



# California Regulatory Notice Register

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SEPTEMBER 17, 2004

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

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**PROPOSED ACTION ON  
REGULATIONS**

*Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.*

**TITLE 5. BOARD OF EDUCATION**

NOTICE OF PROPOSED RULEMAKING

**Immediate Intervention/Underperforming Schools Program (II/USP) and High Priority Schools Grant Program (HPSG)**

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

Program staff will hold a public hearing beginning at **9:00 a.m. on Tuesday, November 2, 2004**, at 1430 N Street, Room 1801, Sacramento. 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. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period ends at **5:00 p.m. on November 2, 2004**. The Board will consider only written comments received by the Regulations Coordinator or at the Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Coordinator  
California Department of Education  
LEGAL DIVISION  
1430 N Street, Room 5319  
Sacramento, CA 95814

E-mail: [dstrain@cde.ca.gov](mailto:dstrain@cde.ca.gov)  
Telephone: (916) 319-0860  
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Sections 33031, Education Code.  
References: Sections 52053 et seq. and 52055.650 et seq., Education Code.

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

Education Code sections 52055.5 and 52055.650 provide for a general standard by which schools participating in the II/USP and HPSGP respectively may receive funding or be subject to state interventions or sanctions. The proposed regulation serves two purposes: (1) it specifies a clear standard to determine whether a school has achieved significant growth on the Academic Performance Index (API) and (2) it establishes a criteria to determine whether a school demonstrates academic growth for those II/USP and HPSGP participants that do not have a valid API score.

DISCLOSURES REGARDING THE  
PROPOSED ACTION

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Costs to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561: None.

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

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

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

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

Adoption of these regulations will not:

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

Significant effect on housing costs: None.

Effect on small businesses: The proposed amendments to the regulations do not have an effect on small businesses because the regulations only relate to local school districts and not to business practices.

**CONSIDERATION OF ALTERNATIVES**

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

The State Board 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 substance of the proposed regulations should be directed to:

Martin Miller, Education Program Assistant  
California Department of Education  
School Improvement Division  
1430 N Street, 4<sup>th</sup> Floor  
Sacramento, CA 95814  
Telephone: (916) 324-3455  
E-mail: [mamiller@cde.ca.gov](mailto:mamiller@cde.ca.gov)

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

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

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies

of any modified regulations should be sent to the attention of the Regulations Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Coordinator at the above address.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's Web site at <http://www.cde.ca.gov/re/lr/rr/>.

**REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY**

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Martin Miller, School Improvement Division, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 324-3455; fax, (916) 324-3580. It is recommended that assistance be requested at least two weeks prior to the hearing.

**TITLE 5. BOARD OF EDUCATION**

**NOTICE OF PROPOSED RULEMAKING**

**State Board Review of Multi-site Charters of Statewide Interest**

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

**PUBLIC HEARING**

The State Board will hold a public hearing beginning at **1:30 p.m. on Tuesday, November 2, 2004**, at 1430 N Street, Room 2102, Sacramento. 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. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The State Board requests, but does not require, that persons who make oral comments at the hearing

also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Coordinator. The written comment period ends at **5:00 p.m. on November 2, 2004**. The State Board will consider only written comments received by the Regulations Coordinator or at the State Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Coordinator  
 California Department of Education  
 LEGAL DIVISION  
 1430 N Street, Room 5319  
 Sacramento, CA 95814  
 E-mail: [dstrain@cde.ca.gov](mailto:dstrain@cde.ca.gov)  
 Telephone: (916) 319-0860  
 FAX: (916) 319-0155

**AUTHORITY AND REFERENCE**

Authority: Sections 33031, 47602, 47605 and 47605.8, Education Code.

References: Sections 47602, 47605, 47605.6, 47605.8, 47612.5, 47632, 47634.2 and 47651, Education Code.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

This regulations packet includes six sections; three sections are amended and three new sections are added. These regulations are necessary to implement AB 1994 (Chapter 1058, Statutes of 2002) which amended and added to the Charter School Act of 1992.

The first section amends 5 CCR 11967 to conform to an amendment of Education Code Section 47605(j), which was amended to require a denied charter to appeal to the county board of education prior to appealing to the State Board of Education (SBE). Previously, a charter that was denied by a school district could appeal to either the county board or the SBE. The amendments to this section are largely technical and conforming to reflect the change in the sequence of a charter appeals.

The second section adds 5 CCR 11967.6, which is necessary pursuant to Education Code Section 47605.8(a). Education Code Section 47605.8 creates new responsibilities for the State Board to review and approve charter schools of statewide benefit that propose to operate on multiple sites. The law requires the SBE to adopt regulations to implement Section 47605.8.

Education Code Section 47605.8 states:

“(a) A petition for the operation of a state charter school may be submitted directly to the State Board of Education, and the board shall have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state. The State Board of Education shall adopt regulations, pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) for the implementation of this section. Any regulations adopted pursuant to this section shall ensure that a charter school approved pursuant to this section meets all requirements otherwise imposed on charter schools pursuant to this part, except that a charter school approved pursuant to this section shall not be subject to the geographic and site limitations otherwise imposed on charter schools.

(b) The State Board of Education may not approve a petition for the operation of a state charter school under this section unless the State Board of Education finds that the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. The finding of the board in this regard shall be made part of the public record of the board's proceedings and shall precede the approval of the charter.

(c) The State Board of Education may, as a condition of charter petition approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report on, the operations of the charter school. The State Board of Education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the State Board of Education.

(d) The State Board of Education shall not be required to approve a petition for the operation of a statewide charter school, and may deny approval based on any of the reasons set forth in subdivision (b) of Section 47605.6.”

The SBE previously adopted regulations describing the criteria and process for SBE review and approval of charters that have been denied by local entities. They are included in 5 CCR 11967 through 11967.5.1. These existing regulations are used as a reference and basis in implementing regulation for Education Code

Section 47605.8. However, Education Code Section 47605.8 creates a new type of State Board-approved charter school that requires additional considerations that are not addressed in existing regulations.

The third section adds 5 CCR 11967.7 to provide technical clarity regarding the timelines for submission of documentation on the adequacy of facilities proposed to be used for statewide charter schools and for California Department of Education to review the adequacy and appropriateness of such facilities.

The fourth section adds 5 CCR 11967.8 to provide technical clarity regarding the funding calculation and process for providing operational funding to statewide charter schools and to specify that for purposes of local tax transfers, a statewide charter does not have a "sponsoring local education agency".

The fifth section amends 5 CCR 11968 related to the number of charter schools authorized to operate in the state. These amendments are necessary to align the charter numbering process more closely with the language in Education Code Section 47602 as amended by AB 1994, and the amendments to Section 11969 that are proposed to 5 CCR 11969 below.

The last section amends 5 CCR 11969 regarding the numbering of charter petitions by the SBE. This amendment is necessary to implement an amendment to Education Code Section 47602, which was also enacted through AB 1994. This section now requires the SBE, in its charter-numbering process, to consider providing separate charter numbers to each site of a multi-site charter that offers differing educational programs. This amendment also clarifies that the California Department of Education is to establish and administer the charter numbering system on behalf of the SBE.

#### DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Costs to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561: None.

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

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

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

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost

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

Adoption of these regulations will not:

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

Significant effect on housing costs: None.

Effect on small businesses: The proposed amendments to the regulations do not have an effect on small businesses because the regulations only relate to local school districts.

#### CONSIDERATION OF ALTERNATIVES

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

The State Board 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 substance of the proposed regulations should be directed to:

Deborah Connelly, Education Program Consultant  
California Department of Education  
Charter Schools Division  
1430 N Street, Room 5401  
Sacramento, CA 95814  
Telephone: (916) 323-2694  
E-mail: [dconnelly@cde.ca.gov](mailto:dconnelly@cde.ca.gov)

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

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

The Regulations Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published

in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Coordinator at the above address.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Coordinator at the above address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/re/lr/rr/>.

#### REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Deborah Connelly, Charter Schools Division, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 323-2694; fax, (916) 322-1465. It is recommended that assistance be requested at least two weeks prior to the hearing.

## TITLE 5. COMMISSION ON TEACHER CREDENTIALING

PROPOSED AMENDMENT OR REPEAL OF SECTIONS 80048.3, 80413.1, 80457 AND 80523.1 PERTAINING TO SPECIFIC REQUIREMENTS FOR THE PRELIMINARY LEVEL I EDUCATION SPECIALIST INSTRUCTION CREDENTIAL, SPECIFIC REQUIREMENTS FOR PRELIMINARY AND CLEAR MULTIPLE AND SINGLE SUBJECT TEACHING CREDENTIALS FOR APPLICANTS PREPARED OUTSIDE CALIFORNIA, ACCEPTANCE OF COLLEGE OR UNIVERSITY WORK FOR PURPOSES OF CERTIFICATION IN CALIFORNIA AND EXPERIENCE IN LIEU OF STUDENT

#### NOTICE OF PROPOSED RULEMAKING

The Commission on Teacher Credentialing proposes to amend regulatory action described below after considering all comments, objections and recommendations regarding the proposed actions.

#### PUBLIC HEARING

A public hearing on the proposed actions will be held:

December 1, 2004  
10:00 am  
California Commission on Teacher Credentialing  
1900 Capitol Avenue  
Sacramento, CA 95814

Oral comments on the proposed action will be taken at the public hearing. We would appreciate 14 days advance notice in order to schedule sufficient time on the agenda for all speakers. Please contact Dale Janssen at (916) 323-5065 regarding this.

Any person wishing to submit written comments at the public hearing may do so. It is requested, but not required, that persons submitting such comments provide fifty copies to be distributed to the Commissioners and interested members of the public. All written statements submitted at the hearing will, however, be given full consideration regardless of the number of copies submitted.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by e-mail on the proposed action. The written comment period closes at 5:00 p.m. on November 29, 2004. Comments must be received by that time or may be submitted at the public hearing. You may fax your response to (916) 327-3166; write to the California Commission on Teacher Credentialing.

ing, attention Dale Janssen, 1900 Capitol Avenue, Sacramento, CA 95814; or submit an e-mail at djanssen@ctc.ca.gov.

Any written comments received 21 days prior to the public hearing will be reproduced by the Commission's staff for each Commissioner as a courtesy to the person submitting the comments and will be included in the written agenda prepared for and presented to the full Commission at the hearing.

**AUTHORITY AND REFERENCE**

Education Code Section 44225 authorizes the Commission to adopt the proposed actions, which will implement, interpret or make specific sections 44227, 44252, 44259, 44265, 44275.3, 44280, 44281, 44310, and 44335 of the Education Code and govern the procedures of the Commission.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Summary of Existing Laws and Regulations

Education Code Section 44225 provides that the Commission may promulgate rules and regulations.

**§ 80048.3. Specific Requirements for the Preliminary Level I Education Specialist Instruction Credential.**

Staff is proposing the deletion of Section (b) because both Assembly Bill (AB) 1620 (Statutes of 1998, Chapter 547, Scott) and AB 877 (Statutes of 2000, Chapter 703, Scott) changed the requirements for out-of-stated trained teachers. Education Code Section 44275.3 clearly defines the requirements for the Preliminary Education Specialist Credential; consequently this section is no longer necessary.

**§ 80413.1. Specific Requirements for Preliminary and Clear Multiple and Single Subject Teaching Credentials for Applicants Prepared Outside California.**

This section was originally promulgated in 1986, since that time the Legislature has passed and Governor's have signed three major pieces of legislation that changed the requirements for out-of-state trained teacher's to earn a California teaching credential. Consequently staff is proposing that this section be deleted. Education Code Section 44275.3 clearly defines the requirements for multiple and single subject credentials for teachers prepared outside of California.

**§ 80457. Acceptance of College or University Work for Purposes of Certification in California.**

The Western Association of School and Colleges is being deleted because it was deleted from Education Code Section 44227 by SB 299 (Statutes of 2001, Chapter 342, Scott).

**§ 80523.1. Experience in Lieu of Student Teaching.**

Staff is proposing adding the Education Specialist Credential to this section because special education credentials were added to the appeal process outlined in Section 80509 in 1998.

Documents Incorporated by Reference

None

**DISCLOSURES REGARDING THE PROPOSED ACTIONS**

The Commission has made the following initial determinations:

Mandated costs to local agencies or school districts:

None

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

Cost or savings to any state agency: None

Cost or savings in federal funding to the state: None

Significant effect on housing costs: None

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

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with Section 17500) of the Government Code.

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.

Assessment regarding the creation or elimination of jobs in California (Govt. Code § 11346.3(b)): The Commission has made an assessment that the proposed amendment to the regulation(s) would not (1) create nor eliminate jobs within California, (2) create new business or eliminate existing businesses within California, and (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: The Commission has determined that the proposed amendment to the regulations does not effect small business. The regulations are not mandatory but an option that effects public school districts and county offices of education.

**CONSIDERATION OF ALTERNATIVES**

The Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private

persons or small businesses than the proposed action. Interested individuals may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

#### CONTACT PERSON/FURTHER INFORMATION

General or substantive inquiries concerning the proposed action may be directed to Dale Janssen at (916) 323-5065 or Dale Janssen, Commission on Teacher Credentialing, 1900 Capitol Ave. Sacramento, CA 95814. General question inquiries may also be directed to Debra Moss at (916) 322-4974 or at the address mentioned in the previous sentence. Upon request, a copy of the express terms of the proposed action and a copy of the initial statement of reasons will be made available. Also available upon request is a copy of the documents incorporated by reference. This information is also available on the Commission's web-site at <<http://www.ctc.ca.gov>>. In addition, all the information on which this proposal is based is available for inspection and copying.

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

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

#### MODIFICATION OF PROPOSED ACTION(S)

If the Commission proposes to modify the actions hereby proposed, the modifications (other than non-substantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, after the public hearing. When it is available, it will be placed on the Commission's web site at <<http://www.ctc.ca.gov>> or you may obtain a copy by contacting Dale Janssen at (916) 323-5065.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations in underline and strikeout can be accessed through the Commission's web site at [www.ctc.ca.gov](http://www.ctc.ca.gov).

