



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

State Agencies: CA Technology Agency

A written comment period has been established commencing on **September 23, 2011** and closing on **November 7, 2011**. Written comments should be directed to the Fair Political Practices Commission, Attention Cyndi Glaser, 428 J Street, Suite 620, Sacramento, California 95814.

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

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

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

Any interested person may present statements, arguments or comments, in writing to the Executive Direc-

tor of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **November 7, 2011**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Cyndi Glaser, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 327-5966.

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commis-

sion should be made to Cyndi Glaser, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 327-5966.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT OF INTEREST CODES

AMENDMENT

STATE: Department of Child Support Services
Commission on State Mandates

ADOPTION

MULTICOUNTY: San Geronio Pass
Water Agency

A written comment period has been established commencing on **September 23, 2011** and closing on **November 7, 2011**. Written comments should be directed to the Fair Political Practices Commission, Attention Alexandra Castillo, 428 J Street, Suite 620, Sacramento, California 95814.

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

The Executive Director of the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

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

Any interested person may present statements, arguments or comments, in writing to the Executive Direc-

tor of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **November 7, 2011**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Alexandra Castillo, Fair Political

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

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND REGULATION SECTION 1859.76, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend Regulation Section 1859.76, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation section under the authority provided by Section 17070.35 of the Education Code. The proposal interprets and makes specific reference Sections 17070.35, 17072.12 and 17072.35 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The SAB adopted the additional grant for general site development costs at its June 28, 2006 meeting, which

was approved by the OAL and filed with the Secretary of State on September 5, 2006. This additional grant helps school districts cover the extra costs for items such as landscaping, finish grading, driveways, walkways, outdoor instructional play facilities, permanent playground equipment, and athletic fields. Districts may be eligible for the additional grant when building new schools and for additions to existing school sites where additional acreage is acquired.

As first implemented, the additional grant for general site development costs was to be suspended “no later than January 1, 2008” unless extended by the SAB.

- First One-Year Extension: The SAB, at its December 12, 2007 meeting, approved emergency regulations extending the suspension date to “no later than January 1, 2009,” which was approved by the OAL and filed with the Secretary of State on March 3, 2008.
- Second One-Year Extension: The SAB, at its February 25, 2009 meeting, approved extending the suspension date to “no later than January 1, 2010,” which was approved by the OAL and filed with the Secretary of State on September 18, 2009.
- Third One-Year Extension: The SAB, at its November 4, 2009 meeting, approved extending the suspension date to “no later than January 1, 2011,” which was approved by the OAL and filed with the Secretary of State on April 8, 2010.
- Fourth One-Year Extension: The SAB, at its June 23, 2010 meeting, approved extending the suspension date to “no later than January 1, 2012,” which was approved by the OAL and filed with the Secretary of State on April 27, 2011.
- Proposed Two-Year Extension: Most recently the SAB, at its July 12, 2011 meeting, approved extending the suspension date to “no later than January 1, 2014.”

The proposed amendments are as follows:

Existing Regulation Section 1859.76 provides new construction additional grants for specific types and amounts of site development costs. It provides that the additional grant for general site development costs shall be suspended “no later than January 1, 2012” unless extended by the SAB. The proposed amendments extend the suspension of the additional grant for general site development costs until “no later than January 1, 2014.” Also, a non-substantive grammatical correction is made by changing “meet” to “meets.”

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulation does not impose a mandate

or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies, school districts, or charter schools to incur additional costs in order to comply with the proposed regulation.

ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation section will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. This regulation only applies to school districts and charter schools for purposes of funding school facility projects.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S.

mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than November 7, 2011, at 5:00 p.m. The express terms of the proposed regulation as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young,
Regulations Coordinator

Mailing Address: Office of Public School
Construction
707 Third Street, Room 1–430
West Sacramento, CA 95605

E-mail Address: robert.young@dgs.ca.gov

Fax No.: (916) 376–5332

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 375–5939. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 376–1753.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulation substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulation.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulation during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A
NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulation with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulation for which the adoption is proposed in ~~strikeout~~/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.dgs.ca.gov/opsc> under "Resources," then click on "Laws and Regulations," then click on "SFP Pending Regulatory Changes."

ALTERNATIVES

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

AVAILABILITY OF THE FINAL STATEMENT
OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES
TO AMEND REGULATION SECTIONS 1859.2
AND 1859.82, TITLE 2, CALIFORNIA CODE OF
REGULATIONS, RELATING TO LEROY F.
GREENE SCHOOL FACILITIES ACT OF 1998

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Sections 17070.35 and 17075.15 of the Education Code. The proposals interpret and make specific reference Sections 17074.56, 17075.10, 17075.15 and 101012(a)(1) of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW
STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The Seismic Mitigation Program (SMP) was established by Assembly Bill 127, Chapter 35, Statutes of 2006 (Perata/Nunez), which became law on May 20, 2006. It was funded in the amount of \$199.5 million for the seismic repair, reconstruction, or replacement of the

“most vulnerable Category 2” school facilities by Proposition 1D approved by the voters at the November 7, 2006 General Election. The SAB adopted regulations to implement the Program, which were approved by the OAL and filed with the Secretary of State on April 30, 2008.

The SAB, at its meeting on August 26, 2009, adopted emergency regulatory amendments to add four additional building component types to the definition of “Most Vulnerable Category 2” school buildings for the purpose of eligibility for the SMP. In addition, the SAB reduced the ground shaking criteria for project eligibility from “1.70 g” to “1.68 g.” The OAL approved the emergency regulations and filed them with the Secretary of State on November 24, 2009.

The SAB, at its meeting on June 22, 2011, adopted emergency regulatory amendments to facilitate the SAB apportioning the remaining SMP funding to eligible school building structural projects. The SAB deleted an eligibility criterion that required “a short period spectral Acceleration” (ground shaking) of at least 1.68 g, expanded the list of eligible structural types from eight to 14, made non-substantive wording corrections to five existing eligible building structure types, and clarified that eligible structures must have “structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event.” The emergency amendments stated the criteria for the structural engineer’s report which must be submitted in support of an application for SMP funding and specified that the Division of the State Architect (DSA) must review and approve structural engineer reports that conform to the DSA guidelines.

In addition, the emergency amendments specified that “Unacceptable risk of injury” from faulting, liquefaction, or landslide must be documented by an engineering geologist’s hazard report in accordance with the California Building Code, Part 2, Chapter 18, section 1803A and concurrence of the California Geological Survey. Finally, the emergency amendments state the order for funding approved SMP applications, the process if there is insufficient funding for all approved applications, and the \$199.5 million maximum funding authority for the SMP.

These emergency amendments to the SMP received an emergency effective date from the Office of Administrative Law upon being filed with the Secretary of State on September 8, 2011 (OAL File No. 2011-0830-03E).

A summary of the proposed regulatory amendments is as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments change the definition of “Most Vulnerable Category 2 Buildings” by:

- Deleting that this term is “as defined by the DSA;”
- Deleting the criterion of a ground shaking threshold (short period spectral acceleration) of 1.68 g based on U.S. Geological Survey maps;
- Deleting that a structural engineer report must be provided regarding the lateral force resisting system, collapse prevention performance objectives, and potential for catastrophic collapse;
- Deleting that the building is designed for occupancy by students and staff; and
- Clarifying and expanding eligible structure types from eight to 14, and making non-substantive wording corrections to five existing building structure types, as shown below:
 - C1 — Concrete Moment Frame,
 - C1B — Reinforced Concrete Cantilever Columns with ~~Wood Roofs~~ Flexible Diaphragms,
 - C2A — Concrete Shear Wall with Flexible Diaphragms,
 - C3A — Concrete Frame with Infill Masonry Shear Walls and ~~Flexible Floor and Roof~~ Diaphragms,
 - PC1 — Precast/Tilt-up Concrete Shear Wall with ~~Concrete Floor and Roof~~ Flexible Diaphragms,
 - PC1A — Precast/Tilt-up Concrete Shear Wall with ~~Flexible Roof~~ Rigid Diaphragms,
 - PC2A — Precast Concrete Frame without Concrete Shear Walls and with Rigid ~~Floor and Roof~~ Diaphragms,
 - PC2 — Precast Concrete Frame and Roofs with Concrete Shear Walls,
 - URM — Unreinforced Masonry Bearing Wall Buildings,
 - RM1 — Reinforced Masonry Bearing Wall with Flexible Diaphragms,
 - URMA — Unreinforced Masonry Bearing Wall with Rigid Diaphragms,
 - S1B — Steel Cantilever Columns with Flexible Diaphragm,
 - S3 — Steel Light Frame Metal Siding and/or Rod Bracing, or
 - M — Mixed construction containing at least one of the above structures types.

Existing Regulation Section 1859.82 establishes the criteria a district must meet to be eligible for facility hardship funding to replace or construct new classrooms and related facilities if the district demonstrates there is an unmet need for pupil housing or the condition of the facilities, or the lack of facilities, is a threat to the health and safety of the pupils. “Seismic mitigation of

the Most Vulnerable Category 2 Buildings as verified by the DSA” is included in this Section and is a factor the SAB can consider when funding SMP project applications.

The proposed emergency amendments add five new subsections described as follows:

New Subsection (a)(1)(C) sets forth four requirements for seismic mitigation funding:

- The construction contract was executed on or after May 20, 2006 (the effective date of AB 127) (relocated from within this section and re-stated here);
- The project funding shall be for the minimum work necessary to obtain DSA approval (relocated from within this section and re-stated here);
- The building is designed for occupancy by students and staff (removed from Regulation Section 1859.2. Definitions, and re-stated here);
- The DSA concurs with a report by a structural engineer, which identifies structural deficiencies that pose an unacceptable risk of injury to its occupants in a seismic event. If the unacceptable risk of injury is due to the presence of faulting, liquefaction or landslide, these hazards must be documented by a geologic hazards report prepared by an engineering geologist in accordance with California Building Code, Part 2, Chapter 18, Section 1803A and with the concurrence of the California Geological Survey.

