.P.M.s within Allied Health Professions. Indeed, there is no Department regulation that refers to D.P.M.s as Allied Health Professionals or establishes a "classification" of any health practitioners as Allied Health Professionals. It is true that Medi-Cal instructions concerning podiatry services are included in the Allied Health Provider Manuals and Bulletins and that podiatry services, as optional medicaid benefits, are subject to limits on the number of services available to a beneficiary each month. However, we do not consider these to be a "classification" of D.P.M.s as Allied Health Professionals. In light of dwindling state financial and personnel resources, we cannot and will not restructure the Medi-Cal Provider Manuals and Bulletins or reduce utilization controls at this time. Hopefully, I conveyed to you during our meetings on the petition to amend Medi-Cal regulations my belief that D.P.M.s are qualified independent medical professionals. Within their scope of practice, D.P.M.s should be treated accordingly in their interactions with the Medi-Cal program. However, I did not commit to making any specific changes to Medi-Cal regulations, procedures, or publications in order to avoid an impression that the program had classified D.P.M.s in any other way.

Deletion of limitations on E&M Coding for office visits

The Department's denial of the CPMA's petition to delete regulatory limits on Evaluation and Management Codes for office visits was made with the knowledge that D.P.M.s can and do perform complete histories and physical examinations. On an unrelated issue, attorneys for the California Department of Consumer Affairs recently quoted to the Department a 1982 legal opinion that says:

"[A] podiatrist may perform a general history and physical examination upon a patient in conjunction with podiatric treatment so long as no conclusion or diagnosis is made regarding the patient's condition except as it relates to that part of the anatomy within the podiatrist's authorized scope of practice."

The limitation on E&M Coding does not prevent podiatrists from performing, and being paid for, a complete history, physical examination and medical decision-making during an office visit or for the purpose of admitting a patient to a health facility. The limitation is consistent with the American Medical Association's Current Procedural Terminology listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians. The purpose of the terminology, which is incorporated by reference in current Medi-Cal regulations, is to provide a uniform nationwide language that accurately describes medical, surgical, and diagnostic services. The terminology also recognizes that the more extensive levels of history, examination, and medical decision-making described in the higher level codes exceed levels necessary to make conclusions and diagnoses that are within the scope of practice of a D.P.M.

The Request for Reconsideration also correctly notes that higher level E&M Codes may be billed for "Non-Physician Medical Practitioners" even though they have far less training than D.P.M.s. Medi-Cal reimbursement is available for certain services of a "Non-physician Medical Practitioner" when the services are delivered in the manner required under the practice act applicable to the practitioner. (See, Title 22 California Code of Regulations sections 51240 & 51241.) The services that may be reimbursed are consistent with the scope of practice authorized under the practice act or by the licensing authority for the practitioner.

Prior Authorization Requirements

The Petition for Reconsideration does not offer any new information or arguments to support the repeal of regulations that require Treatment Authorization Requests (TARs) for some podiatric services. As noted in my April 25, 2003, letter, the Department has broad authority to establish utilization controls in the Medi-Cal program. (Welfare & Institutions Code Section 14133.) These controls, like TARs, do not prevent D.P.M.s or any other providers from delivering necessary services to Medi-Cal beneficiaries. They simply require that the services be approved before they are delivered. These controls limit program costs and adverse health effects to beneficiaries that can result from unnecessary services. It is particularly inappropriate to reduce these utilization controls in times of severe budget shortfalls. We again decline to do so.

Limitation of D.P.M. monthly office visits

Just as with the arguments in the Petition for Reconsideration concerning TARs, the Petition raises no new information or arguments to support repeal of the regulation that limits the number of D.P.M. office

visits a Medi-Cal beneficiary can make in a given month. As stated in my April 25, 2003, letter, this regulation prevents overutilization, program costs, and prevents fraud. These are worthwhile objectives in the best of times. However, at a time when Medi-Cal services and reimbursement levels may be declining, it seems particularly inappropriate to abandon utilization limits of this sort. We must decline to do so.

As required by Government Code Section 11340.7, a copy of this letter will be sent to the Office of Administrative Law for publication in the California Regulatory Notice Register.

If you have any questions about this response, please contact Chief Administrative Law Judge Robert D. Tousignant at (916) 323-0552.

Sincerely,

Richard R. Bayquen
Chief Deputy Director

cc: Thomas Newman, D.P.M., F.A.A.F.S.
Chairman, Medi-Cal Committee
California Podiatric Medical Association
The Foot Health Center of Northridge
9017 Reseda Blvd., #100
Northridge, CA 91324-3922

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.