## TITLE 10. DEPARTMENT OF CORPORATIONS

### NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend a regulation under the CORPORATE SECURITIES LAW OF 1968 relating to entity conversion transactions. The Commissioner proposes to amend Section 260.121 of the California Code of Regulations. (10 C.C.R. § 260.121).

### 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 by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Corporations, addressed to Kathy Womack, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m. on November 1, 2004. Written comments may also be sent to Kathy Womack (1) via e-mail at [regulations@corp.ca.gov](mailto:regulations@corp.ca.gov) or (2) via fax (916) 322-3205.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 260.121: Under the Corporate Securities Law of 1968 ("CSL"), it is unlawful for any person to offer or sell a security in the State of California in an issuer transaction unless such sale has been qualified or is exempt or not subject to qualification. It is also unlawful for any person to offer or sell any security in an "entity conversion transaction" unless the security is qualified or exempt. (Cal. Corp. Code § 25120). In order to qualify a security offering, an application for qualification must comply with Corporations Code Section 25121 and regulations promulgated thereunder.

Section 260.121 of the Commissioner's rules sets forth an application form for the qualification of securities transactions under Corporations Code Section 25120, but the application form does not include entity conversion transactions. The Commissioner proposes to amend the qualification application form in Section 260.121 to include entity conversion transactions.

The Commissioner also proposes clarifying changes to Section 260.121 to update the form for entities that are not organized as a corporation seeking to qualify securities.

**AUTHORITY**

Corporations Code Sections 25610 and 25612.

**REFERENCE**

Corporations Code Sections 25005.1, 25120, and 25121.

**AVAILABILITY OF MODIFIED TEXT**

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

**AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION/INTERNET ACCESS**

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 36/01-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request document PRO 36/01-C. These documents are also available at [www.corp.ca.gov](http://www.corp.ca.gov). As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California.

**AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed at the web-site listed above.

**CONSIDERATION OF ALTERNATIVES**

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

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

**FISCAL IMPACT**

- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Other non-discretionary cost or savings are imposed on local agencies: None.

**DETERMINATIONS**

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

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

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

The Department is not aware of any new costs that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulatory action merely implements clarifying changes to a form.

**EFFECT ON SMALL BUSINESS**

It has been determined that the adoption of these regulations will not affect small business. This regulatory action simply makes clarifying changes to an already existing form.

**CONTACT PERSON**

Nonsubstantive inquires concerning this action, such as requests for copies of the text of the proposed regulations or questions regarding the timelines or rulemaking status, may be directed to Kathy Womack at (916) 322-3553. The backup contact is Karen Fong at (916) 322-3553. Inquires regarding the substance of the proposed regulation may be directed to Gayle Oshima, Corporations Counsel, Department of Corporations, 71 Stevenson Street, Suite 2100, San Francisco, 94105, (415) 972-8576.

**TITLE 10. DEPARTMENT  
OF INSURANCE**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING**

**RH01018047**

**SUBJECT OF HEARING**

The Insurance Commissioner proposes to amend and adopt the regulations as described below after considering comments from the public. The Commissioner proposes to amend Title 10, Chapter 5, Subchapter 9, Article 2 of the California Code of Regulations. The proposed amendments and additions govern the functions and objectives of insurer fraudulent investigative claims units, commonly called "Special Investigative Units" ("SIU" or "SIUs") and the function and objectives of the California Department of Insurance (CDI) in monitoring the SIUs.

**AUTHORITY AND REFERENCE**

The Insurance Commissioner proposes to adopt, repeal and amend specified portions of the subject regulations under the authority of California Insurance Code Sections 1875.20, 1875.21, 1875.22, 1875.23, 12921 and 12926. These regulations are intended to implement, interpret and make specific California Insurance Code Sections 1875.20, 1875.21, 1875.22 and 1875.23.

**HEARING DATE, TIME AND LOCATION**

Date: November 3, 2004  
Time: 10:00 AM–4:00: PM  
Location: 300 Capitol Mall  
6<sup>th</sup> Floor Conference Room  
[Room 635]  
Sacramento, CA. 95814

**PRESENTATION OF WRITTEN AND/OR ORAL  
COMMENTS; CONTACT PERSONS**

Debra A. Chaum  
California Department of Insurance, Legal Division  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4115

**DEADLINE FOR WRITTEN COMMENTS**

All written materials [including e-mail transmissions] must be received by the Insurance Commissioner, addressed to the contact person and address designated above, no later than 5:00 p.m. on November 3, 2004. Any written materials received after that time will not be considered.

**COMMENTS TRANSMITTED BY  
E-MAIL OR FACSIMILE**

The Commissioner will accept written comments transmitted by e-mail provided that they are sent to the following e-mail address: chaumd@insurance.ca.gov.

**ACCESS TO HEARING ROOMS**

Please contact the contact person designated above.

**ADVOCACY OR WITNESS FEES**

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees or other reasonable expenses in accordance with the provisions of Title 10, Subchapter 4.5. Interested persons should contact the Office of the Public Advisor at the following address to inquire about appropriate procedures:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, 17<sup>th</sup> Floor  
Sacramento, California 95814

**INFORMATIVE DIGEST**

**SUMMARY OF EXISTING REGULATIONS AND  
POLICY STATEMENT OVERVIEW**

California Insurance Code Section 1875.20 requires that every insurer admitted to do business in the state shall maintain a unit or division to investigate possible fraudulent claims by insureds or by persons making claims for services or repairs against policies held by insureds. These units are referred to as Special Investigative Units, or alternatively, SIUs.

Section 1875.21 states that insurers may maintain the SIU using its own employees or by contracting with others for that purpose.

Section 1875.22 states that insurers shall establish the SIU no later than July 1, 1992.

Section 1875.23 states that the "unit or division" may include the assignment of fraud investigation to employees whose principal responsibilities are the investigation and disposition of claims. The statute goes on to state that expenses incurred in creating a distinct unit, hiring new employees, or contracting with another entity to fulfill the SIU requirements are included as an administrative expense for rate setting purposes.

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is set forth below.

The Commissioner has determined that the adoption of regulations is necessary in order to effectively

administer California Insurance Code Sections 1875.20-1875.23. The regulations proposed herein would do the following:

- 1) Define the terms “authorized governmental agency”, “claims handler”, “commissioner”, “communication”, “department”, “fraud division”, “insurer”, “integral anti-fraud personnel”, “reasonable belief”, “red flag” or “red flag event”, “regulations”, “special investigative unit”, “suspected insurance fraud” and “The Insurance Frauds Prevention Act” or “(IFPA)”.
- 2) Specify the responsibility of insurers under California Insurance Code Sections 1875.20-23.
- 3) Specify the adequacy and knowledge required of insurers’ staff for compliance with California Insurance Code Sections 1875.20-23.
- 4) Specify insurers’ responsibilities when contracting with another entity for purposes of compliance with California Insurance Code Sections 1875.20-23.
- 5) Specify the appropriate manner for communication with the Fraud Division and authorized governmental agencies.
- 6) Specify the appropriate method for detecting suspected insurance fraud.
- 7) Specify the requisite features of a complete investigation of suspected insurance fraud.
- 8) Specify the appropriate manner in which referrals of suspected insurance fraud shall be made to the Fraud Division.
- 9) Specify the requisite information for a referral of suspected insurance fraud to the Fraud Division.
- 10) Specify the content of anti-fraud training.
- 11) Specify the content of records that insurers must maintain regarding the anti-fraud training provided.
- 12) Specify the requirements for the maintenance and retention of an annual report concerning compliance with California Insurance Code Sections 1875.20-23.
- 13) Specify the requisite contents of the insurers’ annual reports concerning compliance with California Insurance Code Sections 1875.20-23.
- 14) Specify the ability of the Insurance Commissioner to conduct examinations an insurer’s SIU and related operations.
- 15) Specify that a written report of an examination will be provided to the insurer upon completion of the examination.
- 16) Specify the appropriate methods for an insurer to respond to an examination report.

- 17) Specify the penalties imposed for noncompliance with California Insurance Code Section 1875.20-23 and/or these regulations.

#### EFFECT OF PROPOSED ACTION

The major effects of the regulations are as follows:

##### Proposed Section 2698.30(a)

Proposed Section 2698.30(a) defines “authorized governmental agency” by referencing the Insurance Frauds Prevention Act (“IFPA”). The IFPA’s use of the term “authorized governmental agency” depends on the subject of the article in which it is used and defined. In Article 4, which applies to motor vehicle insurance fraud, the term encompasses the Department of the California Highway Patrol, The Department of Insurance, the Department of Justice, the Department of Motor Vehicles, the police department of a city, or a city and county, the sheriff’s office or department of a county, a law enforcement agency of the federal government, the district attorney of any county, or city and county, and any licensing agency governed by the Business and Professions Code. In Article 5, which applies to arson investigations, “authorized agency” includes the State Fire Marshal, the Director of the Department of Forestry and Fire Protection, the chief of any city or county fire department, the chief of any fire protection district, the Attorney General, any district attorney, or any peace officer, the Department of Insurance, and any federal agency. Article 7, workers’ compensation insurance fraud reporting, defines “authorized governmental agency” as the district attorney of any county, the Office of the Attorney General, the Department of Insurance, the Department of Industrial Relations, and any licensing agency governed by the Business and Professions Code. As such, there is not single definition of “authorized governmental agency.” The proposed regulations encompass these different definitions by referencing the IFPA. This section thus provides a clear definition of a term that has different meanings and informs insurers what the term means regardless of its context.

##### Proposed Section 2698.30(b)

Proposed Section 2698.30(b) defines “claims handler” as every employee and agent of an insurer whose principal responsibilities include the investigation, adjustment, settlement and resolution of claims. Insurers will use this definition to determine which employees are encompassed by the regulations’ use of the term. Usage of the term is used in relation to integral anti-fraud personnel within the regulations. This definition accurately reflects the use of the word within the insurance industry.

##### Proposed Section 2698.30(c)

Proposed Section 2698.30(c) defines “Commissioner” as the Insurance Commissioner of the State of

California. This definition specifies the meaning of a term used throughout the regulations.

Proposed Section 2698.30(d)

Proposed Section 2698.30(d) defines “Communication” as including the referral of suspected insurance fraud to the Department of Insurance and providing information and documents requested by the Fraud Division. This definition prevents an interpretation of “communication” that is broad in scope that would inundate the Department with unnecessary communication. This definition adequately covers those communications that are necessary to enforcement of the regulations and the prevention of fraud.

Proposed Section 2698.30(e)

Proposed Section 2698.30(e) specifies that “Department” means the California Department of Insurance. The term is used throughout the regulations but the IFPA also references governmental departments other than the Department of Insurance. This definition avoids confusion as to which department the term refers.

Proposed Section 2698.30(f)

Proposed Section 2698.30(f) clarifies that “Fraud Division” refers to the California Department of Insurance Fraud Division formerly known as the Bureau of Fraudulent Claims. The Bureau of Fraudulent Claims was designated the Fraud Division subsequent to the publication of California Insurance Code Sections 1875.20 et seq. on October 1, 1992. This definition clarifies that “Fraud Division” has the same meaning as “Bureau of Fraudulent Claims” as used throughout the IFPA to create continuity between the proposed regulations and the IFPA.

Proposed Section 2698.30(g)(1)

Proposed Section 2698.30(g)(1) defines the scope of “insurer” to exclude reinsurers because reinsurance does not have the serious problems of fraud that other types of insurance in the State of California have and which require these regulations to alleviate. This definition also avoids the application of other definitions of “insurer” in the IFPA Sections 1872.2, 1874.1, 1875 and 1877.1 of the IFPA. The definition in this proposed section has been tailored for these regulations and no other definition should apply.

Proposed Section 2698.30(g)(2)

California Insurance Code Section 12400.1 states that title insurance is not subject to Sections 1875.20-23. Therefore, proposed Section 2698.30(g)(2) defines the scope of “insurer” to exclude title insurers. This definition informs title insurers that they do not fall within the scope of the term and thus the regulations. This definition also avoids the application of other definitions of “insurer” in the IFPA Sections 1872.2,

1874.1, 1875 and 1877.1 of the IFPA. The definition in this proposed section has been tailored for these regulations and no other definition should apply.

Proposed Section 2698.30(g)(3)

The Insurance Code exempts fraternal fire insurers from these regulations in Sections 9080 and 9080.1. Therefore, proposed Section 2698.30(g)(3) defines the scope of “insurer” to exclude fraternal fire insurers. This definition informs fraternal fire insurers that they do not fall within the scope of the term and thus the regulations. This definition also avoids the application of other definitions of “insurer” in the IFPA Sections 1872.2, 1874.1, 1875 and 1877.1 of the IFPA. The definition in this proposed section has been tailored for these regulations and no other definition should apply.

Proposed Section 2698.30(g)(4)

The Insurance Code exempts fraternal benefit societies from these regulations in Section 10970. Therefore, proposed Section 2698.30(g)(4) defines the scope of “insurer” to exclude fraternal benefit societies. This definition informs fraternal benefit societies that they do not fall within the scope of the term and thus the regulations. This definition also avoids the application of other definitions of “insurer” in the IFPA Sections 1872.2, 1874.1, 1875 and 1877.1 of the IFPA. The definition in this proposed section has been tailored for these regulations and no other definition should apply.

Proposed Section 2698.30(g)(5)

The Insurance Code exempts firemen, policemen, or peace officer benefit and relief associations from these regulations in Section 11400. Therefore, proposed Section 2698.30(g)(5) defines the scope of “insurer” to exclude firemen, policemen, or peace officer benefit and relief associations. This definition informs these associations that they do not fall within the scope of the term and thus the regulations. This definition also avoids the application of other definitions of “insurer” in the IFPA Sections 1872.2, 1874.1, 1875 and 1877.1 of the IFPA. The definition in this proposed section has been tailored for these regulations and no other definition should apply.