New paragraph following Subsection (a)(1)(C) requires that the structural engineer’s report shall conform to the guidelines prepared by the DSA, in accordance with Education Code Section 17310.

New Subsection (a)(1)(D) requires that notwithstanding Regulation Sections 1859.93 (Modernization Project Funding Order) and 1859.93.1 (New Construction Project Funding Order), all applications for the seismic mitigation of the Most Vulnerable Category 2 Buildings shall be funded in the order of receipt of an approved application for funding.

New Subsection (a)(1)(E) specifies that if eligible seismic mitigation funding applications cannot be fully apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans) because insufficient funding is available, the applicant may accept the remaining funding amount or refuse funding entirely. If partial funding is accepted, the applicant will remain eligible for the additional amount of seismic funds, up to the initial funding request, if funds become available within the SMP authority amount of \$199.5 million. If funding is refused, the Board shall consider funding the next project eligible for funding pursuant to this Section.

New paragraph following Subsection (a)(1)(E) requires that for any seismic mitigation funding application not apportioned or approved for placement on the Unfunded List (Lack of AB 55 Loans), the application shall be returned to the applicant.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulation.

ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.
- The SAB has made an initial determination that there will be no impact on housing costs.

EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways

identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. The regulations only apply to school districts for purposes of funding school facility projects.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than November 7, 2011, at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young,
Regulations Coordinator
Mailing Address: Office of Public School
Construction
707 Third Street, Room 1–430
West Sacramento, CA 95605

E-mail Address: robert.young@dgs.ca.gov

Fax No.: (916) 376–5939

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 375–5939. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 376–1753.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who

submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulations should be addressed to the agency’s regulations coordinator identified above. The SAB will accept written comments on the modified regulations during the 15–day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this Notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.dgs.ca.gov/opsc> under “Resources,” then click on “Laws and Regulations,” then click on “SFP Pending Regulatory Changes.”

ALTERNATIVES

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the

agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period.** Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person beginning **September 23, 2011 and ending at 5 p.m. November 7, 2011.** Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407, 33805, 33806, and 33807, Food and Agricultural Code, and to implement, interpret or make specific sections 33805, 33806, and 33807, of said Code, the Department proposes to adopt section 588 of Article 21, of Chapter 1, Division 2, of Title 3 of the California Code of Regulations, as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, section 33085 of the Food and Agricultural Code, authorizes the Department to establish an advisory committee to assist the Secretary in the administration of inspection services related to milk and milk products, as cited in Chapter 4, Part One, Division 15 of the Food and Agricultural Code. The members are appointed by and may hold office at the pleasure of the Secretary.

Existing law, section 33086 of the Food and Agricultural Code, authorizes the Department to include per-

sons representing producers, milk products plants, approved milk inspection services personnel, and the public generally on the advisory committee, and to limit the number of members not to exceed 7 but to consist of such number of members as necessary to assist in the administration of Chapter 4.

Existing law, section 33087 of the Food and Agricultural Code, states a member of the advisory committee shall not receive a salary but may be reimbursed for expenses incurred while engaged in committee duties.

In compliance with sections 33085 through 33087, the Department proposes to adopt section 588 of Article 21 (Milk Inspection Services), of Chapter 1, Division 2, of Title 3 of the California Code of Regulations. This proposal specifies the terms of service for members of the Milk Inspection Advisory Committee (MIAC).

Comparable Federal Regulations

There are no comparable federal regulations relating to this proposal.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

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

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

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

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations would affect small businesses; however, there is no adverse impact, and no fiscal or economic impact upon small businesses is anticipated as a result of this proposal.

CONSIDERATION OF ALTERNATIVES

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

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

INITIAL STATEMENT OF REASONS

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained by contacting the persons named below or by accessing the Department's website as indicated below in this Notice.

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

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

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

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations, or any written comments concerning this proposal are to be addressed to the following:

Kristen Dahl, Assistant Branch Chief
Department of Food and Agriculture
Milk and Dairy Food Safety Branch
Mailing: 1220 N Street
Sacramento, CA 95814
(916) 900-5078

E-mail: kristen.dahl@cdfa.ca.gov

The backup contact person is:

Nancy Grillo, Associate Analyst
Department of Food and Agriculture
Animal Health and Food Safety Services
Mailing: 1220 N Street
Sacramento, CA 95814
(916) 900-5033

E-mail: nancy.grillo@cdfa.ca.gov

Website Access:

Materials regarding this proposal can be found by accessing the following Internet address:
<http://www.cdfa.ca.gov/ahfss/regulations.html>.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Notice of Proposed Rulemaking

45-Day Notice

The Department of Food and Agriculture amended subsection 3591.2(a) of the regulations in Title 3 of the California Code of Regulations pertaining to Oriental Fruit Fly Eradication Area as an emergency action that was effective on September 7, 2011. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than March 5, 2012.

This notice is being provided to be in compliance with Government Code Section 11346.4.

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at

916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on November 7, 2011. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Stephen Brown
 Department of Food and Agriculture
 Plant Health and Pest Prevention Services
 1220 N Street
 Sacramento, CA 95814
sbrown@cdfa.ca.gov
 916.654.1017
 916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT
 OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

The amendment of subsection 3591.2(a) established Ventura County as an eradication area for the melon fruit fly, *Bactrocera dorsalis*. The effect of this action was to establish authority for the State to conduct eradication activities in Ventura County against this pest. There is no existing, comparable federal regulation or statute.

DISCLOSURES REGARDING THE
 PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no other non-discretionary costs or savings to local agencies or school districts.

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

Amendment 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.

Small Business Determination

The Department has determined that the proposed regulations may affect small business.

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend subsections 3591.2(a) pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes to amend subsections 3591.2(a), to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and re-

quest for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Lindsay Rains at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE

TRUST ACCOUNT WITHDRAWALS AND BROKER ESCROW HANDLING REGULATION PROPOSAL

NOTICE IS HEREBY GIVEN

The Acting Commissioner (“Commissioner”) of the Department of Real Estate (“Department”) proposes to amend Sections 2834 and 2950 within Chapter 6, Title 10 of the California Code of Regulations (“Regulations”), relating to licensed real estate brokers who handle escrows as part of their licensed activities. These

proposals are in response to significant, uncompensated losses suffered by consumers. The proposed amendments bring the protections afforded consumers under the Real Estate Law (Business and Professions Code (“Code”) Section 10000 et seq.) to the same level afforded by the Escrow Law (Financial Code Section 17000 et seq.).

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner addressed as follows:

Regular Mail

Department of Real Estate
Attn: Daniel E. Kehew, Sacramento Legal Office
2201 Broadway
Sacramento, CA 95818

Electronic Mail

DRERegulations@dre.ca.gov

Facsimile

(916) 227-9458

Comments may be submitted until 5:00 p.m., Monday, November 7, 2011.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

AMENDMENT OF SECTION 2834

According to Section 17003 of the Escrow Law (commencing with Section 17000 of the Financial Code), “escrow” means:

“. . . any transaction wherein one person, for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by such third person to a grantee,

grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.”

Individuals filling that “third person” role are required to be licensed by the Escrow Law. Regulation of that licensing requirement is assigned to the Department of Corporations (“the DOC”), but with specified exemptions. Among these, the Escrow Law allows for an escrow to be done without a DOC-issued license where a real estate broker holds the escrow when conducting activity licensed under the Department of Real Estate (“the Department”).

It must be noted that the exception for real estate brokers creates a conflict on its face. The broker may only hold the escrow (purportedly a “neutral function”) when also acting as party to, or as agent for a party to, the transaction itself. One may well question whether the neutral function of an escrow should be handled by a person who has a direct interest in the transaction or holds a fiduciary duty to a party to the transaction. The presumed safeguards against malfeasance in such a dual role are the disciplinary requirements imposed by the Department. At the same time, employment of an already-retained professional in the role of escrow may offer some immediate financial or practical advantage to the parties that outweigh the inherent risk.

In enforcing the Real Estate Law, the Department’s attention has been drawn to broker-controlled escrow by several specific violations by licensees and the subsequent disciplinary actions. These instances compelled the Department to review the protections to members of the public afforded by its license discipline structure in comparison to those afforded by the Escrow Law. As explained below, these regulatory proposals are the result of that comparison.

Section 2834 of the Regulations of the Real Estate Commissioner (Title 10 of the California Code of Regulations, herein “the Regulations”) currently mandates that withdrawals may be made from a broker’s trust fund account upon the signature of specified persons, with slightly differing lists provided depending on whether the broker is an individual licensee or corporate licensee. In both situations, the list includes an unlicensed employee of the broker “with fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.”

Notably, the bond requirement does not apply to licensees. Further, no other existing regulation or statute within the Code specifically requires a licensee performing real estate activities to maintain fidelity bond coverage. Rather, the consumer’s greatest certainty of recovering losses based on broker errors in trust handling is to file a claim against the Real Estate Recovery Fund (See Code Sections 10470, *et seq.*). The Recovery Fund provides for a maximum payment of \$50,000 per

claimant. Making such a claim for recovery requires that a conviction of the licensee for fraud and judgment filed against the licensee.

Even where such judgment is entered in favor of the consumer, in the absence of additional bonding or insurance, the consumer’s actual recovery may be limited to the Recovery Account maximum: \$50,000. Department staff note that as of November 2010, the California Association of Realtors (“the C.A.R.”) reported county-wide median home prices ranging from \$139,000 in Kern County up to \$665,000 in San Francisco County. (C.A.R. and DataQuick track such median values in roughly half the state’s counties.) Logically, a majority of escrows for real estate transactions involve funds far exceeding the Recovery Account’s maximum payment. Losses from trust accounts have occurred, and the potential for significant unrecovered loss to the consumer for this particular type of broker malfeasance is shocking.

The lack of any required fidelity bond is especially problematic when held in contrast to the requirements of the Escrow Law. That statute requires independent escrow officers to hold memberships and insurance that offer their clients much more significant recovery for losses attributable to actions of the licensee and the licensee’s employees.