BOARD OF PSYCHOLOGY

Waiver of Examination Under Section 2946

This regulatory action expands the circumstances under which the Examination for Professional Practice in Psychology (EPPP) is waived.

Title 16
California Code of Regulations
AMEND: 1388.6
Filed 08/07/03
Effective 09/06/03
Agency Contact:

Kathy Bradbury (916) 263-0712

CALIFORNIA REGULATORY NOTICE REGISTER 2003, VOLUME NO. 34-Z

**COUNCIL ON DEVELOPMENTAL DISABILITIES
Conflict of Interest Code**

This is a Conflict of Interest Code filing that was previously approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing in the California Code of Regulations only.

Title 2
California Code of Regulations
AMEND: 41000
Filed 08/13/03
Effective 09/12/03
Agency Contact:
Karim AlipourFard (916) 322-5550

**DEPARTMENT OF FOOD AND AGRICULTURE
Noxious Weed Species**

This action adds eleven species of plants to the list of noxious weeds within the meaning of Section 5004 of the Food and Agricultural Code.

Title 3
California Code of Regulations
AMEND: 4500
Filed 08/12/03
Effective 09/11/03
Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF INSURANCE
Governing Regulation for Hearings**

The Department of Insurance is amending the captioned section (10 CCR 2615.3) to correct an internal reference from nonexistent section 2701 to section 2615.2 of title 10, California Code of Regulations, entitled "Governing Procedures: Requirements".

Title 10
California Code of Regulations
AMEND: 2615.3
Filed 08/12/03
Effective 08/12/03
Agency Contact:
Andrea L. Biren (415) 538-4626

**DEPARTMENT OF JUSTICE
Department of Motor Vehicles Business Partner
Automation Surety Bond**

The Department of Justice is amending the captioned surety bond entitled "Business Partner Automation Surety Bond". This Bond is noted at section 51.19 under Article 20, Department of Motor Vehicles.

Title 11
California Code of Regulations
AMEND: Article 20, Section 51.19
Filed 08/07/03
Effective 08/07/03
Agency Contact: Anne M. Burr (415) 703-1403

**DEPARTMENT OF MOTOR VEHICLES
Business Partnership Automation Program**

The regulatory action is the Certificate of Compliance for emergency regulations that dealt with the Business Partner Automation Program. (Prior OAL Files 02-0625-02E, 02-1024-01EE and 03-0221-02EE.)

Title 13
California Code of Regulations
ADOPT: 225.00, 225.03, 225.06, 225.09, 225.12, 225.15, 225.18, 225.21, 225.24, 225.27, 225.30, 225.33, 225.36, 225.39, 225.42, 225.45, 225.48, 225.51, 225.54, 225.57, 225.60, 225.63, 225.66, 225.69, 225.72
Filed 08/11/03
Effective 08/11/03
Agency Contact:
Christie Patrick (916) 657-5567

**DEPARTMENT OF PARKS AND RECREATION
OHMVR Grant and Cooperative Agreement
Regulations**

This is a readopt of the emergency regulatory action (OAL file no. 03-0328-03ER) that amended the Department's regulations dealing with Off-highway Motor Vehicle Recreation (OHMVR) grants and cooperative agreements.

Title 14
California Code of Regulations
ADOPT: 4970.09 AMEND: 4970.00, 4970.01, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06, 4970.07, 4970.08, 4970.10, 4970.11, 4970.12, 4970.13, 4970.14, 4970.15, 4970.16, 4970.17, 4970.18, 4970.19, 4970.20, 4970.21, 4970.22, 4970.23, 4970.24, 4970.25, 4970.2
Filed 08/08/03
Effective 08/08/03
Agency Contact:
Lisa R. McClung (916) 445-2721

**DEPARTMENT OF SOCIAL SERVICES
ABAWD, Food Stamp Voluntary Quit, & FSET
Emergency Regulations**

This emergency rulemaking brings California's Food Stamp regulations concerning voluntary quit and reduction of work effort into compliance with Federal Food Stamp Employment and Training (FSET) regulations.

Title MPP
California Code of Regulations
AMEND: 63-300, 63-407, 63-408, 63-410, 63-411, 63-503, 63-505
Filed 08/08/03
Effective 08/08/03
Agency Contact:
Anthony J. Velasquez (916) 657-2586

DEPARTMENT OF VETERANS AFFAIRS

Cost of Care in Excess of Member Fees

This regulatory action defines and establishes what constitutes the "cost of care in excess of the member fee."