Proposed Section 2698.30(g)(6)

The Insurance Code exempts grant and annuity societies from these regulations in Section 11524. Therefore, proposed Section 2698.30(g)(6) defines the scope of “insurer” to exclude grant and annuity societies. This definition informs grant and annuity societies that they do not fall within the scope of the term and thus the regulations. This definition also avoids the application of other definitions of “insurer” in the IFPA Sections 1872.2, 1874.1, 1875 and 1877.1 of the IFPA. The definition in this proposed section has been tailored for these regulations and no other definition should apply.

Proposed Section 2698.30(g)(7)

California Insurance Code Section 12742 only permits those sections of the Insurance Code listed in Section 12743 to apply to home protection. Sections 1875.20–23 do not appear in Section 12743 and thus home protection is exempt from these regulations. Therefore, proposed Section 2698.30(g)(7) defines the scope of insurer to exclude home protection. This definition informs relevant parties that home protection does not fall within the scope of the term and thus the regulations. This definition also avoids the application of other definitions of “insurer” in the IFPA Sections 1872.2, 1874.1, 1875 and 1877.1 of the IFPA. The definition in this proposed section has been tailored for these regulations and no other definition should apply.

Proposed Section 2698.30(h)

Proposed Section 2698.30(h) sets forth a definition of the term “integral anti-fraud personnel” used in these regulations. This definition is part one of the on-going responsibilities of an insurer for compliance with these regulations. This definition includes personnel who the insurer has not identified as being directly assigned to its SIU but whose duties may include the processing, investigation, or litigation pertaining to payment or denial of a claim or application. The Section provides examples of employees that fall within this definition. This definition provides insurers with clear guidelines on determining which of their employees may be considered “integral anti-fraud personnel” for purposes of compliance with these regulations. This section identifies those employees who will be handling claims and thus forward cases of suspected insurance fraud to the SIU. Identification of these persons will allow for adequate training.

This makes some changes to the language of the emergency regulations. The proposed section deletes the words “receipt” and “agents” from the emergency regulations. The deletion of the word “receipt” reflects the fact that the receipt of a claim or application is commonly a clerical function that does not involve any analysis of a claim or application. Conversely, the deletion of the word “agents” recognizes that its inclusion may result in the section having too broad of a scope. Agents may include soliciting agents, general agents, or independent agents. Even agents of the same type have different duties that may not bring them in contact with claims or applications in the way that would reveal suspected insurance fraud. For these reasons, these two deletions are necessary to realistically define the term “integral anti-fraud personnel.”

This section also adds the words “within the claims function” after the words “call center staff.” This change reflects the reality that not all call center staff

will be in the position to detect fraud. This change is thus necessary for a precise definition of the term “integral anti-fraud personnel.”

Proposed Section 2698.30(i)

Proposed Section 2698.30(i) defines “reasonable belief” as a level of belief based on objective facts or inferences therefrom. A reasonable belief standard applies the regulations uniformly. This definition clarifies that when the regulations call for a referral when there is a reasonable belief of fraud, that belief must be based on facts rather than subjective beliefs. A subjective standard would result in inconsistencies between insurers and between individuals within an insurer’s business. The objective standard also ensures that the Department can adequately investigate actual fraud. A subjective standard would inundate the Department with unnecessary reports that will delay the investigation of actual fraud. Alternatively, a subjective standard could lead to less reporting than necessary where an insurer subjectively believes that there is no fraud but where the evidence is indicative that there is actual fraud.

Proposed Section 2698.30(j)

Proposed Section 2698.30(j) defines “red flag” or “red flag event” as facts, circumstances, or events that support an inference of fraud. These terms appear throughout the regulations, often in connection with training for awareness of “red flags” or for the documentation of “red flag” procedure. This definition informs insurers of the type of knowledge that is required when the regulations refer to “red flags” or “red flag events.” This definition is also consistent with the objective standard set by Section 2698.30(i) because they are inferences based upon facts.

Proposed Section 2698.30(k)

Proposed Section 2698.30(k) clarifies that “regulations” means California Code of Regulations, Title 10, Chapter 5, Subchapter 9, Article 2. The term “regulations” is used throughout the regulations and this definition specifies that the term does not refer to any other regulations, unless otherwise noted.

Proposed Section 2698.30(l)

Proposed Section 2698.30(l) defines “Special Investigative Unit” as the fraudulent claims investigation unit referenced in Section 1875.20. This section reiterates California Insurance Code Section 1875.21, by allowing for an insurer to maintain the SIU by using its own employees or by contracting with another entity. This definition makes clear that the SIU is the division necessary for compliance with applicable sections of the IFPA for direct responsibility of performing the functions and activities as set forth in these regulations.

Proposed Section 2698.30(m)

Proposed Section 2698.30(m) defines the scope of “suspected insurance fraud” specifically so that the term does not encompass all suspicion. The regulations refer to “suspected insurance fraud” in the context of training, reporting and investigating. This definition provides insurers with a clear definition of the scope of what “suspected insurance fraud” may mean for the purposes of compliance with these regulations. This section states that the term includes any misrepresentation of fact or omission of fact pertaining to a transaction of insurance. This definition is thus also consistent with other objective standards in the regulations. The inexhaustive list of the types of facts that show suspected insurance fraud, including a pattern in a claim history, provide guidance for insurers on what constitutes suspected insurance fraud. Integral anti-fraud personnel will use this definition as a basis for detection and a SIU will use it as a basis for training anti-fraud personnel.

This section has been changed from the emergency regulations by adding the words “or omission of fact” after the words “misrepresentation of fact.” This change does not add any burden to insurers but merely reflects the reality that an omission of fact can be equally as indicative of fraud as a misrepresentation of fact.

Proposed Section 2698.30(n)

Proposed Section 2698.30(n) clarifies that “The Insurance Frauds Prevention Act” refers to California Insurance Code Section 1871, et seq. This definition provides notice of the Act’s equivalency in meaning with that particular code section and to provide notice of the Act’s location.

Proposed Section 2698.31

Proposed Section 2698.31 implements and makes specific Insurance Code Section 1875.20 by requiring the establishment, operation and continuous existence of an SIU. This provision clarifies that an insurer will continue to have responsibilities even if it contracts with another entity to maintain its SIU. For example, insurers must still file an annual report with the Department even after contracting with another entity to maintain the SIU. That insurers have continuing obligations was implicit in the emergency regulations but it is explicit here.

Proposed Section 2698.32(a)

Section 2698.32(a) informs insurers how to determine the adequacy of a SIU. This section states that adequacy will be determined by the insurer’s demonstrated ability to establish, operate, and maintain an SIU that is in compliance with these regulations.

This section adds to the emergency regulations an inexhaustive list of factors to determine when a SIU is adequately staffed to perform the functions required

by these regulations. These factors relate to the amount of suspected insurance fraud that can reasonably be expected by an insurer. Adequacy of staffing depends on whether the SIU can handle the number of claims of suspected insurance fraud in a thorough manner that will detect and deter fraud. An insurer will use this section to help determine whether its SIU is adequately staffed to prevent insurance fraud.

Proposed Section 2698.32(b)

Section 2698.32(b) states the requisite knowledge for SIU staff. This section provides insurers with a clear list of subjects, analyses, and pattern a SIU should be familiar with as well as capabilities they should have in order to perform the functions required by these regulations.

Proposed Section 2698.33(a)

Section 2698.33(a) clarifies that the creation of a contract under these regulations does not relieve the insurer of any obligation under these regulations or the IFPA. Numerous obligations continue despite the existence of a contract to maintain a SIU. An insurer’s integral anti-fraud personnel, for example, is often in the best position to initially detect fraud. If these insurer employees had no obligation to cooperate with these regulations and the SIU then the SIU’s investigation would be significantly more difficult.

Proposed Section 2698.33(b)

Proposed Section 2698.33(b) requires an insurer to provide the Department with a copy of any agreement with another party to create a SIU. This section informs insurers of this obligation. The Department will use this report to ensure that insurers are complying with these regulations and that the regulations are adequately detecting and deterring insurance fraud.

Proposed Section 2698.33(c)(1)

Proposed Section 2698.33(c)(1) makes specific the allowance for a contractual SIU in Section 1875.21 by requiring that all duties and functions of the parties be listed in the contract as well as an explanation of how the insurer will monitor the performance of the contract responsibilities. This section clarifies that the contract must also include the parties’ functions pursuant to the terms of their contract. This section informs the contracting parties as well as the Department as to who is obligated to perform which functions pursuant to these regulations. The insurer shall choose the manner in which the contract is monitored because it is a contextual decision based on terms of the parties’ agreement.

Proposed Section 2698.33(c)(2)

Proposed Section 2698.33(c)(2) makes specific the allowance for a contractual SIU in Section 1875.21 by prohibiting the inclusion of provisions that could provide disincentives to the referral and/or investiga-

tion of suspected insurance fraud. There are an innumerable number of theoretical provisions that could contravene the purposes of these regulations by inhibiting the flow of information regarding fraud and thus have a detrimental effect on this State's economy. This section holds a contractual SIU to the same standard as an internal SIU because a contract with disincentives to comply would not require as much of the SIU.

Proposed Section 2698.33(c)(3)

Proposed Section 2698.33(c)(3) makes specific the allowance for a contractual SIU in Section 1875.21 by prohibiting the inclusion of provisions that purport to relieve an insurer of any obligation to comply with the requirements of these regulations and the IFPA. This section helps maintain insurer compliance with these regulations because some provisions of these regulations apply to an insurer despite the existence of a contract. Under this section, an insurer cannot relieve itself of obligations under these regulations. Parties will use this section to help in their understanding of responsibilities under the regulations.

Proposed Section 2698.33(c)(4)

Proposed Section 2698.33(c)(4) makes specific the allowance for a contractual SIU in Section 1875.21 by requiring all SIU contracts to include a provision that requires the contracted entity to comply with all applicable provisions of the IFPA and these regulations. This section prevents an insurer from contravening its responsibilities pursuant to these regulations by contracting with a party who will not comply. By requiring the inclusion of this provision, a contracting entity is bound to comply with these regulations in the way that an insurer must.

Proposed Section 2698.34(a)

Proposed Section 2698.34(a) makes specific California Insurance Code Sections 1875.20-23 and clarifies the emergency regulations by requiring adequate communication by insurers and any entity performing SIU functions. California Insurance Code Section 1871 et seq., is applicable to a SIU. Specifically, Sections 1872.3, 1872.4, 1873, 1874.2, 1874.4, 1875.4, 1877.1, 1877.3, 1877.4, 1877.5 1879.5 provide statutory guidelines for communication with the Department and other authorized governmental agencies. This section thus provides necessary guidelines for communication.

Proposed Section 2698.34(b)(1)-(10)

Proposed Section 2698.34(b)(1)-(10) sets forth an inexact list of the types of documents that an insurer may reasonably expect the Department or other authorized governmental agency to deem important and thus necessary to be delivered upon request. This section clarifies that insurers can expect their obligations to encompass the prompt delivery of certain

documents, such as those listed. The deliverance of relevant documents increases the effective supervision of these regulations and the Department's understanding of the effectiveness of the regulations including where the regulations have failed or succeeded, and whether insurers are capable of complying with the regulations.

Proposed Section 2698.34(c)

Proposed Section 2698.34(c) clarifies that timely release of information means immediate, but no more than twenty-one calendar days after the request unless otherwise agreed to by the Fraud Division. This specification was not part of the emergency regulations but is necessary to make sure that all insurers have the same understanding of "timely."

Proposed Section 2698.34(d)

Proposed Section 2698.34(d) requires the designation of a contact person within a SIU for purposes of communication with the Department or other authorized governmental agencies. Allocation of communication duties to a single contact person will increase efficiency and prevent overlapping of compliance with Department requests or internal miscommunication.

Section 2698.34(d) also states that a single written request is sufficient to compel production of requested information. Under this section, a single written request would provide sufficient notice to the designated contact person because the establishment of a single contact person makes any more than a single request redundant and superfluous.

Proposed Section 2698.35(a)

Proposed Section 2698.35 sets forth regulations for the detection of suspected insurance fraud. The emergency regulations had similar requirements for the SIU to train anti-fraud personnel and made claims handlers responsible for identifying suspected insurance fraud. Proposed Section 2698.35(a) states that an insurer's integral anti-fraud personnel are responsible for identifying suspected insurance fraud and reporting it to the SIU as part of their regular duties. Integral anti-fraud personnel will often be in the best position to detect suspected insurance fraud. This section will increase effective communication between these types of personnel in order to better stop insurance fraud.

Proposed Section 2698.35(b)

Section 2698.35(b) requires written procedures for integral anti-fraud personnel identification, documentation, and referral of suspected insurance fraud to the SIU. The written procedures must also contain a list of red flags used to detect suspected fraud. This section allows for the detection of fraud and the Department's administration of these regulations. Under this section anti-fraud personnel will benefit from uniform guidelines that will result in consistent implementation of the regulations.

Proposed Section 2698.35(c)(1)–(5)

Sections 2698.35(c)(1)–(5) state that the procedures for detecting suspected insurance fraud shall provide for comparison of any insurance transaction against: patterns or trends of possible fraud; red flags; events or circumstances present on a claim; behavior or history of person(s) submitting a claim or application; and other criteria that may indicate possible fraud. This language informs insurers of the type of information necessary to gather in order to create working guidelines that foster effective detection of fraud by integral anti-fraud personnel. The list is inexhaustive because additional types of evidence may become indicative of fraud over a period of time or the importance of certain evidence might depend on the type of insurance.