Specifically, independent escrow agents who are licensed by the DOC are required by the Escrow Law to participate as members in the Escrow Agent’s Fidelity Corporation. The Fidelity Corporation indemnifies members in the minimum amount of one million dollars and maximum amount of five million dollars for each licensed location. Pursuant to Section 17312 of the Financial Code, this membership is required if the escrow agent is engaging, in whole or in part, the business of receiving escrows for deposit or delivery in transactions, including but not limited to, real property escrows (sale, encumbrance, lease, transfer of title), bulk sale escrows, and/or fund or joint control escrows.

Further, if an escrow agent performs escrows falling outside the categories of transactions referenced in Section 17312, said escrow holder must maintain a minimum of \$125,000 in fidelity bond coverage. Additionally, the bond must cover each officer, director and employee for not less than \$125,000 for the purpose of indemnifying the escrow agent (or the escrow agent’s successor in interest) for loss of trust obligations held by the escrow agent as a result of fraudulent or dishonest abstraction, misappropriation, or embezzlement of trust obligations by an officer, director, trustee, or employee of the escrow agent.

In addition to fidelity bond coverage, the Escrow Law also requires licensed escrow agents to post a surety bond or cash in the amount of up to \$50,000 per location, meet certain minimum financial worth require-

ments prior to licensure, submit audited financial statements to the DOC on an annual basis by a licensed certified public accountant, and is subject to random audits at least once in a forty–eight month period or more often in the event of complaints.

Therefore, the potential risk that one might lose one’s money and be unable to recover the full amount is much higher should the consumer be subject to an escrow controlled by a real estate broker than in where the consumer funds are misappropriated by an independent escrow company.

Department staff also have concerns about other issues within the existing Section 2834, as well:

- The section has been amended six times between 1958 and 1993, and the clarity of the section has suffered as a result. For example, the central concept that an individual licensed broker or designated officer of a corporate broker retains responsibility and liability for the trust fund withdrawals by the broker’s authorized employee was added as a subsection, rather than highlighted.
- There is no clear, existing requirement that the individual licensed broker or designated officer of a corporate broker be a signatory on each trust fund of the brokerage.
- The existing requirement regarding bonding of unlicensed persons has been misunderstood frequently. The requirement demands “fidelity bond coverage at least equal to the maximum amount of the trust funds to which the employee has access at any time.” The Department interprets this requirement as making no allowance for a deductible on the bond; where a deductible exists, the bond covers that much less than the maximum amount of the trust funds to which the employee has access. Cash held in reserve to cover a deductible does not overcome this issue, as such funds may be attached by a creditor or misused by the licensee before they can be used for this intended purpose. However, an insurance policy that specifically covers the amount of the deductible can act as a guarantee that compensation is available to the harmed consumer — and to the knowledge of Department staff, this is the only means of creating the assurance of recovery that the regulation anticipates. The section, however, currently does not make this solution apparent.

Purpose of Amendment to Section 2834: This proposal specifically requires:

- (1) That the individual broker of record or designated officer of a corporate broker be a signatory on each trust account of that broker, along with whichever

qualified subsidiary personnel the broker may choose to add.

- (2) Relocates to the opening paragraph of the section the specification that a supervising broker or designated officer retains liability for trust fund actions taken by their subsidiary personnel (currently located in subsection (c)), and deletes the subsection where that specification currently resides.
- (3) Addresses the frequently misunderstood requirement for a bond coverage of the full amount of trust funds where an unlicensed person has signature access, specifying that any deductible amount on the bond must be covered by an insurance policy.
- (4) Redrafts subsection (b) for clarity within the context of the full section.
- (5) Adds a new subsection (c), specific to trust accounts relating to broker–controlled escrows. This subsection requires bond coverage to ensure that consumers have a financial remedy and are more completely protected against loss that is the fault of the broker licensee or that licensee’s employees, whether or not the loss is caused by fraud or negligence.

Rationale of Amendment to Section 2834:

Referring to the items in the “Specific Purpose” section, above:

Item (1): As the responsible licensee for all actions taken under the broker’s license, the broker or designated officer should be a signatory on each trust account and directly informed regarding changes to each trust account.

Items (2) and (4): Address readability issues that arose through past revisions of Section 2834.

Item (3): Clarifies in regulation the means by which an unlicensed person may have signature access to a trust account, with full recovery available to consumers harmed should a loss occur.

Item (5): With regard to escrow trusts, specifically, brings the protections available to consumers into line with the protections offered by the Escrow Law. The newly required bond/insurance coverage will ensure that mishandling of escrows by a licensee or licensee’s employee will not result in loss to the consumer.

AUTHORITY: AMENDMENT OF SECTION 2834

Sections 10080 and 10145(f), Business and Professions Code, and Section 17006(a)(4), Financial Code.

REFERENCE: AMENDMENT OF SECTION 2834

Section 10145, Business and Professions Code; and Section 17006(a)(4), Financial Code.

INFORMATIVE DIGEST/PLAIN ENGLISH
OVERVIEW

AMENDMENT OF SECTION 2950

According to Section 17003 of the Escrow Law (commencing with Section 17000 of the Financial Code), “escrow” means:

“... any transaction wherein one person, for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by such third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.”

Individuals filling that “third person” role are required to be licensed by the Escrow Law. Regulation of that licensing requirement is assigned to the Department of Corporations (“the DOC”), but with specified exemptions. Among these, the Escrow Law allows for an escrow to be done without a DOC-issued license where a real estate broker holds the escrow when conducting activity licensed under the Department of Real Estate (“the Department”).

It must be noted that the exception for real estate brokers creates a conflict on its face. The broker may only hold the escrow (purportedly a “neutral function”) when also acting as party to, or as agent for a party to, the transaction itself. One may well question whether the neutral function of an escrow should be handled by a person who has a direct interest in the transaction or holds a fiduciary duty to a party to the transaction. The presumed safeguards against malfeasance in such a dual role are the disciplinary requirements imposed by the Department. At the same time, employment of an already-retained professional in the role of escrow may offer some immediate financial or practical advantage to the parties that outweigh the inherent risk.

In enforcing the Real Estate Law, the Department’s attention has been drawn to broker-controlled escrow by several specific violations by licensees and the subsequent disciplinary actions. These instances compelled the Department to review the protections to

members of the public afforded by its license discipline structure in comparison to those afforded by the Escrow Law. As explained below, these regulatory proposals are the result of that comparison.

Section 2950 of the Regulations imposes standards for the handling of escrows by real estate brokers exempted from the Escrow Law. In fact, this section “stands in” for many of the consumer protections provided by the Escrow Law.

Section 2950 falls short of the protections provided by the Escrow Law in several ways, however. First, the section fails to require real estate brokers to notify the Department of escrow activities. Because the Real Estate Law lacks any special licensing requirement for brokers performing escrow activities (or, for that matter, any specific real estate activity save mortgage loan origination), the Department has no ability to accurately determine which licensees are conducting broker controlled escrows. At present, the Department’s only means to identify a broker handling escrows is through a problem arising in practice and the filing of a complaint by a consumer or another licensee.

In contrast, independent escrow agents operating under the Escrow Law must obtain specific licensure with the DOC before performing escrow activities. As a result, the DOC has a complete database of independent escrow agents, and is able to track, monitor, and audit the activities of those licensees. Through that database, DOC is able to better regulate and enforce escrow activity by its licensees, ensuring that escrow agents are in compliance with the Escrow Law and that the public is being properly served. Without a similar database of real estate brokers performing broker-controlled escrows, the Department is unable to adequately monitor and audit the activities of a real estate brokers in a field presenting high risk to consumers (through the inherent conflict of the dual roles as agent and neutral escrow).

Also, Section 2950 does not require that a real estate broker performing broker-controlled escrows to make critical disclosures in writing to all of the parties of an escrowed transaction. Information such as the licensee’s licensed name, license number, and the agency that issued the license would (a) enable the consumer to do prophylactic research about the licensee’s status with the Department and (b) quickly make complaint in the event of problems with the escrow. The omission of this information is even more problematic due to the fact that an escrow may be performed in California by different classifications of people who are licensed by different agencies, an artifact of the drafting of Section 17006 of the Financial Code. Although both Section 17403.4 of the Financial Code and Section 1057.7 of the Civil Code require escrow companies to provide specific licensing disclosures to consumers, no such

provision exists in the Real Estate Law, pertaining to real estate brokers performing escrows.

Purposes of Amendment to Section 2950

This proposal specifically requires:

- (1) That the broker report specified information to the Department upon the broker's entry into the escrow business, or when conducting the first escrow after January 1, 2012, if the broker is already conducting escrows. The broker must also provide to the Department, upon the close of that transaction, copies of specified escrow documents.
- (2) That the initial escrow instructions executed by the parties (using drafts provided by the broker) include text identifying the broker (licensed name and license number) and the Department as licensing entity regulating the licensed escrow activity.
- (3) That the broker disclose to all parties to the escrowed transaction, and document the disclosure of, a specified statement regarding the licensed status of the broker.

Rationales of Amendment to Section 2950

Referring to the items in the "Specific Purpose" section, above:

Item (1): The Department's inability to identify, among the almost 500,000 current licensees, those engaged in this particular practice presents significant enforcement challenges. Broker-controlled escrows place a broker in an inherently conflicting role, at one time acting as both (1) party or agent for a party and (2) the neutral holder of escrow. Further, the amounts that a broker may hold in trust within the escrow can be substantial. Given these risks, and the cases resulting from exploitation of these risks, the Commissioner believes that closer scrutiny of the broker-controlled escrow practice is warranted — yet the population of licensees engaged in the practice is unknown. This amendment will ensure that practitioners engaged in broker-controlled escrow can be identified and subject to appropriate oversight.