Title 12

California Code of Regulations

ADOPT: 506, 507

Filed 08/12/03

Effective 09/11/03

Agency Contact: Frederick Chow (916) 653-0603

ENVIRONMENTAL PROTECTION AGENCY

Environmental Enforcement & Training Grant Program

This regulatory action provides the procedures for applying for Environmental Enforcement and Training Act grants, criteria to be used in determining which applications will be funded, and requirements governing the receipt and expenditure of Environmental Enforcement and Training Act grant funds.

Title 27

California Code of Regulations

ADOPT: 10011, 10012, 10013, 10014, 10015, 10016, 10017, 10018

Filed 08/07/03

Effective 09/06/03

Agency Contact:

Carol J. Monahan (916) 322-3638

FISH AND GAME COMMISSION

Inseason Sport Groundfish, Conformance with Federal Regulations

This emergency regulatory action conforms California's sport fishing regulation for groundfish with recently approved inseason changes to federal groundfish regulations.

Title 14

California Code of Regulations

AMEND: 27.82, 27.83

Filed 08/13/03

Effective 09/01/03

Agency Contact: John M. Duffy (916) 653-4899

FISH AND GAME COMMISSION

Winter-Run Chinook Salmon

This rulemaking action prohibits the retention of Chinook salmon in the Sacramento River from Bend Bridge to the Carquinez Bridge from January 1 through July 15. This action also prohibits the retention of Chinook salmon in the American River from the Jibboom Street Bridge to the river mouth from January 1 through July 15.

Title 14

California Code of Regulations

AMEND: 7.50(b)(5), 7.50(156)

Filed 08/07/03

Effective 08/07/03

Agency Contact: John M. Duffy (916) 653-4899

FRANCHISE TAX BOARD

Sales & Gasoline Tax

The Franchise Tax Board is amending the captioned section by removing that portion of the regulation that references and explains Revenue and Taxation Code section 24345(b)(2) due to the fact that language was revised by Stats. 1987, Ch. 1139. The Board is further providing an amendment by replacing the repealed authority reference with a current one.

Title 18

California Code of Regulations

AMEND: 24345-4

Filed 08/07/03

Effective 09/06/03

Agency Contact:

Colleen Berwick (916) 845-3306

FRANCHISE TAX BOARD

Corporate Liquidations and Liquidations Covering More Than One Income Year

In this filing under California Code of Regulations, title 1, section 100, the Franchise Tax Board repeals regulations pertaining to "corporate liquidations" and "liquidations covering more than one income year."

Title 18

California Code of Regulations

REPEAL: 24501, 24502

Filed 08/12/03

Effective 09/11/03

Agency Contact:

Colleen Berwick (916) 845-3306

OFFICE OF ENVIRONMENTAL HEALTH

HAZARD ASSESSMENT

Chemicals Known to the State to Cause Cancer or Reproductive Toxicity

This action amends the "List of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity" pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986. The amendment of the list is exempt from the APA pursuant to Health and Safety Code section 25249.8.

Title 22

California Code of Regulations

AMEND: 12000

Filed 08/07/03

Effective 09/06/03

Agency Contact: Cynthia Oshita (916) 322-2068

**CCR CHANGES FILED WITH
THE SECRETARY OF STATE
WITHIN APRIL 9, 2003
TO AUGUST 13, 2003**

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

Title 1

07/01/03 AMEND: 1038
05/08/03 REPEAL: 121, 122, 123, 124, 125, 125.5, 126, 127, 128, App. A (Form 1013)

Title 2

08/13/03 AMEND: 41000
08/01/03 ADOPT: 22100, 22110, 22120, 22130
07/29/03 AMEND: 18404.1
07/14/03 AMEND: Chapter 55, Section 54400
07/14/03 AMEND: 56800
07/14/03 AMEND: 649.11
07/07/03 ADOPT: 1859.77.3 AMEND: 1859.2, 1859.77.2
06/19/03 AMEND: 1859.2, 1859.20, 1859.21, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, 1859.78.3, 1859.79, 1859.81.1, 1859.83, 1859.107, 1859.145
06/16/03 ADOPT: 18530.2
06/13/03 ADOPT: 1859.160, 1859.161, 1859.162, 1859.162.1, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.168, 1859.169, 1859.170, 1859.171 AMEND: 1859.2, 1859.51, 1859.103, 1859.106, 1859.145.1
06/12/03 AMEND: 1859.77.2
06/12/03 ADOPT: 18329.5
06/12/03 AMEND: 1555
06/10/03 ADOPT: 18702.5 AMEND: 18702, 18702.1
06/04/03 ADOPT: 649.23, 649.24, 649.25
05/08/03 AMEND: 2970
05/07/03 AMEND: 547.80, 17030, 17111, 17112, 17151 REPEAL: 547.81, 17434
05/07/03 ADOPT: 471.1 AMEND: 470, 470.1, 471, 472, 17502, 17520
05/01/03 AMEND: 1859.61, 1859.105, 1859.106, 1859.141, 1859.142, 1859.145, 1859.147, 1859.148, 1859.150.1, 1859.151, 1859.152, 1859.153
04/28/03 AMEND: 1897