Proposed Section 2698.36(a)(1)

Section 2698.36(a)(1) requires an investigation of suspected fraud to include a thorough analysis of a claim file, application, or insurance transaction. These documents are the source of the most information from the insured and could be the greatest indicator of misrepresentation or omission of a relevant fact. These documents can also be compared against any of the patterns of evidence suggesting insurance fraud listed in Section 2698.35(c). Insurers will use this section to assist in creating a complete investigative procedure.

Proposed Section 2698.36(a)(2)

Section 2698.36(a)(2) requires that an investigation of suspected insurance fraud include the identification and interviewing of potential witnesses who may provide information on the accuracy of the claim or application. This procedure allows for scrutiny of insured claims by examining others with knowledge that may be able to substantiate claims or provide evidence of actual fraud. Insurers will use this section to assist in creation a complete investigative procedure.

Proposed Section 2698.36(a)(3)

Section 2698.36(a)(3) requires that an investigation of suspected insurance fraud to include the utilization of industry-recognized databases. The use of databases is part of a complete investigation. Such databases provide another source of information by which to compare the claims of the insured. Insurers will use this section to assist in creating a complete investigative procedure.

Proposed Section 2698.36(a)(4)

Section 2698.36(a)(4) requires an investigation of suspected insurance fraud to include the preservation of documents and other evidence. The preservation of evidence allows for effective investigation by creating a record of what is known and allowing a comparison of that information to new information. The preservation of evidence also allows for comparison of

suspected insurance fraud in one claim to suspected fraud in a later claim. The Department may also use this record for its own investigations. Insurers will use this section to assist in creating a complete investigative procedure.

Proposed Section 2698.36(a)(5)

Section 2698.36(a)(5) requires an investigation of suspected insurance fraud to include a concise and complete summary of the investigation including conclusions and their basis of findings. This section furthers the intent of creating an evolving understanding of what indicates suspected and actual fraud and the efficacy of the regulations. The preservation of summaries and conclusions helps create a pattern by which future investigations of suspected fraud will benefit. Insurers will use this section to assist in creating a complete investigative procedure.

This section slightly changes the emergency regulations by changing the last word from “conclusions” to “findings.” This word choice specifies that the regulations require the basis for findings leading up to the conclusion rather than just the basis for the ultimate conclusion.

Proposed Section 2698.37(a)

Proposed Section 2698.37(a) requires the referral of suspected insurance fraud to the Fraud Division, and as required, to district attorneys. Under this section, an insurer has a proactive obligation to refer suspected insurance fraud. What constitutes suspected insurance fraud is defined by these regulations at Section 2698.30(m). Moreover, Section 2698.37 requires a referral anytime there is a reasonable belief of insurance fraud. The purpose of this subsection is to clarify the fraud reporting obligations of an insurer.

Proposed Section 2698.37(b)

Proposed Section 2698.37(b) requires a referral anytime there is a reasonable belief of insurance fraud. This requirement improves communication by not allowing a party who reasonably believes there is fraud to wait for a request for this information. This section clarifies the standard for when referrals are necessary. Because the proposed section requires a “reasonable belief,” the insurer’s referral of suspected insurance fraud should be based on objective facts and rational inferences based on those facts. This wording matches that of California Insurance Code Section 1877.3, which sets forth the duty to report a reasonable belief that fraud has been committed.

Proposed Section 2698.37(c)

Proposed Section 2698.37(c) sets the time period in which insurers must refer suspected insurance fraud to the Fraud Division. Although not part of the emergency regulations, this section is needed to specify the period in which insurers must refer suspected insurance fraud. Proposed Section 2698.37(c) states that the

referral shall be made within the period specified by statute. The IFPA provides different time limits for referrals at Sections 1872.4, 1874.2, and 1877.3. The time limits vary greatly depending on the basis for referral. This section refers to the California Insurance Code because the time period for the communications has already been determined by statute.

Proposed Section 2698.38(a)(1)–(2)

Section 2698.38(a) requires a referral to include the type of fraud and the type of referral. This information provides necessary guidance to insurers. These subsections inform insurers that the Department requires this information for an effective determination of whether actual fraud exists. The purpose of r this requirement is that this specific information will narrow the investigative scope for the Department so that the referral can be properly filed and investigated correctly.

Proposed Section 2698.38(b)(1)–(6)

Proposed Section 2698.38(b) requires a referral to include reporting party information in a referral. This information provides necessary guidance to insurers. These subsections inform insurers that the Department requires this information for an effective determination of whether actual fraud exists. This specific information allows the Department to identify the reporting party and contact the reporting party for investigative purposes.

Proposed Section 2698.38(c)(1)–(4)

Proposed Section 2698.38(c) requires a referral to include alleged victim information. This information provides necessary guidance to insurers. These subsections inform insurers that the Department requires this information for an effective determination of whether actual fraud exists. This specific information allows the Department to identify and contact the alleged victim for investigative purposes.

Proposed Section 2698.38(d)(1)–(10)

Proposed Section 2698.38(d) requires a referral to include insurance policy or claim information, as appropriate in a referral. This information provides necessary guidance to insurers. This specific information provides the Department with an understanding of why a particular claim is suspected to be fraudulent. This crucial evidentiary record provides the appropriate leads to investigate in a determination of actual fraud.

This section changes the wording of the emergency regulations 2698.38(d)(9) from “suspicion” to “belief.” Pursuant to Section 2698.37(b), referrals are made when there is a “reasonable belief” of insurance fraud. The regulations do not use the term “reasonable suspicion.” This section’s change of wording from the

emergency regulations is necessary for consistency with existent case law regarding probable cause and related concepts.

Proposed Section 2698.38(e)(1)–(4)

Section 2698.38(e) requires a referral to include other agency referral information, as appropriate in a referral of suspected insurance fraud. The purpose of this subsection is that it provides necessary guidance to insurers. This specific information provides the Department with names of other persons or agencies that may be in the process of independent investigations. Inter-agency cooperation will lead to a more thorough and efficient investigation but is only possible if the Department is made aware of these additional referrals.

Proposed Section 2698.38(f)(1)–(4)

Section 2698.38(f) requires a referral to include other referral contact information, as appropriate. This information provides necessary guidance to insurers. The specific information required by this subsection provides the Department with contact information for other persons who may be in the process of independent investigations. Inter-agency cooperation will lead to a more thorough and efficient investigation but is only possible if the Department is made aware of the contact information for these referrals.

Proposed Section 2698.38(g)(1)–(13)

Section 2698.38(g) requires a referral to include information for each party associated with the referral. This information provides necessary guidance to insurers. This specific information would be compared to industry-recognized database records. The absence of this information would severely inhibit the Department’s investigation as well as the prevention of insurance fraud in the State of California.

Proposed Section 2698.39

This section has been renamed to better inform interested parties of the subject of the section. The new title now reads “Anti-Fraud Training”. This change revision to the emergency regulations was made to more accurately reflect the content of the section. The newly proposed section is no longer limited to SIU training. Subsection (c) within this section sets forth the three level of anti-fraud training.

Proposed Section 2698.39(a)

Proposed Section 2698.39(a) requires that the insurer establishes and maintains an ongoing anti-fraud training program that will develop the fraud-awareness skills of the integral anti-fraud personnel. This section furthers the purpose of the regulations in preventing insurance fraud. Continuous training raises fraud awareness and will allow integral anti-fraud personnel to adapt to changing patterns in insurance fraud. This requirement ensures that anti-fraud personnel will remain effective over time.

Proposed Section 2698.39(b)

Section 2698.39(b) requires that the insurer designate an SIU staff person to be responsible for coordinating the ongoing anti-fraud training program. The purpose of this subsection is to ensure that the insurer will create an adequate and effective staff. The allocation of coordination duties to a single SIU staff person will prevent confusion as to who is responsible for coordinating the training program and thus increase efficiency.

Proposed Section 2698.39(c)(1)(a)–(d)

Section 2698.39(c)(1)(a)–(d) sets forth the requirements for training of all new employees that must be completed within 90 days. This is the first of three levels of training under the regulations. This training covers the basic overview of fraud detection, what the SIU is and the way the SIU functions. This type of training is reasonably necessary for all employees because they are likely to deal with information that should be forwarded to the SIU or integral anti-fraud personnel. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(2)(a)

Section 2698.39(c)(2) is the second level of training and sets forth the subject matter for integral anti-fraud personnel in-service training. Section 2698.39(c)(2)(a) requires review of the function and purpose of the SIU. This section ensures that the anti-fraud personnel are aware of what the SIU's purpose is so that the personnel can effectively interact with the SIU. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(2)(b)

Proposed Section 2698.39(c)(2) is the second level of training and sets forth the subject matter for integral anti-fraud personnel in-service training. Part of the responsibilities of anti-fraud personnel will be to direct suspected fraud claims to the SIU. Section 2698.39(c)(2)(b) requires the introduction or review of the written procedures established by the SIU. This section ensures that anti-fraud personnel are knowledgeable about how to effectively cooperate with the SIU. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(2)(c)

Section 2698.39(c)(2) is the second level of training and sets forth the subject matter for integral anti-fraud personnel in-service training. Section 2698.39(c)(2)(c) requires the identification of red flags and red flag events. Red flags are a common element among multiple fraud cases, the recognition of which makes the investigation of fraud more efficient. This section ensures anti-fraud knowledge and consistency. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(2)(d)

Proposed Section 2698.39(c)(2) is the second level of training and sets forth the subject matter for integral anti-fraud personnel in-service training. Section 2698.39(c)(2)(d) requires training on any changes to current procedures. This section is necessary because as fraud patterns change, procedures for detecting and documenting fraud must also change in order to be effective. Under this section anti-fraud personnel will be uniformly trained on these procedures in order to avoid miscommunication that would otherwise result between the SIU and the anti-fraud personnel. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(2)(e)

Section 2698.39(c)(2) is the second level of training and sets forth the subject matter for integral anti-fraud personnel in-service training. Section 2698.39(c)(2)(e) requires training on Fraud Division insurance reporting requirements. This section ensures compliance with the reporting requirements within these regulations. Without this section, anti-fraud personnel might not understand the reporting provisions, including the time period in which referrals must be made. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(2)(f)

Section 2698.39(c)(2) is the second level of training and sets forth the subject matter for integral anti-fraud personnel in-service training. Section 2698.39(c)(2)(f) requires training on existing and new, emerging insurance fraud trends. This section ensures that anti-fraud personnel are trained to deter insurance fraud despite the fact that the patterns it creates may change over time. Without this requirement, anti-fraud personnel may become ineffective due to lack of knowledge. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(3)(a)

Section 2698.39(c)(3) is the third level of training and sets forth the subject matter for continuing SIU personnel training. Section 2698.39(c)(3)(a) requires training on investigate techniques. This section ensures that SIU personnel will be trained to investigate suspected insurance fraud properly. Without continuing training on investigative techniques, SIU personnel may become ineffective over time or unfamiliar with current trends. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(3)(b)

Section 2698.39(c)(3) is the third level of training and sets forth the subject matter for continuing SIU personnel. Section 2698.39(c)(3)(b) requires training on communication with the Fraud Division and authorized governmental agencies. This section helps

maintain insurer compliance with these regulations. Without this requirement, SIU personnel might not understand the requirements for communication and referrals, including time periods in which communications and referrals must be made. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(3)(c)

Section 2698.39(c)(3) is the third level of training and sets forth the subject matter for continuing SIU personnel. Section 2698.39(c)(3)(c) requires training on fraud indicators. This section thus requires that SIU personnel are knowledgeable of "red flags." If SIU personnel are unfamiliar with fraud indicators, their reports on fraud will be inconsistent, their investigations will be inefficient, and much fraud will go undetected.

Proposed Section 2698.39(c)(3)(d)

Section 2698.39(c)(3) is the third level of training and sets forth the subject matter for continuing SIU personnel. Section 2698.39(c)(3)(d) requires training on emerging fraud trends. This section ensures that SIU personnel will detect and deter insurance fraud despite the fact that the patterns it creates may change over time. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(c)(3)(e)

Section 2698.39(c)(3) is the third level of training and sets forth the subject matter for continuing SIU personnel. Section 2698.39(c)(3)(e) requires training on legal and related issues. This section ensures that SIU personnel have an understanding of the legal context in which they are performing their job duties. Rather than existing in a vacuum, there are legal implications for many of SIU job decisions and functions and for the information that SIU personnel receive. Insurers are in the best position to determine exactly what legal issues SIU personnel need to know to effectively perform their function in furtherance of the purposes of these regulations and the IFPA because what constitutes a relevant legal issue depends on the context of the function being performed. Insurers will use this section to help create their training programs.

Proposed Section 2698.39(d)

Section 2698.39(d) sets forth requirements for the preservation anti-fraud training records. This section allows the Department to oversee training programs and to ensure that personnel receive the appropriate training. Preservation of these records may also be used to determine compliance with other provisions of these regulations. Insurers will use this section to help create their training programs.

Proposed Section 2698.40(a)

Proposed Section 2698.40(a) requires insurers to report annually to the Department and sets the time period for this process. Previous regulatory attempts at

preventing insurance fraud in the State of California have been unsuccessful. An annual report that includes information relevant to these regulations will help maintain compliance and the detection and deterrence of fraud.