Items (2) and (3): The Escrow Law, appropriately, requires an independent escrow holder licensed by the DOC to make disclosures to the parties to an escrow regarding the licensee's identity and licensed status. That requirement ensures that consumers can identify, and prompt regulatory action against, licensees who fail in their licensed duties as neutral escrow holder. This amendment would

bring the Regulations relating to real estate licensees into line with the Escrow Law, providing uniform protection to consumers whose escrow holder happens to be a real estate licensee, rather than an escrow licensee.

AUTHORITY: AMENDMENT OF SECTION 2950

Section 10080, Business and Professions Code.

REFERENCE: AMENDMENT OF SECTION 2950

Section 10145, Business and Professions Code; and Section 17006(a)(4), Financial Code.

**WITH REGARD TO BOTH SECTIONS
2834 AND 2950**

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(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

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

The express terms of the proposed action may be obtained upon request from the Sacramento offices of the Department. 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. These documents are also available at the Department's website at www.dre.ca.gov. As required by the Administrative Procedure Act, the Department's Sacramento Legal Office maintains the rule-making file. The rulemaking file is available for public inspection at the Department of Real Estate, 2201 Broadway, 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 on the website listed above.

CONSIDERATION OF ALTERNATIVES

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

FISCAL IMPACT

The Department has determined that there is no substantial economic impact on any party from this proposal.

DETERMINATIONS

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

- Does not create a cost or savings to any state agency. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost nor impose a mandate (nondiscretionary cost or savings) on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. (Statements of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost or savings regarding federal funding to the state. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The only item proposed herein that might significantly impact a real estate broker's cost of doing business is the amendment to Regulation 2834 that would require real estate brokers performing broker controlled escrows to maintain fidelity bond coverage. Pursuant to Departmental research on fidelity bonds and prices with different insurance companies nationwide, Department staff found a range of prices depending on the bond amount, size of company, volume and type of business, number of employees, and company revenue, etc. The cost of securing a fidelity bond would largely depend on these factors, and therefore, will vary widely amongst individual brokers and their escrow businesses. The following, for the benefit of comparison, summarizes the pricing obtained.

One such example was Stateside Underwriting Agency, which offered a bond in the amount of \$1,000,000 with fidelity bond coverage, a minimum deductible of \$5,000, and annual premium of \$3,000. Generally, other companies offered fidelity bonds with a premium based upon 1–3% of the insurance amount. For example, a bond for \$250,000 may cost anywhere between \$2,500 and \$7,500 a year. Still other companies offered pricing structures based upon \$10, \$20, or \$50 per \$1,000 based upon the bond amount.

It should be noted that the majority of independent escrow agents, licensed by the DOC and members of the Escrow Agent's Fidelity Corporation, fall within the \$1,000,000 fidelity bond coverage category and pay anywhere between \$500 and \$800 in annual premiums, with minimum deductibles of \$5,000. However, it should also be mentioned that the Escrow Agent's Fidelity Corporation is a unique corporation wherein DOC licensees are able to pool the premiums of all member escrow companies and thus insure higher amounts for less money.

Under the Commissioner's proposal, the cost of doing business for real estate brokers performing broker controlled escrows would increase due to the cost of purchasing and maintaining a fidelity bond for the broker's escrow division. Such increased cost would be relative to the broker's individual escrow division, volume of business, employees, and other important factors depending on the insurance company.

EFFECT ON SMALL BUSINESS

An unknown number of the licensed real estate brokers engaged in broker controlled escrows may be small businesses. Those businesses would be required to purchase bonds to cover the full amount of the funds held in

escrow, with purchase costs described as in the “Cost Impacts” section, immediately above.

CONTACT PERSON

Inquiries concerning this action may be directed to Daniel Kehew at (916) 227-0425, or via email at DRERegulations@dre.ca.gov. The backup contact person is Mary Clarke at (916) 227-0780.

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

NOTICE OF PROPOSED RULEMAKING

Financial Management Services — Participant-Directed Services

The Department of Developmental Services (Department) proposes to amend Title 17, California Code of Regulations (CCR), Division 2, Chapter 1, Subchapter 6: Service Provider Record Maintenance Requirements; Chapter 3, Subchapter 2: Vouchers; Chapter 3, Subchapter 18: Standard Rate Schedule, by amending sections 50604, 54355, and 58543. Additionally, the Department proposes to add, to Division 2, a new Subchapter 22: Financial Management Services — Participant-Directed Services, new sections, 58883, 58884, 58886, 58887, and 58888.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action of the Department. The written comment period closes at 5:00 p.m. on November 7, 2011. Please submit any written comments to the Department’s contact person designated below by 5:00 p.m. on November 7, 2011. In addition, the Department will receive both oral and written comments at the public hearing.

PUBLIC HEARING

One public hearing to receive oral and written comments is scheduled as follows:

November 7, 2011, at 9:30 a.m.–11:30 a.m., or end of testimony, at 1600 Ninth Street, Sacramento, California, 95814, Bateson Building, Room 360.

AUTHORITY AND REFERENCE

Authority: Sections 4405, 4648(a), 4648.12(c)(1)(B), 4688.21, 4690, 4690.1, and 4690.2,

Welfare and Institutions Code; and Section 11152, Government Code.

Reference: Sections 4631, 4648(a), 4648.12(c), 4690, 4690.1, Welfare and Institutions Code; 42 U.S.C. Section 1396n(c) (section 1915(c) of the Social Security Act).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Currently, the Department offers voucher services to consumers and/or their families. The federal government is requiring the use of a financial management service (FMS) provider when participating in the funding of voucher services for respite, day care, nursing, and transportation. These services, along with the new Community-based Training Program for Adults, will be known as Participant-Directed Services. The Department proposes to amend Sections 50604, 54355 and 58543, and add Sections 58883, 58884, 58886, 58887 and 58888 of Title 17, of the CCR, to add Participant-Directed Services and FMS for eligible participants. Regional centers may vendor providers as an FMS to carry out the responsibilities such as: assisting a family member or adult consumer in verifying worker eligibility status; collecting and processing timesheets of workers; processing payroll, withholdings, filing and payment of applicable federal, state and local employment-related taxes and insurance; performing billing payments and reimbursements as authorized; and maintaining all source documentation related to the authorized service(s). New service codes will be added to existing service codes to identify when these services are used in conjunction with the FMS and the rates of reimbursement for these services.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations will not adversely affect small businesses. The proposed regulations do not change any current business requirements for financial management services.

LOCAL MANDATE AND FISCAL IMPACT DETERMINATIONS

The Department has determined that the proposed regulatory action does not impose: 1) a mandate on local agencies or school districts, 2) significant costs or savings to any state agency, 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, 4) other nondiscretionary costs or savings imposed on local agencies, or 5) costs or savings in federal funding to the state.

ECONOMIC IMPACT AND
BUSINESS ASSESSMENT

Based on the Department's findings it is anticipated that the proposed action will have no economic effect on the creation of new jobs and new businesses within the state, nor on the expansion of businesses currently doing business within the State of California. The Department has also determined this proposed action will not eliminate jobs or existing businesses.

The Department has determined that the proposed regulations will not have: 1) a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states, or 2) a significant effect on housing cost. The Department is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES CONSIDERED

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

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

CONTACT PERSONS

General and substantive inquiries concerning the proposed action may be directed to:

Department of Developmental Services
Community Rate Section
1600 Ninth Street, Room 310
Sacramento, CA 95814
Attention: Jeffrey Greer
Phone: (916) 654-2201
Facsimile: (916) 654-1578
E-mail Address: jeff.greer@dds.ca.gov

If the above person is unavailable, you may also contact Greg Saul, Branch Manager, Program Operations Branch at (916) 653-3749.

AVAILABILITY OF
RULEMAKING DOCUMENTS

The Department has prepared and has copies ready for public review, an Initial Statement of Reasons for

the proposed regulations, all the information upon which the proposed regulations are based, and the exact text of the proposed regulations.

Copies of the Notice, Initial Statement of Reasons and text of the proposed regulations will be made available through the Department's website at www.dds.ca.gov. All other public records, reports, documentation or other material related to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying throughout the rulemaking process from the contact persons at the above address. Upon completion, the Final Statement of Reasons will be made available by either contacting the persons above or through the Department's website.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After close of the comment period the Department may adopt the proposed regulations as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before the Department adopts the regulations as revised. Requests for the modified text should be made to the contact person named above.

TITLE 18. BOARD OF EQUALIZATION

Notice of Proposed Regulatory Action

**Amendments to California Code of Regulations,
Title 18, Section 1807,
*Petitions for Reallocation of Local Tax,
and Section 1828, Petitions for Distribution or
Redistribution of Transactions and Use Tax***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. Regulation 1807 prescribes the procedures the Board follows when reviewing a request or inquiry (petition) from a jurisdiction, other than a submission under RTC section 6066.3, for investigation of suspected misallocation of local sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.). Regulation 1828 prescribes similar procedures the Board follows when reviewing a district's petition for investiga-

tion of suspected improper distribution or nondistribution of district transactions (sales) and use tax under the Transactions and Use Tax Law (RTC §7251 et seq.). The proposed amendments to Regulations 1807 and 1828 improve the review processes by: (1) allowing a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allowing a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allowing a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) requiring the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; (5) requiring a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorizing appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically granting opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. The proposed amendments to Regulations 1807 and 1828 also clarify that the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates. The amendments are not retroactive.

PUBLIC HEARING

The Board will conduct a meeting in Room 121, at 450 N Street, Sacramento, California, on November 15-17, 2011. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as

the matter may be heard on November 15, 16, or 17, 2011. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulations 1807 and 1828.

AUTHORITY

Regulations 1807 and 1828: RTC section 7051.

REFERENCE

Regulation 1807: RTC sections 7209 and 7223.

Regulation 1828: RTC section 7270.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Counties are authorized to adopt local sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7201), and all of California's counties have adopted ordinances under the terms of this law. Cities are authorized to adopt local sales and use tax ordinances in accordance with the Bradley-Burns Uniform Local Sales and Use Tax Law, and when a city adopts such an ordinance the city's tax is credited against its county's local sales and use tax. (RTC § 7202, subd. (h).) Also, redevelopment agencies were authorized to adopt sales and use tax ordinances in accordance with the provisions of the Bradley-Burns Uniform Local Sales and Use Tax Law, prior to January 1, 1994, and there are still some redevelopment agencies' local sales and use taxes in effect. (RTC §§ 7202.6 and 7202.8.) A county's local sales and use tax ordinance may provide a credit for a redevelopment agency's local sales and use tax. (RTC § 7202.5.)