04/21/03 ADOPT: 1185.02, 1186 AMEND: 1181.1, 1183, 1183.01, 1185, 1185.01, 1185.02, 1185.1, Article 6 title. REPEAL: 1185.2, 1186, 1186.1, 1186.2, 1186.3, 1188.5
04/10/03 AMEND: 18313
04/09/03 ADOPT: 18550.1 AMEND: 18225.7

Title 3

08/12/03 AMEND: 4500
07/29/03 ADOPT: 760, 760.1, 760.2, 760.3, 760.4, 760.5, 760.6, 760.7, 760.8, 760.9
07/28/03 ADOPT: 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3663.5
07/24/03 AMEND: 3417(b)
07/10/03 AMEND: 3700(c)
07/08/03 AMEND: 3700(c)
07/03/03 ADOPT: 755, 755.1, 755.2, 755.3, 755.4, 755.5, 755.6, 756, 756.1, 756.2, 756.3, 757, 758, 758.1, 759 AMEND: 753.2 REPEAL: 757, 759, 759.1, 759.2, 759.3, 759.4, 759.5
06/26/03 AMEND: 3417(b)
06/12/03 AMEND: 3423(b)
06/03/03 AMEND: 3417
06/02/03 REPEAL: 796
05/28/03 ADOPT: 1392.12
05/22/03 AMEND: 6860
05/19/03 ADOPT: 6450, 6450.1, 6450.2, 6450.3, 6784 AMEND: 6000 REPEAL: 6450, 6450.1, 6450.2, 6450.3, 6784
05/05/03 ADOPT: 1310, 1310.1, 1310.2, 1310.3
04/24/03 AMEND: 6000, 6710
04/21/03 AMEND: 3423(b)
04/21/03 AMEND: 3417(b)
04/15/03 AMEND: 3423(b)

Title 4

07/14/03 ADOPT: 10151, 10152, 10153, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162
06/26/03 AMEND: 12100, 12101, 12104, 12105, 12120, 12122, 12124, 12126, 12128, 12130, 12132, 12140, 12142
06/16/03 ADOPT: 12370
05/22/03 ADOPT: 12300, 12301, 12302, 12304, 12305, 12306, 12307, 12308, 12309, 12310 AMEND: 12301, 12303, 12309
04/09/03 AMEND: 1467

Title 5

07/31/03 AMEND: 80014, 80015, 80015.1, 80023 REPEAL: 80085, 80085.1, 80086, 80087, 80088, 80412, 80413.2, 80414, 80422, 80680-80690.1
07/21/03 ADOPT: 1068-1074
07/18/03 ADOPT: 80473, 80473.1
07/03/03 AMEND: 51023.5

CALIFORNIA REGULATORY NOTICE REGISTER 2003, VOLUME NO. 34-Z

06/20/03 ADOPT: 13075
 06/16/03 ADOPT: 9531, 9532
 05/15/03 ADOPT: 24000, 24001, 24002, 24003,
 24004, 24005, 24006, 24007, 24008,
 24009
 05/01/03 ADOPT: 1218.5 AMEND: 1200, 1204,
 1209, 1211, 1212, 1215, 1216, 1217,
 1217.5, 1219, 1219.5, 1220, 1225
 04/21/03 ADOPT: 11990
 04/15/03 AMEND: 18106
 04/14/03 AMEND: 11510, 11512.5(a)(11), 11517
 REPEAL: 11510(j)

Title 7

07/23/03 AMEND: 213(i)
 06/03/03 AMEND: 201, 202, 203, 204, 208, 209,
 210, 211, 213, 214, 215, 216, 217, 218,
 219, 220, 221, 222

Title 8

08/04/03 ADOPT: 3458 AMEND: 3437
 07/31/03 AMEND: 1532, 1532.1, 1535, 5198,
 5200, 5201, 5207, 5211, 5214, 5218,
 5220
 07/28/03 AMEND: 3016, 3120.6, 2122.0
 07/24/03 AMEND: 1532.1
 07/21/03 AMEND: 5557
 07/11/03 ADOPT: 5248, 5252.1, 5253.1, 5298.1,
 5307, 5308 AMEND: 1504, 5236, 5237,
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