Proposed Section 2698.40(b)(1)–(2)

Proposed Section 2698.40(b)(1) requires an insurer's annual report to include the names, titles and contact information of the insurer's SIU personnel or the name of the organization and organizational contacts with whom the insurer has contracted for the maintenance of the SIU or any function thereof. Previous insurer reporting proved inadequate for the Department to have a complete understanding of the insurance industry's compliance with the regulations and the effect the regulations had on insurance fraud. This section adds requirements to the annual report so the Department may verify the SIU's existence and contact them if necessary. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(b)(3)

Proposed Section 2698.40(b)(3) requires insurers to include in their annual report the names of personnel whose duties include communication with the Fraud Division on matters relating to suspected insurance fraud. Previous insurer reporting proved inadequate for the Department to have a complete understanding of the insurance industry's compliance with the regulations and the effect the regulations had on insurance fraud. This section adds the requirement that the report inform the Department of the names of an insurer's staff that they should be dealing with. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(b)(4)

Proposed Section 2698.40(b)(4) requires insurers to include in their annual report a description of methods and written procedures for the detection, investigation and reporting of insurance fraud. Previous regulatory attempts at deterring and detecting insurance fraud proved inadequate. This section ensures that the proposed regulations are being followed and that they are deterring and detecting fraud. This information not only shows compliance but also educates the Department as to which methods of detection and investigation are effective in preventing insurance fraud. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(b)(5)

Proposed Section 2698.40(b)(5) requires insurers to include in their annual report a description of the insurer's plan for initial and on-going fraud education and training for integral anti-fraud personnel. Previous regulatory attempts at deterring and detecting insur-

ance fraud proved inadequate. This section ensures that the proposed regulations are being followed and that they are deterring and detecting fraud. This information not only shows compliance but also educates the Department as to which methods of detection and investigation are effective in preventing insurance fraud. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(b)(6)

Proposed Section 2698.40(b)(6) requires insurers to include in their annual report a written description or chart outlining the organizational arrangement of the insurer's anti-fraud personnel. Previous regulatory attempts at deterring and detecting insurance fraud proved inadequate. This section ensures that the proposed regulations are being followed and that they are deterring and detecting fraud. This information not only shows compliance with these regulations but also educates the Department as to effective arrangements of personnel. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(b)(7)

Proposed Section 2698.40(b)(7) requires insurers to include in their annual report a description of how the SIU is adequately staffed to meet the requirement herein and the expertise of the staff. Previous insurer reporting proved inadequate for the Department to have a complete understanding of the insurance industry's compliance with the regulations and the effect the regulations had on insurance fraud. This section assists the Department's effective administration of these regulations by ensuring that the proposed regulations are being followed and that they are deterring and detecting fraud. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(b)(8)

Proposed Section 2698.40(b)(8) requires insurers to include in their annual reports the number of claims processed by the insurer and the number of claims referred to the SIU, for each reported company, for the past calendar year. Previous insurer reporting proved inadequate for the Department to have a complete understanding of the insurance industry's compliance with the regulations and the effect the regulations had on insurance fraud. This section ensures that the proposed regulations are being followed and that they are deterring and detecting fraud. This information relates to whether an insurer's staff is adequate. A significant amount of fraud activity will suggest that a larger SIU is necessary to effectively comply with

these regulations. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(b)(9)

Proposed Section 2698.40(b)(9) requires insurers to include in their annual report the number of suspected insurance fraud reported to the Department and to district attorney offices, for each reported company, for the past calendar year. Previous insurer reporting proved inadequate for the Department to have a complete understanding of the insurance industry's compliance with the regulations and the effect the regulations had on insurance fraud. This section ensures that the proposed regulations are being followed and that they are deterring and detecting fraud. This information relates to whether an insurer's staff is adequate. A significant amount of fraud activity will suggest that a larger SIU staff is necessary to effectively comply with these regulations. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(b)(10)

Proposed Section 2698.40(b)(10) requires insurers to include in their annual report a description of any significant, anticipated changes to the insurer's operations. Previous regulatory attempts at deterring and detecting insurance fraud proved inadequate. This section ensures that the proposed regulations are being followed and that they are deterring and detecting fraud. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(b)(11)

Proposed Section 2698.40(b)(11) requires insurers who contract for compliance with these regulations to provide a copy of that contract in their annual report. Previous regulatory attempts at deterring and detecting insurance fraud proved inadequate. This section ensures that the proposed regulations are being followed and that they are deterring and detecting fraud. The insurer shall decide the appropriate manner of monitoring the contract because it is a contextual decision based upon the terms of the parties' contract. Purpose of this section is that it enable insurer to understand what should be in the annual report to the Department.

This section differs from the emergency regulations in that it replaces the words "CIC Section 1875.20 et seq." with the words "these regulations." This change clearly provides that the requirements under these regulations apply under this section.

Proposed Section 2698.40(b)(12)

Proposed Section 2698.40(b)(12) requires that insurers include in their annual report the number and type of civil actions initiated by each reported company alleging acts of insurance fraud during the

preceding calendar year. Previous insurer reporting proved inadequate for the Department to have a complete understanding of the insurance industry's compliance with the regulations and the effect the regulations had on insurance fraud. This section assists in the Department's effective administration of these regulations by ensuring that the proposed regulations are being followed and that they are deterring and detecting fraud. In conjunction with other evidence, this information could suggest that fraud is slowing or decreasing or how well the insurer is detecting fraud. Insurers will use this section to understand what should be in the annual report to the Department.

Proposed Section 2698.40(c)

Proposed Section 2698.40(c) requires the signing and attestation of the report by an officer of the holder of or applicant for the Certificate of Authority. Previous insurer reporting proved inadequate for the Department to have a complete understanding of the insurance industry's compliance with the regulations and the effect the regulations had on insurance fraud. This section ensures that the proposed regulations are being followed and that they are deterring and detecting fraud. Although the emergency regulations required this certification for a license renewal, it was not specifically attached to the annual report. This certification will specifically verify the accuracy of the report. The purpose of this subsection is to clarify and inform insurers regarding what should be contained in the annual report to the Department.

Proposed Section 2698.40(d)

Proposed Section 2698.40(d) requires insurers to retain a copy of the annual report for review. In order to ensure that the proposed regulations are being followed and that they are deterring and detecting fraud the Department must have a record of past reports. The preservation of these records reveals patterns of insurance fraud and allows for a determination of what detection and investigation methods are most effective. The purpose of this subsection is to clarify what should be contained in the annual report to the Department.

Proposed Section 2698.40(e)

Proposed Section 2698.40(e) states that the names of the insurer's personnel who will communicate with the Fraud Division shall not be made part of the public record and shall be released only according to California Insurance Code Section 1873.1. Section 1873.1 allows for disclosure of this information only when required in connection with a criminal or civil proceeding. This section is necessary to further clarify and elucidate an insurer's fraud reporting obligations.

Proposed Section 2698.41(a)

Proposed Section 2698.41(a) permits the commissioner to conduct an examination of an insurer's SIU. This section is consistent with California Insurance Code Section 730(a), which permits the commissioner to examine an insurer whenever he or she deems necessary. Although an examination will not necessarily occur, the ability of the commissioner to examine the SIU's operations encourages compliance with these regulations and furthers the goal of preventing insurance fraud.

Proposed Section 2698.41(b)

Proposed Section 2698.41(b) provides that an insurer will be given a written report of the examination including identification of violations of these regulations and the required corrective actions. This section will improve compliance by informing insurers how to improve their operations and thus further the goal of preventing insurance fraud.

Proposed Section 2698.41(c)(1)

Proposed Section 2698.41(c)(1) provides that an insurer will have thirty days to reply to a report identifying violations of these regulations with a plan demonstrating how the insurer will achieve compliance. Failure to supply the Department with such a plan would be a violation of these regulations. This section encourages compliance with these regulations and thus furthers the goal of preventing insurance fraud.

Proposed Section 2698.41(c)(2)(A)

Proposed Section 2698.41(c)(2)(A) allows any insurer submitting a corrective plan pursuant to Section 2698.41(c) to include any written material that may rebut any matters contained in the examination report. This section was not part of the emergency regulations but addresses the concern of noncompliance. This section allows review of findings made in the examination by the Department. Insurers will be able to use this section to raise questions and concerns for findings and to rebut evidence brought against them.

Proposed Section 2698.41(c)(3)

Proposed Section 2698.41(c)(3) allows the commissioner to consider any rebuttal information in determining whether a penalty should be assessed, and if so, in what amount. This section was not part of the emergency regulations but is reasonably necessary to allow the commissioner to review findings made in the examination. This section allows review of findings made in the examination by the Department. Insurers will be able to use this section to raise questions and concerns for findings and to rebut evidence brought against them.

Proposed Section 2698.42(a)

Proposed Section 2698.42(a) allows the Commissioner to impose sanctions for violation of these regulations and/or California Insurance Code Section 1875.20–23. This section enforces these regulations and the underlying Insurance Code. This section acts as both an incentive to comply and a punishment for non-compliance.

Proposed Section 2698.42(b)

Proposed Section 2698.42(b) provides that each act in violation of these regulations will subject the insurer to a penalty of not more than \$55,000 and/or suspension or revocation of the insurer's Certificate of Authority. This section clarifies possible statutory sanctions for non-compliance with these regulations. The penalties set forth are consistent with the existent statutory penalties set forth at California Insurance Code Sections 704 and 704.7 and clarifies that other statutory penalties may also apply.

MANDATES

The proposed regulations do not impose any mandate on local agencies or school districts. 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.

COST OR SAVINGS TO STATE/LOCAL AGENCY  
OR SCHOOL DISTRICT OR IN  
FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES  
AND THE ABILITY OF CALIFORNIA  
BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposed regulations do not have a significant, statewide adverse economic impact directly affecting business or the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON PRIVATE  
PERSONS OR ENTITIES/BUSINESSES

The Commissioner has made an initial determination that a representative private person or small business may incur additional expenses as a result of these regulations. These expenses may include the value of time spent by insurers in training, the cost of

creating or contracting for a SIU, and the value of time spent communicating with authorized governmental agencies.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES  
IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that small businesses may incur additional expenses as a result of these regulations. These expenses may include the value of time spent by adjusters in training regarding these regulations as well as the value of time spent by adjusters traveling to and from training facilities.

COMPARABLE FEDERAL LAW

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

TEXT OF REGULATIONS AND INITIAL  
STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed adoption of the regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person

listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

#### **AUTOMATIC MAILING**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

#### **WEBSITE POSTINGS**

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find in the leftmost column the link entitled 'Legal.' Click on it. On the 'Legal' page select the 'Proposed Regulations' link, near the top of the page. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH01018047" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (for instance, "1875.20"), or search by keyword ("special investigation unit"). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the Special Investigations Unit link, and click it. Links to the documents associated with these regulations will then be displayed.

#### **MODIFIED LANGUAGE**

If the regulations adopted by the Department differ 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. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

## **TITLE 13. DEPARTMENT OF MOTOR VEHICLES**

### **NOTICE IS HEREBY GIVEN**

The Department of Motor Vehicles (the department) proposes to amend Sections 220.04, 220.12, and 221.12, in Chapter 1, Division 1, Article 3.5, of Title 13, California Code of Regulations to identify the latest revision of the Motor Carrier Permit (MCP) renewal application and correct two (2) minor grammatical omissions.

### **PUBLIC HEARING**

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

### **DEADLINE FOR WRITTEN COMMENTS**

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on *November 1, 2004*, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

### **AUTHORITY AND REFERENCE**

The department proposes to adopt the proposed action under the authority granted by Vehicle Code section 1651, in order to implement, interpret or make specific Vehicle Code section 34600 et seq.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Section 34621 of the Vehicle Code requires an annual renewal application for the Motor Carrier Permit (MCP) Program. Originally, the program used the same form for the initial and renewal MCP application. A review of the application process led to the creation of a renewal application. The department proposes to identify the renewal application form by name and number and correct two (2) minor word omissions.

### **DOCUMENTS INCORPORATED BY REFERENCE**

It would be impractical, cumbersome or unduly expensive to publish the document in the California Code of Regulations. The form is currently available to the public upon request from the department.

Motor Carrier of Property Permit Renewal  
Application DMV 134 MCP REV. 3/2003

#### FISCAL IMPACT STATEMENT

- Cost Or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulation is a clarification of statute.
- Effect on Housing Costs: None.

#### DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. No studies or data were relied upon in support of this proposal.
- The adoption of this regulatory action will neither create nor eliminate jobs or create businesses in the state of California, will not result in the elimination of existing businesses, and will not reduce or expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses because the proposed regulatory action identifies the revised renewal application and corrects two minor word omissions.

#### PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot be reviewed during the comment period.

#### ALTERNATIVES CONSIDERED

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.

#### CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Christie Patrick, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-5567, or [cpatrick@dmv.ca.gov](mailto:cpatrick@dmv.ca.gov). In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or e-mail [dbaity@dmv.ca.gov](mailto:dbaity@dmv.ca.gov). The fax number for the Regulations Branch is (916) 657-1204.

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

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons and Express Terms) may be accessed at [www.dmv.ca.gov/about/lad/regactions.htm](http://www.dmv.ca.gov/about/lad/regactions.htm).

#### AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

**TITLE 14. MINING AND  
GEOLOGY BOARD**

INFORMATIVE DIGEST

NOTICE OF PROPOSED RULEMAKING

**ACCEPTANCE OF LIABILITY**

**NOTICE IS HEREBY GIVEN** that the State Mining and Geology Board (SMGB) proposes to adopt the regulations described below after considering all comments and recommendations regarding the proposed action.

REGULATORY ACTION

The SMGB proposes to add § 3806.3 and § 3806.5 to the California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1. The regulations clarify and make specific the types of financial assurance mechanisms available to a Federal agency under the Surface Mining and Reclamation Act (SMARA; Public Resources Code Section 2710 et seq.) when operating a surface mine on state-owned land.

PUBLIC HEARINGS AND  
WRITTEN COMMENTS

The SMGB has not scheduled a public hearing on this proposed action; however, the SMGB will hold a hearing to receive comments if it receives a written request for a public hearing from any interested person, or his/her authorized representative, no later than 15 days before the close of the written comment period. The hearing facility will be barrier free in accordance with the Americans with Disabilities Act. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The SMGB requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony.

Any interested person may submit written comments relevant to the proposed regulatory action to the SMGB. The Written Comment Period closes at 4:00 P.M., November 2, 2004. The SMGB will consider only relevant comments received at the SMGB office by that time. Late submittals will not be considered.