The ordinance imposing a county's or city's local sales and use tax must include provisions identical to those of the Sales and Use Tax Law (RTC § 6001 et seq.) with certain exceptions, which include the rate of tax and the substitution of the name of the county or city as the taxing agency in place of the state. (RTC §§ 7202 and 7203.) Also, each county, city, and redevelopment agency is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its local sales and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC §§ 7202, subds. (d) and (h)(4), and 7204.3.)

The Board is required to periodically transmit local sales and use taxes to the cities, counties, cities and counties, and redevelopment agencies (jurisdictions)

for which they were collected. (RTC § 7204.) The Board may redistribute local taxes when there is an error (RTC § 7209) and Regulation 1807 prescribes the procedures that apply when a jurisdiction files a petition requesting that the Board investigate a suspected misallocation of local sales and use tax.

In addition, districts (cities, counties, cities and counties, and other governmental entities) are authorized to adopt district transactions (sales) and use tax ordinances in accordance with the Transactions and Use Tax Law. The ordinance imposing a district transactions and use tax must include provisions identical to those of the Sales and Use Tax Law with certain exceptions, which include the rate of tax and the substitution of the name of the district as the taxing agency in place of the state. (RTC §§ 7261 and 7262.) Also, each district is required to contract with the Board to have the Board perform all the functions related to the administration and operation of its district transactions and use tax ordinance in conjunction with the Board's administration of the Sales and Use Tax Law. (RTC § 7270.)

The Board is required to periodically transmit transactions and use taxes to the districts for which they were collected. (RTC § 7271.) The Board may redistribute local taxes when there is an error (RTC § 7269) and Regulation 1828 prescribes the procedures that apply when a district files a petition requesting that the Board investigate a suspected improper distribution or nondistribution of district transactions and use tax.

Proposed Amendments to Regulations 1807 and 1828

Regulations 1807 and 1828 were originally adopted in 2002. The original 2002 versions of Regulations 1807 and 1828 were repealed and new versions of Regulations 1807 and 1828 were adopted in 2008 in order to streamline the Board's review of jurisdictions' petitions requesting that the Board investigate suspected misallocations of local sales and use tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district transactions and use tax. During the Board's September 15, 2010, Business Taxes Committee meeting, Mr. Johan Klehs presented his suggestions to further improve the review processes prescribed by Regulations 1807 and 1828, as adopted in 2008, and the Board directed its staff to meet with interested parties to discuss Mr. Klehs' suggestions.

Board staff subsequently met with the interested parties on January 6, 2011, and February 17, 2011, to discuss Mr. Klehs' suggestions and other interested parties' suggestions for improving the review processes prescribed by Regulations 1807 and 1828. Then, Board staff prepared Formal Issue Paper 11-004, which set forth Board staff's, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommen-

dations on how to best amend Regulations 1807 and 1828 to improve their review processes, and submitted the formal issue paper to the Board for consideration at its April 26, 2011, Business Taxes Committee meeting. However, the Board did not vote on staffs, Mr. Klehs' and the HdL Companies', and MuniServices, LLC's alternative recommendations at the end of the April 26, 2011, Business Taxes Committee meeting due to the overall lack of agreement between staff and the interested parties, and among the interested parties. Instead, the Board directed staff to develop guidelines explaining what is expected of all the parties involved in the review processes prescribed by Regulations 1807 and 1828 and to continue to work with the interested parties to see if staff and the interested parties could agree on how to best amend Regulations 1807 and 1828.

As a result, Board staff prepared a report, which set forth the expectations of all the parties participating in the Regulation 1807 and Regulation 1828 review processes, and provided the report and Board staff's revised recommendation regarding how to best amend Regulations 1807 and 1828 to the interested parties on August 4, 2011. Board staff's revised recommendation recommended that both regulations be amended to: (1) allow a jurisdiction or district to request a 30-day extension to submit its written objection to a notification of misallocation; (2) allow a jurisdiction or district to perfect an incomplete petition within 30 days after the date of correspondence from the Allocation Group in the Board's Sales and Use Tax Department notifying the jurisdiction or district that its petition is incomplete; (3) allow a jurisdiction or district to request that the Allocation Group issue its supplemental decision on a petition within 60 days after receiving such request and based upon the information in the Allocation Group's possession if the Allocation Group does not issue its supplemental decision within three months after receiving a timely written objection to its original decision; (4) require the Allocation Group to forward the petition file to the Appeals Division in the Board's Legal Department within 30 days after receiving an objection to its supplemental decision regarding a petition; and (5) require a notice of appeals conference regarding a petition to be mailed to every jurisdiction or district that may be substantially affected by the Appeals Division's recommendation to grant that petition; and (6) authorize appeals conference holders in the Appeals Division to grant a jurisdiction or district 30 days, instead of 15 days, to submit additional arguments and evidence after an appeals conference, and automatically grant opposing jurisdictions or districts 30 days, instead of 15 days, to file responses to post-conference submissions. Board staff's revised recommendation also recommended that both regulations be amended to clarify that

the Board repealed the 2002 versions of the regulations and adopted new versions of the regulations in 2008, clarify the effect of the adoption of the 2008 regulations on petitions filed prior to January 1, 2003, and clarify that the 2008 regulations and the proposed 2011 amendments to the 2008 regulations apply to procedures occurring after their effective dates and are not retroactive.

Mr. Kelhs and the HdL Companies indicated that they agreed with Board staff's revised recommendation; however, MuniServices, LLC, requested two changes to staff's revised recommendation. First, MuniServices, LLC, suggested that the amendments to Regulations 1807 and 1828 allow a jurisdiction or district to request that the Board's Allocation Group issue its supplemental decision within 30 days, instead of 60 days, after receiving such request. Second, MuniServices, LLC, suggested that the transition rules in Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), be revised to indicate that Regulations 1807 and 1828 were amended, rather than repealed and readopted, in 2008. However, Board staff did not agree with MuniServices, LLC's suggested changes. Therefore, Board staff prepared an Informal Issue Paper dated August 10, 2011, containing Board staff's revised recommendation for how to best amend Regulations 1807 and 1828 and MuniServices, LLC's alternative to staff's revised recommendation, and submitted it to the Board for consideration during its August 23, 2011, Business Taxes Committee meeting.

During the August 23, 2011, Business Taxes Committee Meeting, Mr. Klehs expressed his support for Board staff's revised recommendation, Ms. Robin Sturdivant expressed the HdL Companies' support for staff's revised recommendation, and Ms. Christy Bouma expressed MuniServices, LLC's opinion that the amendments contained in staff's revised recommendation will improve Regulation 1807's and Regulation 1828's review processes. In addition, the Board agreed with Board staff's revised recommendation to amend Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), to indicate that the regulations were repealed and readopted in 2008 because the amendments are consistent with the actual 2008 events and the regulations' history notes in the California Code of Regulations. However, the Board noted that the Board's website incorrectly indicated that both regulations were substantially "amended" in 2008, not repealed and readopted, and that the language on the Board's website likely led to MuniServices, LLC's concerns about Board's staff's recommended amendments to Regulation 1807, subdivision (g), and Regulation 1828, subdivision (f), and the Board directed staff to correct the Board's website. Therefore, at the conclusion of the August 23, 2011, Business Taxes Committee meeting, the

Board unanimously voted to authorize staff to begin the formal rulemaking process to adopt the amendments to Regulations 1807 and 1828 contained in staff's revised recommendation, as set forth in the Informal Issue Paper dated August 10, 2011. The objective of the proposed amendments is to improve Regulation 1807's and Regulation 1828's processes for reviewing jurisdictions' petitions requesting that the Board investigate suspected misallocations of local tax and districts' petitions requesting that the Board investigate suspected improper distributions or nondistributions of district tax.

There are no comparable federal regulations or statutes to Regulations 1807 and 1828.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1807 and 1828 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1807 and 1828 will improve the Board's processes for reviewing jurisdictions' petitions for the investigation of suspected misallocations of local sales and use tax and districts' petitions for investigation of suspected improper distributions or nondistributions of district transactions and use tax, without imposing any new requirements on the businesses that report and pay such taxes. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulations 1807 and 1828 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS
OR BUSINESSES

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

RESULTS OF THE ASSESSMENT REQUIRED BY
GOVERNMENT CODE SECTION
11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulation 1807 and 1828 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

NO SIGNIFICANT EFFECT ON
HOUSING COSTS

Adoption of the proposed amendments to Regulations 1807 and 1828 will not have a significant effect on housing costs.

DETERMINATION REGARDING
ALTERNATIVES

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

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at

(916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on November 15, 2011, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Regulations 1807 and 1828 during the November 15-17, 2011, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulations 1807 and 1828. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF
REASONS AND TEXT OF
PROPOSED AMENDMENTS

The Board has prepared underlined and strikeout versions of the text of Regulations 1807 and 1828 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. These documents and all the information on which the proposed amendments are based are available to the public upon request. The rule-making file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments to Regulations 1807 and 1828, and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES
PURSUANT TO GOVERNMENT CODE
SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 1807 and 1828 with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made to the proposed amendments to Regulation 1807 or Regulation 1828, the Board will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The

text of the resulting regulation will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

If the Board adopts the proposed amendments to Regulations 1807 and 1828, the Board will prepare a Final Statement of Reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

**TITLE 27. OFFICE OF
ENVIRONMENTAL HEALTH HAZARD
ASSESSMENT**

NOTICE OF PROPOSED RULEMAKING

**AMENDMENT TO SECTION 25705
SPECIFIC REGULATORY LEVELS POSING
NO SIGNIFICANT RISK: IMAZALIL**

SEPTEMBER 23, 2011

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to establish a specific regulatory level posing no significant risk for imazalil and amend Title 27, California Code of Regulations, section 25705.¹

PUBLIC PROCEEDINGS

Any written statements or arguments concerning this proposed action, regardless of the form or method of transmission, must be received by OEHHA by 5:00 p.m. on **November 7, 2011**, the designated close of the written comment period.