AUTHORITY AND REFERENCE

The SMGB proposes to adopt regulations adding §§ 3806.3 and 3806.5 to Article 11 of the California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, pursuant to its authority granted in PRC § 2755 and § 2773.1(e). Reference: PRC § 2755 and § 2773.1(e).

The Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code (PRC) § 2710 et seq.) requires that prior to the commencement of surface mining operations, the operator shall obtain a financial assurance for the operations from the lead agency (PRC § 2770). SMARA, also, requires that the lead agency approve the amount of the financial assurance as sufficient to reclaim the land disturbed by the mining activities, as well as the adequacy of the financial assurance instrument itself. The amount of the instrument is determined in accordance with the provisions of PRC § 2773.1 and 14CCR Article 11, specifically § 3804.

PRC § 2773.1 provides that a financial assurance instrument may take the form of surety bond executed by an admitted surety insurer, irrevocable letter of credit, or trust fund, or other form of financial assurance specified by the State Mining and Geology Board (SMGB) in regulation. In addition to those instruments provided in statute, the SMGB has adopted by regulation two other forms of financial assurance instruments, which are available only to state and local government entities; these are: pledges of revenue, and budget set asides. (14CCR § 3806)

Although the current forms of financial assurance instruments work well for private surface mine operators and state and local government agencies that operate surface mines, they do not work for Federal agencies when mining on State land. This is because a Federal agency is dependent on the Congress to approve its budget items and cannot independently provide a mandated surety. A Federal agency does not have local authority to pledge a revenue stream or to independently set aside a line item in its budget. Therefore, a Federal agency cannot obtain a financial assurance instrument that is currently approved in SMARA or in regulation.

The United States Department of the Interior, Bureau of Reclamation (BOR), has requested that the SMGB develop a solution that will allow the BOR to conduct surface mining operations on State land in compliance with SMARA. The BOR will agree to accept liability for reclaiming mined land according to an approved SMARA reclamation plan.

The SMGB is provided authority under PRC § 2773.1(e) to adopt regulations specifying financial assurance mechanisms other than those in statute. Under this authority, the SMGB may propose regulatory language that provides for a Federal agency to guarantee, by a written statement of responsibility, the reclamation of State land disturbed by that agency's surface mining activities. In this manner, a Federal agency could meet the financial assurance requirements of SMARA.

POLICY STATEMENT OVERVIEW

The proposed language in the regulations clarifies and makes specific the types of financial assurance mechanisms that are available to a Federal agency when conducting surface mining operations on State land pursuant to the Surface Mining and Reclamation Act (SMARA; Public Resources Code Section 2710 et seq.). This regulation is necessary in order to protect the California public and environment by providing for a guarantee of financial assurance funds from a Federal agency to cover the cost of reclamation of land disturbed by Federal mining activities.

CEQA COMPLIANCE

The SMGB staff have determined that this rule making project is either not a project under Title 14, CCR § 15378 of the CEQA Guidelines, or is Categorically Exempt under Title 14, CCR § 15308 of the CEQA Guidelines.

DISCLOSURES REGARDING THE PROPOSED ACTION

The SMGB staff has made the following preliminary determinations:

**Mandate on local agencies and school districts:** The SMGB staff determined that adoption of this regulation does not impose any new mandates on local agencies or on local school districts.

**Costs or savings to any State agency:** The SMGB staff determined that this proposed regulation imposes no savings or additional expenses to state agencies.

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

**Other non-discretionary costs or savings imposed upon local agencies:** The SMGB staff determined that no other non-discretionary costs or savings to local agencies are imposed by the proposed regulations.

**Cost or savings in Federal funding to the State:** The SMGB staff determined that there are no costs or savings in Federal funding to the State.

**Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** SMGB staff determined that no statewide adverse impacts to California businesses result from the adoption of this proposed regulatory language.

**Potential cost impact on private persons or directly affected businesses:** The SMGB staff has determined that the regulations impose no cost impacts on private persons or directly affected businesses.

**Creation or elimination of jobs in California:** The SMGB staff has determined that the adoption of these regulations will not:

- Create nor eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

**Significant effect on housing costs:** The SMGB staff has determined that the adoption of these regulations will have no significant effect on housing costs.

**Effects on small businesses:** The SMGB staff has determined that the regulations will have no impact on small businesses.

CONSIDERATION OF ALTERNATIVES

The SMGB must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. SMGB staff has not identified any adverse impacts resulting from the proposed regulation.

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

An interested person may request a copy of the proposed regulation and the Initial Statement of Reasons, or direct questions about the proposed regulation and Initial Statement of Reasons and inspect all supplemental information, upon which the regulation is based, contained in the rulemaking file. The rulemaking file is available for inspection at the SMGB Office at 801 K Street, Suite 2015, Sacramento, California, between 9:00 A.M. and 4:00 P.M., Monday through Friday except during state holidays. Copies of the proposed regulation and the Initial Statement of Reasons may be requested by writing to the above address, or viewed on the SMGB's Internet Web Site at:

<http://www.conservation.ca.gov/smgb>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public comment period, the SMGB may adopt, as final, the proposed regulations substantially as described in this Notice and Informative

Digest. Copies of the regulations, as finally adopted, will be sent to all persons on the SMGB's public comment mailing list for this issue and others requesting copies. If, as a result of public comment, substantive changes to the regulations are deemed appropriate, copies of the proposed changes will be sent to all persons who testified at the public hearing or submitted written comments during the comment period or at the public hearing, and to those who have requested copies of information regarding the regulation. The modified text will be available to the public for at least 15 days before the SMGB adopts the regulation as revised. The SMGB will accept written comments for a period of at least 15 days after the date upon which changes were made available. If adopted, the regulation will appear in CCR, Title 14, Division 2, Chapter 11, Subchapter 1, Article 11, § 3806.3 and § 3806.5. A copy of the Final Statement of Reasons may be obtained by contacting the SMGB office as described under the section Contact Person.

#### CONFLICT WITH FEDERAL REGULATIONS

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

#### CONTACT PERSON

Inquiries concerning the substance of the adopted regulation should be directed to:

Ms. Kit Gonzales, Executive Assistant  
(or as a backup)  
John G. Parrish, Ph. D., Executive Officer  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, California 95814

### **TITLE 16. BOARD OF GUIDE DOGS FOR THE BLIND**

NOTICE IS HEREBY GIVEN that the State Board of Guide Dogs for the Blind (hereinafter "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 Conference Room A, 5<sup>th</sup> Floor, Department of Consumer Affairs, 400 R Street, Sacramento, California, at 10:00 a.m., on November 22, 2004. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the board at its office not later than 5:00 p.m. on November 22, 2004 or must be received by the board at the hearing. The board,

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

#### AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 7208 of the Business and Professions Code, and to implement, interpret or make specific Sections 7208 and 7215.6 of said Code, the board is considering changes to Division 22 of Title 16 of the California Code of Regulations as follows:

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 7215.6 authorizes the board to provide a procedure for the resolution of disputes between guide dog users and guide dog schools relating to the continued physical custody and use of a guide dog, in all cases except those in which the dog user is the unconditional legal owner of the dog.

1. Adopt section 2293.

The proposed regulation would specify the procedures for the school to follow if the school decides not to permit the continued use of a guide dog by its user.

2. Adopt section 2294.

The proposed regulation would specify the requirements that must be met to utilize the arbitration panel provided for in Business and Professions Code section 7215.6.

These regulations, the first to address the arbitration process, will help set expectations and provide certainty for schools and users.

#### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None. May Ultimately save some costs for the state in that the regulation will establish a deadline for requests for arbitration, thereby limiting the number of arbitration proceedings the board may have to pay for.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

The regulation will require, in limited and fairly infrequent circumstances, the school send a letter and minimal other information to a guide dog user when it has decided to take the dog out of the user's control. The school may obtain a waiver if the user agrees to relinquish custody of the dog. The Board does not expect that a school would have to provide the required letter and notice more than once a year. The cost of preparing and sending the letter and other information should be minimal.

Significantly, the regulation requires that if arbitration is requested, it must be done within a certain timeframe. The timeframe provides the school with a certainty for when it can re-assign a guide dog that it has taken out of a user's control.

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

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

Effect on Housing Costs: None

#### EFFECT ON SMALL BUSINESS

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

#### CONSIDERATION OF ALTERNATIVES

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

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

#### INITIAL STATEMENT OF REASONS AND INFORMATION

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

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the State Board of Guide Dogs for the Blind at 400 R Street, Suite 5100-A, Sacramento, California 95814.

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

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

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

#### CONTACT PERSON

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

Name: Harry L. Thomas, Executive Officer  
Address: 400 R Street, Suite 5100-A  
Sacramento, CA 95814  
Telephone No.: (916) 324-9328  
Fax No.: (916) 324-9340  
E-Mail Address: [guidedogboard@dca.ca.gov](mailto:guidedogboard@dca.ca.gov)

#### WEBSITE ACCESS

Materials regarding this proposal can be found at [www.dca.ca.gov/guidedogboard](http://www.dca.ca.gov/guidedogboard).

### TITLE 16. BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally, or in writing, relative to the action proposed at a hearing to be held at the Kensington Park Hotel, 450 Post Street, Sherwood Room, San Francisco, CA 94102-1592 on November 15, 2004, at 1:00 p.m. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on November 15, 2004, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may

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

#### AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code, and to implement, interpret or make specific sections 2570.2, and 2570.3 of the Business and Professions Code and section 4154 of the California Code of Regulations, the Board is considering revising Division 39, Title 16 of the California Code of Regulations as follows:

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law identifies hand therapy, the use of physical agent modalities, and swallowing assessment, evaluation or intervention as areas of advanced practice that require completion of post professional education and supervised on-the-job training.

The purpose of the proposed amendment is to interpret and make specific the supervision parameters for occupational therapists in the process of completing on-the-job training.

Section 4154: This section provides that occupational therapists must complete post professional education and supervised on-the-job training in order to receive advanced practice certification. This proposed regulation interprets and makes specific the supervision parameters for occupational therapists in the process of completing on-the-job training by requiring a written agreement between the supervisor and the occupational therapist, defines the level of supervision, requires the supervisor to be readily available in person at all times, and requires the supervisor to have continuous responsibility to follow the progress of each client.

#### FISCAL IMPACT ESTIMATES

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

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

#### AND

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

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

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

Effect on Housing Costs: None

#### EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses because the regulations do not regulate small businesses, do not require reports or any other compliance activities.

#### CONSIDERATION OF ALTERNATIVES

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

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

#### INITIAL STATEMENT OF REASONS AND INFORMATION

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

#### TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Board of Occupational Therapy, 444 North Third Street, Suite 410, Sacramento, California 95814.

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

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

Any interested person may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person or by accessing the Board's website.

CONTACT PERSON

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

Janet Yagi

California Board of Occupational Therapy  
444 North Third Street, Suite 410  
Sacramento, CA 95814  
(916) 322-3278 (916) 445-6167 (FAX)

**Janet\_Yagi@dca.ca.gov**

The backup contact person is:

Jeff Hanson

California Board of Occupational Therapy  
444 North Third Street, Suite 410  
Sacramento, CA 95814  
(916) 324-4353 (916) 445-6167 (FAX)

**Jeff\_Hanson@dca.ca.gov**

WEBSITE ACCESS

Materials regarding this proposal can be found at [www.bot.ca.gov](http://www.bot.ca.gov).

**TITLE 16. BOARD OF  
OCCUPATIONAL THERAPY**

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally, or in writing, relative to the action proposed at a hearing to be held at the Kensington Park Hotel, 450 Post Street, Sherwood Room, San Francisco, CA 94102-1592 on November 15, 2004, at 1:00 p.m. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on November 15, 2004, or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person

designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code, and to implement, interpret or make specific section 2570.4(d) of the Business and Professions Code, the Board is considering revising Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW

Existing law sets forth the requirements for licensure as an occupational therapist and certification as an occupational therapist in California. The law also provides an exemption to the licensing/certification requirements for practitioners licensed in other jurisdictions that have licensing requirements at least as stringent as California's so long as the practitioner works in association with an occupational therapist licensed by the Board and works no more than 45 days in a calendar year. The proposed regulation interprets, defines and makes specific the conditions under which a practitioner would be exempt from California licensing/certification requirements.

Section 4124: This proposed regulation would define "calendar year" as a single calendar year and "day" as any portion of a day. It would require the practitioner to work under the supervision of an occupational therapist licensed by the Board. Finally, it would clarify that for another jurisdiction to be considered as having licensure requirements at least as stringent as California's, the education and examination requirements must be the same as California's and the practitioner must have had a criminal background check conducted as a condition of licensure.

FISCAL IMPACT ESTIMATES

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

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic

impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**AND**

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

**IMPACT ON JOBS/NEW BUSINESSES**

The Board has determined that this regulatory proposal will:

Eliminate the following types of jobs: None.

Create the following types of businesses: None.

Expand the following types of businesses: None.

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

Cost Impact on Representative Private Person or Business: The cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that is known to the Board is: None

Effect on Housing Costs: None

**EFFECT ON SMALL BUSINESS**

The Board has determined that the proposed regulations would not affect small businesses because the regulations do not regulate small businesses, require reports or any other compliance activities.

**CONSIDERATION OF ALTERNATIVES**

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

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

**INITIAL STATEMENT OF REASONS AND INFORMATION**

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

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Board of Occupational Therapy, 444 North Third Street, Suite 410, Sacramento, California 95814.

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

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

Once it has been prepared, a copy of the final statement of reasons may be obtained by making a written request to the contact person named below or by accessing the Board's website.

**CONTACT PERSON**

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

Janet Yagi  
California Board of Occupational Therapy  
444 North Third Street, Suite 410  
Sacramento, CA 95814  
(916) 322-3278 (916) 445-6167 (FAX)

**Janet\_Yagi@dca.ca.gov**

The backup contact person is:

Jeff Hanson  
California Board of Occupational Therapy  
444 North Third Street, Suite 410  
Sacramento, CA 95814  
(916) 324-4353 (916) 445-6167 (FAX)

**Jeff\_Hanson@dca.ca.gov**

**WEBSITE ACCESS**

Materials regarding this proposal can be found at [www.bot.ca.gov](http://www.bot.ca.gov).