Written comments can be sent by e-mail, mail or fax addressed to:

Monet Vela
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation Program
P.O. Box 4010
Sacramento, California 95812-4010
FAX: (916) 324-1786

Telephone: (916) 323-2517
monet.vela@oehha.ca.gov

Comments sent by courier should be delivered to:

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 19th Floor
Sacramento, California 95814

It is requested but not required that hard-copy statements or arguments be submitted in triplicate.

On request only, OEHHA will schedule a public hearing to present oral comments. The request must be submitted in writing to OEHHA at the address listed above no later than **October 21, 2011**, which is 15 days before the close of the comment period. OEHHA will mail a notice for any scheduled public hearing to interested parties on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA web site at least ten days before the public hearing date. The notice will provide the date, time, location and subject matter to be heard.

If a hearing is scheduled and you have special accommodation or language needs, please contact Monet Vela at (916) 323-2517 or monet.vela@oehha.ca.gov at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Please direct inquiries concerning the substance and processing of the action described in this notice to Monet Vela, in writing at the address given above, or by telephone at (916) 323-2517. Fran Kammerer is a back-up contact person for inquiries concerning processing of this action and is available at (916) 445-4693.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq. and commonly known as Proposition 65 (hereinafter Proposition 65 or the Act), prohibits a person in the course of doing business from knowingly and intentionally exposing any individual to a chemical that has been listed as known to the State to cause cancer or reproductive toxicity, without first giving clear and reasonable warning to such individual (Health and Safety Code section 25249.6). The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water (Health and Safety Code section 25249.5).

For chemicals known to the state to cause cancer, an exemption from the warning requirement is provided

¹All further regulatory references are to Title 27 of the California Code of Regulations unless otherwise indicated.

by the Act when a person in the course of doing business is able to demonstrate that an exposure for which the person is responsible produces no significant risk or that a discharge which otherwise complies with all applicable requirements would not cause any significant amount of the discharged or released chemical to enter any source of drinking water (Health and Safety Code sections 25249.9 and 25249.10). A determination that a level of exposure poses no significant risk may be made utilizing regulations that have previously been adopted by OEHHA (sections 25701–25721). Section 25701 describes alternative methods for making such a determination. Section 25705 sets forth the process by which OEHHA may identify specific regulatory levels for determining “no significant risk” for purposes of Proposition 65 and establishes those levels for certain listed chemicals.

Details on the basis for the proposed level are provided in the initial statement of reasons, which is incorporated in the rulemaking record.

This amendment to section 25705(c) would adopt the following No Significant Risk Level (NSRL) for one chemical listed as known to cause cancer:

Chemical	NSRL, in units micrograms per day
Imazalil	11

Under Section 25705(c), an NSRL may be determined by the lead agency based on state or federal risk assessments, unless a specific regulatory level of a chemical listed under Proposition 65 has already been established in Section 25705(b). Here, the NSRL is based upon a federal risk assessment by the U.S. Environmental Protection Agency (U.S. EPA). The cancer unit risk value adopted by U.S. EPA provides the basis for calculating the proposed NSRL, as discussed in more detail in the initial statement of reasons for this regulatory amendment.

This notice and the initial statement of reasons are being provided to the OEHHA Science Advisory Board’s Carcinogen Identification Committee (CIO) to review and comment on the proposed NSRL.

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

The OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

OEHHA has made an initial determination that the adoption of the regulation 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.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulation will not impose any requirements on small business. Rather, the proposed regulation will assist small businesses subject to the Act in determining whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, all the critical information upon which the regulation is based and the text of the regulation. A copy of the Initial Statement of Reasons, a copy of the text of the regulation and a copy of the risk assessment which was used by OEHHA to determine the proposed NSRL are available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of this proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such changes. Copies of the notice and the changed regulation will also be available at the OEHHA's Web site.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from OEHHA's

Proposition 65 Implementation Program at the address and telephone number indicated above. The Final Statement of Reasons will also be available at the OEHHA's Web site at www.oehha.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

**CALIFORNIA ENDANGERED SPECIES ACT
INCONSISTENCY DETERMINATION NO.
2080-2011-020-03**

- Project:** San Joaquin Pipeline — Eastern Segment Project
- Location:** Stanislaus and Tuolumne Counties
- Applicant:** San Francisco Public Utilities Commission
- Notifier:** Jonathan Mates–Munchin

Background

The San Francisco Public Utilities Commission (SFPUC) (Applicant) proposes to construct a new pipeline segment as part of the SFPUC's Water System Improvement Program (WSIP).

The San Joaquin Pipeline — Eastern Segment (Project) includes the construction of ancillary facilities and one new pipeline segment, totaling approximately 6.5 miles. This new pipeline segment will run parallel to and just north of the existing San Joaquin Pipeline (SJPL) System. Ancillary components include the construction of a new valve house (Valve House No. 4), site improvements at Oakdale Portal, a tie-in vault at the western end of the new pipeline, construction of one new throttling station, and upgrades/replacement of existing valves at a tributary to Cashman Creek.

The Project is located within an existing SFPUC right-of-way (ROW) for the SJPL. The Project includes staging areas that are adjacent to the ROW from the Oakdale Portal westward to Fogarty Road near Cashman Creek (MP 57.62), a distance of approximately 8 miles. Oakdale Portal is located at MP 49.84, or 49.84 miles west of Hetch Hetchy Reservoir/ O'Shaughnessy Dam. An additional temporary construction easement (TCE) will be used during construction, located outside of the SJPL ROW, adjacent to Emery Road.

The Project activities described above are expected to cause incidental take¹ of California tiger salamander

¹Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

(*Ambystoma californiense*) (CTS) where those activities take place within the Project site. Project related incidental take of CTS could occur as a result of trenching, road construction, stockpiling, and construction. CTS is designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(3)(G).)

CTS individuals are documented as present at the Project site and there is occupied CTS habitat within and adjacent to the Project site. Because of known CTS observations and the presence of suitable CTS habitat within the Project site, the United States Fish & Wildlife Service (Service) determined that CTS is reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of CTS.

According to the Service, the Project will result in the temporary loss of 104.3 acres of upland CTS habitat and 1.36 acres of aquatic habitat, totaling 105.66 acres of temporary habitat loss. Construction of the Project will also result in the permanent loss of 0.61 acres of upland CTS habitat.

Because the Project is expected to result in take of a species designated as threatened under the federal ESA, the U.S. Army Corps of Engineers (Corps) consulted with the Service as required by the ESA. On August 9, 2011, the Service issued a biological opinion (Service File No. SPK-2008-01001) (hereafter, the BO) to the Corps. The BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures. The BO includes the following measures, among others, for CTS:

1. A qualified biologist or restoration specialist is required to prepare a vegetation restoration specification for grassland or other sensitive habitats impacted by construction activities. The goal of the plan will be to restore temporarily impacted habitats to their pre-Project condition.
2. Project construction and maintenance shall avoid direct and indirect impacts on wetlands and other waters of the United States, to the greatest extent feasible. Where the Project cannot avoid disturbance, the SFPUC will employ measures to minimize direct and indirect impacts to wetlands and other waters of the state. Those measures will be developed in consultation with the Central Valley Regional Water Quality Control Board (CVRWQCB) and Corps and may include, but are not limited to, the following:

- As the Project proceeds to final design, a qualified biologist will identify all avoidable and unavoidable wetlands, and other waters within Project limits. Identification will be based on final engineering specifications and existing maps of all wetlands and waters within the study area.
3. According to the BO, in addition to the general conservation measures described above, measures for avoiding and minimizing effects on CTS shall also include the following:
 - At locations where potential aestivation habitat cannot be avoided, a qualified biologist(s), approved by the Service, will perform surveys for the salamander in refugia burrows prior to any ground disturbance. All burrows within the direct construction or spoils area will be flagged and surveyed.
 - Only individuals possessing appropriate permits issued by the Service may handle/capture federally-listed species.
 4. SFPUC will implement compensatory mitigation to address direct effects to CTS. Compensation for permanent loss of CTS will be provided at a ratio of 3 acres of offsite habitat compensation for every 1 acre of impact. In addition, compensation for effects to CTS upland habitat during construction will be provided at a ratio of 0.1 acre of offsite habitat compensation for every 1 acre of the 104.3 acres of temporary impact. Off-site compensation will amount to approximately 19 acres of CTS habitat purchased by SFPUC at a Service-approved conservation bank.

On August 10, 2011, the Director of the Department of Fish and Game (DFG) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1, that the BO and its related ITS are consistent with CESA for purposes of the Project and CTS. (Cal. Reg. Notice Register 2011, No. 34-Z, p. 1353.)

Determination

After review and consideration of the BO and the related ITS, DFG has determined based substantial evidence that the BO and ITS are **not consistent** with CESA because measures required by the Service do not meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. This determination is based on the following considerations:

1. There is no timeline for SFPUC to meet any of the requirements in the BO and ITS. Performance

security (ensured funding) is not required in the BO for restoration of temporarily impacted areas. Fish and Game Code section 2081, subdivision (b)(4) requires the applicant to ensure adequate funding to carry out all required mitigation.

2. The location of and amount of funding necessary for the Applicant to implement required avoidance, minimization, and mitigation measures is unknown and not specified. DFG has no basis to determine and cannot find, as a result, that authorized Project impacts of the taking on CTS are, have been or will be minimized and fully mitigated pursuant to Fish and Game Code section 2081, subdivision (b)(2), or that the Applicant has ensured adequate funding such that the BO and ITS are consistent with the requirements of Fish and Game Code section 2081, subdivision (b)(4).
3. The Applicant is not required by the BO and related ITS to grant or otherwise place a conservation easement over the mitigation property to ensure its maintenance in favor of CTS in perpetuity. Likewise, the BO and ITS do not require the Applicant to prepare and for the Service to approve a management plan for the property, and the BO and ITS are silent as to any required management funding (endowment) for mitigation lands. The BO and ITS, in this respect, are also not consistent with Fish and Game Code section 2081, subdivisions (b)(2) and (b)(4).
4. The Applicant is not required under the BO and ITS to purchase mitigation credits from a DFG-approved conservation bank. DFG cannot find, as a result, that the BO and ITS are consistent with Fish and Game Code section 2081, subdivision (b)(2).
5. The Applicant is not required under the BO and ITS to coordinate with and otherwise notify DFG regarding various conditional take minimization and mitigation measures, or any of the following: of the Resident Engineer, Biological Monitors, species training for Project personnel, reporting regarding trapped CTS, Project implementation reports, design plans, Project suspension, post CTS-encounter coordination, and post-construction implementation and compliance reporting. DFG cannot find, as a result, that the BO and ITS are consistent with requirements in the Fish and Game Code regarding successful implementation of Project avoidance, minimization, and mitigation measures; full mitigation of authorized impacts of the taking on CTS; compliance and effectiveness monitoring;

and ensured funding. (See generally Fish & G. Code, § 2081, subd. (b).)

For the reasons described above, DFG has determined there is substantial evidence in its administrative record of proceedings that the BO, including the related ITS, are not consistent with CESA as it pertains to incidental take of CTS by the Applicant during implementation of the Project. DFG's finding is based on a determination that the BO and ITS, in their current form, are not consistent with Fish and Game Code section 2081, subdivision (b). Take of CTS for purposes of state law is prohibited, as a result, except as authorized by the Fish and Game Code. (See Fish & G. Code, § 2080.1, subd. (c).)

DECISION NOT TO PROCEED

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)**

**NOTICE OF WITHDRAWAL AND
RESUBMITTAL OF PROPOSED
RULEMAKING**

**TITLE 27. CALIFORNIA CODE OF
REGULATIONS**

**PROPOSED AMENDMENT TO SECTION 25705
SPECIFIC REGULATORY LEVEL POSING NO
SIGNIFICANT RISK
IMAZALIL**

SEPTEMBER 23, 2011

A notice to establish a specific regulatory level posing no significant risk for imazalil was posted on the OEHHHA website and published in the CRNR on September 9, 2011. OEHHHA is withdrawing that notice because a number of non-substantive, clarifying changes to the notice were required. OEHHHA is therefore republishing the notice and restarting the public comment period. The amended notice will be published in the CRNR on September 23, 2011 and was posted on the OEHHHA website on September 9, 2011.

**OAL REGULATORY
DETERMINATIONS**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATION
(Summary Disposition)**

**(Pursuant to Government Code Section 11340.5
and Title 1, section 270, of the
California Code of Regulations)**

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

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Date: September 7, 2011
 To: Ira Parthemore
 From: Chapter Two Compliance Unit
 Subject: **2011 OAL DETERMINATION NO. 19(S)
(CTU2011-0811-02)**
 (Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation California Department of Corrections and Rehabilitation Form 7385, titled "Authorization for Release of Information"

On August 11, 2011, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether California Department of Corrections and Rehabilitation (CDCR) Form 7385, titled "Authorization for Release of Information" constitutes an underground regulation. The challenged rule is attached hereto at Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant

¹ "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

to the Administrative Procedure Act (APA). Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment.

If a rule meets the definition of a regulation in Government Code section 11342.600, but was not adopted pursuant to the APA, it may be an "underground regulation" as defined in California Code of Regulations, title 1, section 250:

The following definitions shall apply to the regulations contained in this chapter: (a) "Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, *but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA* and is not subject to an express statutory exemption from adoption pursuant to the APA . . . (Emphasis added.)

The form you challenge as an underground regulation, CDCR Form 7385, titled "Authorization for Release of Information" was incorporated by reference into California Code of Regulations, title 15, section 3076.4. "Incorporation by reference" is defined in California Code of Regulations, title 1, section 20(a) to mean:

. . . the method whereby a regulation printed in the California Code of Regulations makes provisions of another document part of that regulation by reference to the other document."

Also, California Code of Regulations, title 1, section 20(e) states:

(e) Where a regulation which incorporates a document by reference is approved by OAL and filed with the Secretary of State, the document so incorporated shall be deemed to be a regulation subject to all provisions of the APA.

Therefore, a document incorporated by reference by a properly adopted regulation has the same force and effect of the properly adopted regulation. California Code of Regulations, title 15, section 3076.4 states:

(c) The C&PR shall review the CDC Form 128-C and the inmate's central file.

. . . .

(2) If the inmate is not sentenced to death or to life without the possibility of parole, medical staff shall explain the recall of commitment process to the inmate within 48 hours of notification and arrange for the inmate to designate a family member or other outside agent on *CDCR Form 7385 (Rev. 09/09), Authorization for Release of Information, which is incorporated by reference.*

The inmate's designee shall be informed about the recall of commitment process and the inmate's medical condition. If the inmate is mentally unfit to designate a family member or other outside agent, medical staff shall contact the inmate's emergency contact listed on the CDC Form 127 (Rev. 06/01), Notification in Case of Death, Serious Injury, or Serious Illness, which is incorporated by reference, and advise them of the recall process. (Emphasis added.)

....

California Code of Regulations, title 15, section 3076.4 is a properly adopted regulation and was filed with the Secretary of State on July 7, 2011, pursuant to the APA. It was an emergency adoption pursuant to Penal Code section 5058.3(a)(2). A Certificate of Compliance must be transmitted to OAL by December 14, 2011, or the emergency language will be repealed by operation of law on the following day.

Thus, CDCR Form 7385 is part of a properly adopted regulation and cannot be an underground regulation.²

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

Debra M. Cornez
Assistant Chief Counsel/
Acting Director

/s/

Kathleen Eddy
Senior Counsel

Copy: Matthew Cate
Tim Lockwood

² The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

- (A) The challenged rule has been superseded.
- (B) The challenged rule is contained in a California statute.
- (C) *The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.*
- (D) The challenged rule has expired by its own terms.
- (E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. [Emphasis added.]

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: September 7, 2011
To: Dontay Johnson
From: Chapter Two Compliance Unit
Subject: **2011 OAL DETERMINATION NO. 18(S)**
(CTU2011-0819-01)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation a memorandum titled "Window Coverings/Staff & Inmate/Prison Security"

On August 19, 2011, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether a memorandum titled "Window Coverings/Staff & Inmate/Prison Security" (memorandum) constitutes an underground regulation. The memorandum is dated November 11, 2009, and was issued by two facility captains and an associate warden at Kern Valley State Prison. The memorandum is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).² Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemp-

¹ "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

tions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

. . .

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the memorandum challenged by your petition was issued by two facility captains and an associate warden at Kern Valley State Prison and applies solely to the inmates of Kern Valley State Prison. Therefore, the rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.³

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

- (A) The challenged rule has been superseded.
- (B) The challenged rule is contained in a California statute.
- (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
- (D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. [Emphasis added.]

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
Debra M. Cornez
Assistant Chief Counsel/
Acting Director

/s/
Kathleen Eddy
Senior Counsel
Copy: Matthew Cate
Tim Lockwood

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: September 9, 2011
To: Arvie Carroll
From: Chapter Two Compliance Unit
Subject: **2011 OAL DETERMINATION NO. 20(S) (CTU2011-0829-02)**
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation Pleasant Valley State Prison Department Operations Manual Supplement section 53130.9

On August 29, 2011, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether Pleasant Valley State Prison Department Operations Manual (DOM) Supplement section 53130.9, titled “Assignments,” constitutes an underground regulation. DOM Supplement section 53130.9 is one subsection of DOM Supplement section 53130, titled “Inmate Work Training Incentive Program.” DOM Supplement section 53130 was issued by the warden at Pleasant Valley State Prison and is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant

¹“Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

to the Administrative Procedure Act (APA).² Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a “regulation” in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

. . .

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition was issued by Pleasant Valley State Prison and applies solely to the inmates of Pleasant Valley State Prison. Therefore, the rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.³

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

Debra M. Cornez
Assistant Chief Counsel/
Acting Director

/s/

Kathleen Eddy
Senior Counsel
Copy: Matthew Cate
Tim Lockwood

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.

[Emphasis added.]

² Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

File# 2011-0825-03
 AIR RESOURCES BOARD
 Area Designations 2011

The Air Resources Board (Board) submitted this rulemaking action to amend the Table of Area Designations for Ozone in title 17, California Code of Regulations, section 60201 to reflect changes in the designation status of three areas. Area designations of "attainment," "nonattainment," "nonattainment-transition-al," or "unclassified" describe the status of compliance with state ambient air quality standards for specified pollutants based on area designation criteria established in other title 17 regulations. The Board redesignated one area, the entirety of the Northeast Plateau Air Basin, to an attainment area based on data collected during 2007 through 2009. The Board also redesignated two other areas, which took effect by operation of law pursuant to Health & Safety Code section 40925.5. The Lake Tahoe Air Basin was changed from a nonattainment to nonattainment-transition area and the Glenn County area of the Sacramento Valley Air Basin was changed from a nonattainment-transition to nonattainment area.

Title 17
 California Code of Regulations
 AMEND: 60201
 Filed 09/08/2011
 Effective 10/08/2011
 Agency Contact: Trini Balcazar (916) 445-9564

File# 2011-0729-02
 BOARD OF CHIROPRACTIC EXAMINERS
 Informed Consent

This regulatory action establishes informed consent requirements for chiropractors when conducting a procedure in which there is a known risk of serious bodily harm.