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF FISH AND GAME**

**CESA CONSISTENCY DETERMINATION FOR Mallory Ridge Vegetation Management Project Contra Costa County**

The Department of Fish and Game ("Department") received notice on August 30, 2004 that the Contra Costa Water District proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of prescribed burns at several locations to assess the effects of controlled burning on critical habitat quality for the Alameda whipsnake. The activities are expected to have long term benefits for the snake.

On April 30, 2002, the U.S. Fish and Wildlife Service ("Service") issued an intra-Service biological opinion (1-1-02-F-0064) which considered the Federal

and State threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) and authorized incidental take. The Department subsequently issued a consistency Determination for the project on July 19, 2002. The Contra Costa Water District is requesting a new Consistency Determination due to proposed amendments to the project which were authorized by the Service on July 27, 2004 (biological opinion 1-1-04-F-0210)

Pursuant to California Fish and Game Code Section 2080.1, the Contra Costa Water District is requesting a determination on whether federal biological opinion 1-1-04-F-0210 is consistent with CESA.

If the Department determines that the biological opinion is consistent with CESA, the Contra Costa Water District will not be required to obtain an incidental take permit under CESA for the proposed project.

**DEPARTMENT OF FISH AND GAME**

**CESA CONSISTENCY DETERMINATION FOR  
Taylor Property Development Project  
San Diego County**

The Department of Fish and Game (“Department”) received notice on August 25, 2004 that Lighthouse Ventures, LLC proposes to rely on consultations between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (“CESA”). The project consists of the construction of 28 houses on 13.6 acres of a 30 acre parcel in the City of Oceanside, San Diego County, California. The project will impact native and non-native habitats on which the listed thread-leaved brodiaea occurs.

The U.S. Fish and Wildlife Service issued to the U.S. Army Corps of Engineers a no jeopardy federal biological opinion (FWS-SDG-2820.4) on April 15, 2003, and amendments to it on August 20, 2003, November 20, 2003, and July 22, 2004. The biological opinion considers the federally threatened and state endangered thread-leaved brodiaea (*Brodiaea filifolia*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, Lighthouse Ventures, LLC is requesting a determination that the federal biological opinion (FWS-SDG-2820.4), including the amendments, is consistent with CESA as to anticipated take of thread-leaved brodiaea.

If the Department determines that the federal biological opinion is consistent with CESA, Lighthouse Ventures, LLC will not be required to obtain an incidental take permit under CESA for the proposed project.

**STATE PERSONNEL BOARD**

**NOTICE OF PROPOSED AMENDMENT OF  
REGULATION AND STATEMENT OF REASONS  
AMENDED PUBLIC HEARING DATE**

**California Code of Regulations  
Title 2. Administration  
Division 1. Administrative Personnel  
Chapter 1. State Personnel Board**

**DATE:** September 17, 2004  
**TO:** ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND MEMBERS OF THE GOVERNOR’S CABINET  
**SUBJECT:** Proposed Amendment to Title 2, California Code of Regulations § 211—Dismissed State Employees to Take Examinations

Please take notice of the change in the date of the public hearing for the proposed amendment action related to Title 2, California Code of Regulations § 211. Please see the complete notice with full detail as published in the Notice Register of September 10, 2004.

Date and Time: November 3, 2004—9:30 a.m. to 10:00 a.m.  
Place: 801 Capitol Mall, Auditorium  
Sacramento, CA 95814  
Purpose: To receive written or oral public comments about this action.

Please note that the written public comment period has not changed and will close Monday, October 25, 2004, at 5:00 p.m. Written comments may be submitted to Daphne Baldwin at the State Personnel Board, 801 Capitol Mall, MS 55, Sacramento, CA 95814, or to [dbaldwin@spb.ca.gov](mailto:dbaldwin@spb.ca.gov), or fax comments to her attention at (916) 653-1280.

Additional information or questions regarding the substance of the proposed action should be directed to Daphne Baldwin. Questions regarding the regulatory process in conjunction with this regulation should be directed to Elizabeth Montoya, the backup contact person, at the State Personnel Board, (916) 654-0842 or TDD (916) 653-1498.

**DECISION NOT TO PROCEED**

**DIVISION OF WORKERS’  
COMPENSATION**

Pursuant to Government Code Section 11347, the Division of Workers’ Compensation hereby gives notice that it has decided not to proceed with Article 4,

Subchapter 1, of Chapter 4.5, Division 1 of Title 8, Section 9779.5 (Notice File No. Z-03-0815-01) as published in the California Regulatory Notice Register on September 5, 2003.

Any interested person with questions concerning this rulemaking should contact James M. Robbins at the Division of Workers' Compensation at either (415) 703-4600 or by e-mail at: [dwcrules@dir.ca.gov](mailto:dwcrules@dir.ca.gov).

## **PROPOSITION 65**

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

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

#### **NOTICE OF INTENT TO REPEAL TITLE 22. CALIFORNIA CODE OF REGULATIONS, SECTION 12901**

Notice is hereby given that the Office of Environmental Health Hazard Assessment (OEHHA) has reviewed all the public comments received during the 45-day public comment period and the public hearing regarding the proposed amendments to or repeal of Title 22, California Code of Regulations, Section 12901, which was the subject of the Notice of Proposed Rulemaking published on June 4, 2004 and has determined, following public input and internal discussion that repeal of the regulation in its entirety is the most appropriate action.

OEHHA has determined that the proposed amendments to the regulation that were included with the June 4, 2004 notice will not adequately address the legal and technical concerns that prompted the regulatory action and may in fact exacerbate the problems that have been experienced by the regulated community, courts and litigants in interpreting the regulation. Based upon the comments received from the public, it appears that there is a stronger argument for repeal of the regulation and that it is not possible at this time to craft a regulation that will not conflict with existing California Law on evidence or create additional cause for litigation concerning the intent or application of the regulation. OEHHA received five oral comments at the hearing on July 20, 2004, of these, two supported repeal of the regulation, two opposed repeal and one was neutral. Of the eight written comments received, four supported repeal and

four took no apparent position on repeal and only addressed issues or concerns with the amended language for the regulation that had been proposed by OEHHA. In reviewing the comments received, it became apparent that additional attempts to amend the regulation would most likely fail to add clarity or certainty concerning the appropriate methods of detection to be used for Proposition 65 listed chemicals.

Based upon the comments received concerning this regulation, it appears that there generally are scientific protocols in existence that can be used by regulated businesses to determine whether a given exposure to a listed chemical may require a warning under Proposition 65, or whether a given release of a listed chemical may violate the discharge prohibition under the Act. These methods of detection protocols vary depending upon the chemical involved, route of exposure, type of medium causing the exposure or release, etc. There appears to be no consensus in the regulated or enforcement community regarding any standard approach that may be applied to all exposure and discharge scenarios that arise under Proposition 65 that could be captured in this regulation. There are also fundamental disagreements among the various stakeholders concerning the scope and effect of the regulation that would be very difficult to satisfactorily resolve in a rule of general application. Therefore, given that an existing body of statutory and case law concerning the conduct of scientific tests and the admissibility of scientific evidence already exists in California, OEHHA has determined that Title 22, Cal. Code of Regulations section 12901 is not needed and that the regulation does not further the purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as Proposition 65, codified at Health and Safety Code section 25249.5 et seq.) because it fails to provide clarity or certainty for either the regulated community or those involved in the enforcement of Proposition 65 concerning the appropriate methods of detection for chemicals regulated under the Act.

This Notice of Intent to Repeal serves to commence a 15-day public comment period on the proposed action. If you have any comments regarding the proposed action, OEHHA will accept written comments between **September 17 and October 4, 2004**. In order to be considered, the comments must be received by OEHHA by 5:00 p.m. on **October 4, 2004**.

A copy of the text of the regulation that would be repealed is attached. If you wish to submit formal comments on OEHHA's proposed action to repeal

Title 22, Cal. Code of Regulations, section 12901 in its entirety, you may submit your comments by mail, fax, courier or hand-delivery to:

Ms. Cynthia Oshita  
 Office of Environmental Health  
 Hazard Assessment  
 Street address: 1001 I Street, 19<sup>th</sup> Floor  
 Sacramento, California 95814  
 Mailing Address: P.O. Box 4010  
 Sacramento, California 95812-4010  
 Fax No.: (916) 323-8803  
 Telephone: (916) 445-6900

Comments may also be transmitted via email addressed to: (coshita@oehha.ca.gov). Inquiries concerning the action described in this notice may be directed to Cynthia Oshita, in writing at the address given above, or by telephone at (916) 445-6900.

<h2 style="margin: 0;">SUMMARY OF REGULATORY ACTIONS</h2>
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### 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 PHARMACY Pharmacist-In-Charge

This action amends an existing regulation governing the duties of a pharmacist-in-charge of a pharmacy to permit one pharmacist to serve as the pharmacist-in-charge of two pharmacies not separated by a driving distance of more than 50 miles.

Title 16  
 California Code of Regulations  
 AMEND: 1709.1  
 Filed 09/02/04  
 Effective 10/02/04  
 Agency Contact:  
 Paul Riches (916) 445-5014 x4016

#### BOARD OF PHARMACY Ancillary Personnel

Existing section 1793.3 of title 16 of the California Code of Regulations allows a pharmacist to supervise a single unlicensed individual who can enter information into the pharmacy computer or prepare labels for dispensed prescriptions. This regulatory action would

revise section 1793.3 to permit the pharmacist to supervise that number of unlicensed individuals who enter information into the computer or prepare labels that the pharmacist feels is appropriate. This regulatory action would also provide that the pharmacist in exercising that judgment can refuse to supervise the number of unlicensed individuals scheduled by the pharmacy and prohibit the employer from discharging, disciplining, or otherwise discriminating against any pharmacist for exercising judgment under this regulation.

Title 16  
 California Code of Regulations  
 AMEND: 1793.3  
 Filed 09/03/04  
 Effective 10/03/04  
 Agency Contact:  
 Paul Riches (916) 445-5014 x4016

#### CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD Recycling Market Development Zone Regulations

The regulatory action deals with the process for becoming a designated recycling market development zone

Title 14  
 California Code of Regulations  
 ADOPT: 17913.5 AMEND: 17901,17902, 17905, 17910, 17911,17913, 17914, 17914.5  
 Filed 09/07/04  
 Effective 10/07/04  
 Agency Contact:  
 Raffy Kouyoumdjian (916) 341-6524

#### CALIFORNIA STATE UNIVERSITY Editorial Correction of Name of the System

The California State University is amending sections 40000, 40050, 40650, 40900, 41302, 41304, 41901.5, 42501, and 43000, title 5, California Code of Regulations. They are simply changing "the California State University and Colleges" to read "the California State University". This name change took place in Stats. 1983, Ch. 143. The aforementioned amendments were forwarded to the Office of Administrative Law pursuant to Education Code section 89030.1.

Title 5  
 California Code of Regulations  
 AMEND: 40000, 40050, 40650, 40900, 41302, 41304, 41901.5, 42501, 43000  
 Filed 09/03/04  
 Effective 09/03/04  
 Agency Contact:  
 Bruce M. Richardson (562) 951-4500

**CALIFORNIA STATE UNIVERSITY**  
**General Requirements for Graduation**

The California State University (University) is amending sections 40402.1, 40405, 40405.1, 40405.2, 40405.3, and 40405.4, by removing the language “(This section applies to students who enter the curriculum on or after the commencement of the 1981-82 academic year.)” at the beginning of each of the aforementioned sections. The University is further amending sections 40901, 41301, 41906, 41910, and 42728 providing miscellaneous changes. The University is also repealing sections 40500, 40501, 40503, 40505, 40506, 41600, 41601, 42395, 42705, 43600, 43601, 43602, 43603, 43604, 43660, 43661, 43662, 43663, 43664, 43665, 43666, 43667, and 43668. All the aforementioned sections are in title 5, California Code of Regulations, and were filed with the Secretary of State’s Office by the University on July 19, 2004, and filed with the Office of Administrative Law for printing on July 28, 2004, pursuant to Education Code section 89030.1.

Title 5  
California Code of Regulations  
ADOPT: 40402.1, 40405, 40405.1, 40405.2, 40405.3, 40405.4, 40901, 41301, 41906, 41910, and 42728. AMEND: 40500, 40501, 40503, 40505, 40506, 41600, 41601, 42395, 42705, 43600, 43601, 43602, 43603, 43604, 43660, 43661, 43662, 43663, 43664, 43665, 43666  
Filed 09/02/04  
Effective 07/19/04  
Agency Contact:  
Bruce M. Richardson (562) 951-4500

**DENTAL BOARD OF CALIFORNIA**  
**Registered Dental Hygienists Exam in CA Law and Ethics**

This regulatory action requires that an applicant for licensure as a registered dental hygienist must pass a supplemental written examination in California Law and Ethics.

Title 16  
California Code of Regulations  
ADOPT: 1082.3  
Filed 09/07/04  
Effective 10/07/04  
Agency Contact: Linda Madden (916) 263-2300

**DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS**  
**DUI Satellite Locations**

This action updates the DUI program licensure regulations to allow licensed programs to use satellite locations under limited circumstances, and updates provisions that prescribe the procedure for informal administrative adjudication.

Title 9  
California Code of Regulations  
ADOPT: 9807, 9822, 9834, 9836 AMEND: 9800, 9802, 9878 REPEAL: 9830, 9834, 9836  
Filed 09/01/04  
Effective 10/01/04  
Agency Contact: Mary Conway (916) 327-4742

**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Oak Mortality Disease Control**

Oak mortality disease presents a clear and present danger to the native stands of oak and other trees, the nursery industry, and other agricultural commodities and plant life of California. The California Department of Food and Agriculture adopted section 3700 of title 3 of the California Code of Regulations to arrest the artificial spread of the disease. On August 12, 2004 the causal pathogen of sudden oak disease was confirmed from two coast live oak trees located in San Francisco County. On August 26, 2004 Department received an email from the United States Department of Agriculture giving notice that it was modifying of the list of associated articles listed as regulated. This emergency regulatory action amends section 3700 to add San Francisco County to the list of regulated counties and modifies the list of associated articles to conform to the federal changes.

Title 3  
California Code of Regulations  
AMEND: 3700(b)(c)  
Filed 09/02/04  
Effective 09/02/04  
Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF FOOD AND AGRICULTURE**  
**Oriental Fruit Fly Interior Quarantine**

This emergency regulatory action establishes approximately 67 square miles surrounding the Westchester area of Los Angeles County as an area under quarantine for the Oriental fruit fly.

Title 3  
California Code of Regulations  
AMEND: 3423(b)  
Filed 09/08/04  
Effective 09/08/04  
Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF HEALTH SERVICES**  
**Licensed Midwives**

This action provides for payment by the Medi-Cal Program for the services of a licensed midwife provided in accordance with the provisions of the Licensed Midwifery Practice Act.

Title 22  
California Code of Regulations  
ADOPT: 51191, 51192, 51255, 51356, 515104.1  
AMEND: 51051

Filed 09/03/04  
 Effective 10/03/04  
 Agency Contact:  
 Barbara S. Gallaway (916) 657-3197

**DEPARTMENT OF INSURANCE**  
 Special Investigative Units

This is the third readoption of an emergency action that repeals the former regulations on special investigative units of insurance companies and adopts new regulations in their place in order to increase the detection and deterrence of insurance fraud, thereby protecting the public welfare.

Title 10  
 California Code of Regulations  
 AMEND: 2698.30, 2698.31, 2698.32, 2698.33, 2698.34, 2698.35, 2698.36, 2697.37, 2698.38, 2698.39, 2698.40, 2698.41, 2698.42  
 Filed 09/01/04  
 Effective 09/01/04  
 Agency Contact: Debra Chaum (415) 538-4115

**DEPARTMENT OF MOTOR VEHICLES**  
 Vehicle Registration and Titling

This action updates the regulations that specify the procedure for refund of the in-lieu fee portion of the vehicle license fee upon the loss of a vehicle by adding provisions to cover nonrepairable vehicles.

Title 13  
 California Code of Regulations  
 ADOPT: 155.05 AMEND: 155.00, 155.02, 155.04, 155.08, 155.10 REPEAL: 155.06  
 Filed 09/02/04  
 Effective 10/02/04  
 Agency Contact:  
 Bonnie DeWatney (916) 657-8954

**FISH AND GAME COMMISSION**  
 New Zealand Mud Snail

This regulatory action adds the New Zealand mudsnail to the list of species that are restricted from being imported, transported or possessed in California.

Title 14  
 California Code of Regulations  
 AMEND: 671  
 Filed 09/01/04  
 Effective 10/01/04  
 Agency Contact: Tracy L. Reed (916) 653-4899

**PHYSICAL THERAPY BOARD OF CALIFORNIA**  
 Citations and Fines

This regulatory action updates the list of offenses for which a physical therapist may be cited or fined.

Title 16  
 California Code of Regulations  
 AMEND: 1399.26

Filed 09/08/04  
 Effective 10/08/04  
 Agency Contact: Rebecca Marco (916) 263-2550

**RESOURCES AGENCY**  
 Proposed CEQA Guideline Amendments

This regulatory action updates and clarifies public agencies' review of the environmental impact of proposed projects and the preparation and review of environmental impact reports, negative declarations, and mitigated negative declarations.

Title 14  
 California Code of Regulations  
 ADOPT: 15333 AMEND: 15023, 15062, 15064, 15065, 15075, 15082, 15085, 15087, 15088, 15088.5, 15094, 15097, 15126.4, 15205, 15206, 15252, 15313, 15325, 15330, 15333, 15378 REPEAL: 15126.4, 15152, 15205, 15206, 15252, 15313, 15325, 15330, 15378  
 Filed 09/07/04  
 Effective 09/07/04  
 Agency Contact:  
 Sandra S. Ikuta (916) 653-5481

**CCR CHANGES FILED WITH THE  
 SECRETARY OF STATE  
 WITHIN APRIL 28, 2004  
 TO SEPTEMBER 8, 2004**

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**  
 08/12/04 ADOPT: 1396 AMEND: 1314, 1321, 1323, 1324, 1334, 1354, 1390, 1392, REPEAL: 1332

**Title 2**  
 08/31/04 ADOPT: 599.517  
 08/20/04 ADOPT: 586, 586.1, 586.2  
 08/10/04 ADOPT: 1896, 1896.2, 1896.4, 1896.6, 1896.10, 1896.12, 1896.14, 1896.16, 1896.18, 1896.20, 1896.22 REPEAL: 1896, 1896.2, 1896.4, 1896.6, 1896.8, 1896.10, 1896.12, 1896.14, 1896.16, 1896.18, 1896.20  
 08/09/04 AMEND: 599.508  
 08/09/04 ADOPT: 1859.77.3 AMEND: 1859.2, 1859.77.2  
 08/04/04 AMEND: 599.515(e)

07/30/04 ADOPT: 18531.10  
 07/28/04 ADOPT: 1172.90, 1172.92  
 07/27/04 AMEND: 18404.1  
 07/26/04 ADOPT: 18530.9 AMEND: 18531.5  
 07/22/04 ADOPT: 1859.51.1, 1859.70.2 AMEND:  
 1859.2, 1859.51, 1859.70, 1859.103  
 07/02/04 AMEND: 1859.2, 1859.145, 1859.145.1  
 06/28/04 ADOPT: 599.516  
 06/21/04 ADOPT: 22600, 22600.1, 22600.2,  
 22600.3, 22600.4, 22600.5, 22600.6,  
 22600.7, 22600.8, 22600.9, 22601,  
 22601.1, 22601.2, 22601.3, 22601.4,  
 22601.5, 22601.6, 22601.7, 22601.8  
 06/15/04 AMEND: 18707.1  
 06/15/04 ADOPT: Div. 8, Ch. 99, Sec. 58800  
 06/03/04 AMEND: 2270, 2271  
 06/01/04 ADOPT: 20107  
 06/01/04 ADOPT: 1859.163.1, 1859.163.2,  
 1859.164.2, 1859.167.1 AMEND:  
 1859.2, 1859.145, 1859.145.1, 1859.160,  
 1859.161, 1859.162, 1859.163, 1859.164,  
 1859.164.1, 1859.165, 1859.166,  
 1859.167, 1859.168, 1859.171  
 05/25/04 ADOPT: 59152  
 05/21/04 ADOPT: 1859.123.1 AMEND: 1859.2,  
 1859.73.1, 1859.81, 1859.83, 1859.90,  
 1859.120, 1859.121, 1859.122,  
 1859.122.1, 1859.122.2, 1859.123,  
 1859.124, 1859.124.1, 1859.125,  
 1859.125.1, 1859.126, 1859.127,  
 1859.129, 1859.130  
 05/17/04 AMEND: 50  
 05/17/04 AMEND: 50  
 05/17/04 AMEND: 48000  
 05/17/04 AMEND: 18616  
 05/17/04 ADOPT: 250  
 05/13/04 ADOPT: 18531.61 AMEND: 18531.6  
 05/11/04 ADOPT: 22100 (renumbered to 22100  
 and 22100.1), 22110 (renumbered to  
 22100.2), 22120 (renumbered to  
 22100.3), and 22130 (renumbered to  
 22100.4)

**Title 3**

09/08/04 AMEND: 3423(b)  
 09/02/04 AMEND: 3700(b)(c)  
 08/19/04 AMEND: 3700(c)  
 08/10/04 ADOPT: 1472.8 AMEND: 1472.5  
 08/05/04 AMEND: 3962(a)  
 07/09/04 AMEND: 3423(b)  
 07/06/04 AMEND: 3430(b)  
 07/06/04 AMEND: 3700(c)  
 07/02/04 AMEND: 3558(a)  
 06/25/04 AMEND: 1380.19(p), 1442.7  
 06/09/04 AMEND: 3700(c)  
 05/27/04 AMEND: 3423(b)  
 05/27/04 AMEND: 3428(b)

05/27/04 AMEND: 1180(a)  
 05/17/04 ADOPT: 6450, 6450.1, 6450.2, 6450.3,  
 6784 AMEND: 6000 REPEAL: 6450,  
 6450.1, 6450.2, 6450.3, 9784  
 05/13/04 AMEND: 3700(b)  
 05/03/04 AMEND: 3700(c)

**Title 4**

08/17/04 ADOPT: 12400, 12401, 12402, 12403,  
 12404, 12405, 12406  
 07/19/04 ADOPT: 10300, 10302, 10305, 10310,  
 10315, 10317, 10320, 10322, 10325,  
 10326, 10327, 10328, 10330, 10335,  
 10337 AMEND: 10325(b), 10325(B)(1),  
 10325(c)(2)(B) , 10325(c)(12),  
 10325(d)(1)  
 07/19/04 ADOPT: 4147, 4148  
 07/19/04 ADOPT: 10163, 10164 AMEND: 10152,  
 10153, 10154, 10155, 10156, 10157,  
 10158, 10159, 10160, 10161, 10162  
 07/06/04 ADOPT: 12200, 12200.1, 12200.3,  
 12200.5, 12200.6, 12200.7, 12200.9,  
 12200.11, 12200.13, 12200.14, 12200.15,  
 12200.16, 12200.17, 12200.18, 12200.20,  
 12200.21, 12200.25, 12201, 12202,  
 12203, 12204, 12205, 12218, 12218.5,  
 12218.7, 12218.11, 12218.13, 12220,  
 06/01/04 ADOPT: 12370, 12371

**Title 5**

09/03/04 AMEND: 40000, 40050, 40650, 40900,  
 41302, 41304, 41901.5, 42501, 43000  
 09/02/04 ADOPT: 40402.1, 40405, 40405.1,  
 40405.2, 40405.3, 40405.4, 40901,  
 41301, 41906, 41910 42728. AMEND:  
 40500, 40501, 40503, 40505, 40506,  
 41600, 41601, 42395, 42705, 43600,  
 43601, 43602, 43603, 43604, 43660,  
 43661, 43662, 43663, 43664, 43665,  
 43666  
 08/09/04 AMEND: 590, 591, 592, 593, 594, 595,  
 596  
 07/30/04 ADOPT: 58317  
 07/19/04 ADOPT: 40530, 40531, 40532 AMEND:  
 40651, 40803, 40803.1  
 06/30/04 AMEND: 19814(e)  
 06/23/04 ADOPT: 19810, 19811, 19812, 19813,  
 19814, 19815, 19816, 19817, 19818,  
 19819, 19820, 19821, 19822, 19823,  
 19824, 19825, 19826, 19828, 19829,  
 19830, 19831 REPEAL: 19827  
 06/17/04 ADOPT: 19814.1, 19832, 19833, 19834,  
 19835, 19836, 19837 AMEND: 19814  
 06/08/04 ADOPT: 18074, 18074.1, 18074.2,  
 18074.3, 18074.4, 18074.5, 18074.6,  
 18075, 18075.1, 18075.2, 18076,  
 18076.1, 18076.2, 18076.3, 18220.6  
 AMEND: 18413, 18428 REPEAL: 18021

**CALIFORNIA REGULATORY NOTICE REGISTER 2004, VOLUME NO. 38-Z**

06/01/04 REPEAL: 80032.2, 80058.2, 80466, 80523.3  
 05/25/04 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  
 05/24/04 AMEND: 11973, 11974, 11975, 11977, 11978, 11979  
 05/19/04 ADOPT: 1204.5, 1211.5, 1218.6  
 AMEND: 1200, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1215, 1217 REPEAL: 1212, 1218.5, 1219.5  
 05/10/04 ADOPT: 19800, 19801, 19803, 19804, 19805

**Title 8**

08/30/04 ADOPT: 32032, 32033, 32034, 32035, 81000, 81005, 81010, 81020, 81030, 81040, 81050, 81055, 81060, 81065, 81070, 81075, 81080, 81090, 81100, 81105, 81110, 81115, 81120, 81125, 81130, 81135, 81140, 81145, 81150, 81155, 81160, 81165, 81170, 81175, 81180, 81  
 08/27/04 AMEND: 3657  
 08/26/04 AMEND: 3427  
 08/02/04 AMEND: 6283(a)  
 07/29/04 ADOPT: 232.01, 232.02, 232.03, 232.04, 232.05, 232.06, 232.07, 232.08, 232.09, 232.10, 232.11, 232.12, 232.20, 232.21, 232.22, 232.23, 232.24, 232.25, 232.26, 232.27, 232.28, 232.29, 232.30, 232.31, 232.32, 232.33, 232.34, 232.35, 232.36, 232.37, 232.40,  
 07/20/04 AMEND: 5147  
 07/13/04 AMEND: 1523  
 07/07/04 AMEND: 1632, 3212  
 07/07/04 AMEND: 1716.2  
 07/07/04 ADOPT: 9881.1, 10117.1, 10118.1  
 AMEND: 9810, 9880, 9881, 9883 REPEAL: 9882, 10117, 10118  
 07/07/04 AMEND: 3301  
 07/06/04 AMEND: 15220, 15220.1, 15220.3, 15220.4  
 07/06/04 AMEND: 5194  
 07/02/04 ADOPT: 9788.01, 9788.19788.11, 9788.2, 9788.3, 9788.31, 9788.32, 9788.4, 9788.5, 9788.6, 9788.7, 9788.9, 9788.91  
 06/30/04 ADOPT: 10250  
 06/28/04 AMEND: 1953  
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