Title 16
 California Code of Regulations
 ADOPT: 319.1
 Filed 09/07/2011
 Effective 10/07/2011
 Agency Contact: Dixie Van Allen (916) 263-5329

File# 2011-0728-03
 CALIFORNIA HORSE RACING BOARD
 Random Drug Testing; Physical Examination

The California Horse Racing Board adopted section 1500.1 of Title 4 of the California Code of Regulations to make jockeys, apprentice jockeys and drivers subject to random drug testing as well as testing for cause. Additionally, failure to submit to or complete a drug test constitutes a refusal to be tested. Jockeys who refuse the

test shall be immediately prohibited from riding or driving in any race until a negative result is achieved. The random drug testing will be conducted on an unannounced basis, before or after the performance of duties. The regulations establish the procedure for the test including a split sample program in case a jockey, apprentice jockey or driver wants to re-test a sample if a positive result is obtained. This rulemaking also amends section 1498 to require a drug test at the annual physical.

Title 4
 California Code of Regulations
 ADOPT: 1500.1 AMEND: 1498
 Filed 09/07/2011
 Effective 10/07/2011
 Agency Contact: Harold Coburn (916) 263-6397

File# 2011-0823-03
 DEPARTMENT OF CONSUMER AFFAIRS
 Conflict-of-Interest Code

The Department of Consumer Affairs is amending its conflict-of-interest code found at title 16, section 3830, California Code of Regulations. The changes were approved for filing by the Fair Political Practices Commission on July 27, 2011.

Title 16
 California Code of Regulations
 AMEND: 3830
 Filed 09/13/2011
 Effective 10/13/2011
 Agency Contact: Michael Santiago (916) 574-8220

File# 2011-0803-01
 DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
 Procedural Regulations

The Department of Fair Housing and Employment (Department) adopted sections 10000 through 10066 in title 2 of the California Code of Regulations establishing the Department's practice and procedure for receiving, investigating, and conciliating complaints of employment and housing and public accommodation discrimination.

Title 2
 California Code of Regulations
 ADOPT: 10000, 10001, 10002, 10003, 10004, 10005, 10006, 10007, 10008, 10009, 10010, 10011, 10012, 10013, 10014, 10015, 10016, 10017, 10018, 10019, 10020, 10021, 10022, 10023, 10024, 10025, 10026, 10027, 10028, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10036, 10037, 10038, 10039, 10040, 10041, 10042, 10043, 10044, 10045, 10046, 10047, 10048, 10049, 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060, 10061, 10062, 10063, 10064, 10065, 10066

Filed 09/07/2011
Effective 10/07/2011
Agency Contact: Annmarie Billotti (916) 478-7247

File# 2011-0830-01
DEPARTMENT OF FOOD AND AGRICULTURE
Oriental Fruit Fly Eradication Area

This emergency action adds Ventura County to the eradication area for the Oriental Fruit Fly (*Bactrocera dorsalis*).

Title 3
California Code of Regulations
AMEND: 3591.2(a)
Filed 09/07/2011
Effective 09/07/2011
Agency Contact: Stephen S. Brown (916) 654-1017

File# 2011-0801-01
DEPARTMENT OF HEALTH CARE SERVICES
Upkeep & Repair Deduction for Persons in Long-Term Care

This action amends California's Medi-Cal regulations governing eligibility of persons in long-term care to conform to the requirements of Title 42 CFR section 435.725(d).

Title 22
California Code of Regulations
AMEND: 50605
Filed 09/13/2011
Effective 10/13/2011
Agency Contact: Lori Manieri (916) 650-6825

File# 2011-0817-01
FISH AND GAME COMMISSION
Upland Game Hunting

This regulatory action by the Fish & Game Commission amends sections 300 and 311 of title 14 of the California Code of Regulations. Section 300 provides general information about upland game bird hunting and is updated annually prior to the start of hunting season. This rulemaking updates the number of sage-grouse hunting permits, revises falconry season bag limits in Mono County zones, and removes county-specific regulations for the take of white-winged doves. Section 311 is amended to authorize take of wild turkey by no less than 0.177 caliber ammunition.

Title 14
California Code of Regulations
AMEND: 300, 311
Filed 09/08/2011
Effective 09/10/2011
Agency Contact: Sheri Tiemann (916) 654-9872

File# 2011-0816-02
OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
Chemicals Required by State or Federal Law to Have been Tested for Potential to Cause Cancer or Reproductive Toxicity, But Which Have Not Been Adequately Tested As Required

The Office of Environmental Health Hazard Assessment is amending title 27, section 27000, California Code of Regulations, entitled "Chemicals Required By State Or Federal Law To Have Been Tested For Potential To Cause Cancer Or Reproductive Toxicity, But Which Have Not Been Adequately Tested As Required". This list is published pursuant to Health and Safety Code section 25249.8.

Title 27
California Code of Regulations
AMEND: 27000
Filed 09/08/2011
Effective 08/01/2011
Agency Contact: Susan Luong (916) 327-3015

File# 2011-0830-03
STATE ALLOCATION BOARD
Leroy F. Greene School Facility Act 1998; Seismic Mitigation Program

This emergency action adds six categories of construction to the types of school facilities eligible for participation in the Seismic Mitigation Program (SMP) and provides for State Architect (DSA) review of engineering reports that must be included in an application for funding

Title 2
California Code of Regulations
AMEND: 1859.2, 1859.82
Filed 09/08/2011
Effective 09/08/2011
Agency Contact: Robert Young (916) 375-5939

File# 2011-0728-02
STATE WATER RESOURCES CONTROL BOARD
Central Coast Corralitos R. Watershed Basin Plan Amendment Pathogen TMDLs

This filing is a Basin Plan Amendment submitted to OAL by the State Water Resources Control Board (SWRCB) and subject to OAL review under Government Code section 11353.

The Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), adopted a Basin Plan Amendment for the Central Coast Region Water Quality Control Plan intended to reduce fecal coliform concentration levels in the Corralitos and Salsipuedes Creek Watershed. After adoption, the Central Coast Water Board submitted the Basin Plan Amend-

ment to the SWRCB which then approved the amendment and submitted it to OAL.

This Basin Plan Amendment includes three components. First, the amendment includes a Total Maximum Daily Load (TMDL) for fecal coliform concentration applicable to the impaired waters of the Corralitos and Salsipuedes Creek Watershed, including an implementation program for the responsible parties and a tracking and evaluation schedule for the TMDL. Second, the amendment includes a general prohibition on discharges containing fecal material from domestic animals (including horses, cattle, goats, sheep, dogs, cats and any other animals in the care of persons) into the waters of the Corralitos and Salsipuedes Creek Watershed. Third, the amendment includes a general prohibition on human fecal material discharges into waters of the Corralitos and Salsipuedes Creek Watershed.

Title 23
California Code of Regulations
ADOPT: 3929.7
Filed 09/08/2011
Effective 09/08/2011
Agency Contact: Michael Buckman (916) 341-5479

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN April 20, 2011 TO
September 14, 2011**

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

Title 2

09/08/11 AMEND: 1859.2, 1859.82
09/07/11 ADOPT: 10000, 10001, 10002, 10003, 10004, 10005, 10006, 10007, 10008, 10009, 10010, 10011, 10012, 10013, 10014, 10015, 10016, 10017, 10018, 10019, 10020, 10021, 10022, 10023, 10024, 10025, 10026, 10027, 10028, 10029, 10030, 10031, 10032, 10033, 10034, 10035, 10036, 10037, 10038, 10039, 10040, 10041, 10042, 10043, 10044, 10045, 10046, 10047, 10048, 10049, 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058,

10059, 10060, 10061, 10062, 10063, 10064, 10065, 10066
09/06/11 AMEND: 29000
09/01/11 ADOPT: 58600 REPEAL: 58600
09/01/11 AMEND: 54200
09/01/11 AMEND: 54600
08/08/11 ADOPT: 59700
07/27/11 AMEND: 1859.90.2, 1859.81
07/15/11 AMEND: 1151, 1153, 1155.500, 1165, 1170, 1172.20
07/11/11 ADOPT: 21903.5 AMEND: 21903
07/11/11 ADOPT: 570.5 AMEND: 571(b)
07/06/11 AMEND: 1859.2, 1859.81, 1859.148.2, 1859.166.2
07/06/11 AMEND: 18360
07/05/11 AMEND: 649.3, 649.18, 649.20, 649.24
06/30/11 AMEND: 633.9
06/21/11 REPEAL: 59152
06/07/11 AMEND: 640
05/12/11 AMEND: 1859.83
05/04/11 ADOPT: 1190, 1190.01, 1190.02, 1190.03, 1190.04, 1190.05 AMEND: 1181.1, 1181.2
04/28/11 AMEND: 18427.1
04/28/11 AMEND: 1859.90.2
04/27/11 AMEND: 1859.76
04/21/11 REPEAL: 18420.5
04/21/11 AMEND: 18465
04/21/11 ADOPT: 1859.90.2 AMEND: 1859.90.2 (renumbered to 1859.90.3), 1859.129, 1859.197

Title 3

09/07/11 AMEND: 3591.2(a)
08/23/11 ADOPT: 6131 AMEND: 6128, 6130
08/23/11 ADOPT: 1392.4.1 AMEND: 1392, 1392.1, 1392.2, 1392.4, 1392.6, 1392.8.1, 1392.9, 1392.11
08/03/11 AMEND: 3437(b)
07/28/11 REPEAL: 1400.9.1
07/15/11 AMEND: 3434(b)
07/15/11 AMEND: 3589
07/15/11 REPEAL: 3286
07/08/11 AMEND: 3658
07/05/11 ADOPT: 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7, 3701.8 AMEND: 3407
06/28/11 AMEND: 3591.15(a)
06/27/11 AMEND: 3437(b)
06/22/11 AMEND: 3435(b)
06/15/11 AMEND: 3437(b)
05/31/11 AMEND: 3437(b)
05/11/11 ADOPT: 6446, 6446.1 AMEND: 6400, 6452.4, 6624, 6860
04/20/11 AMEND: 3434

Title 4

09/07/11 ADOPT: 1500.1 AMEND: 1498
 08/16/11 ADOPT: 8078.2 AMEND: 8070, 8072, 8073, 8074
 08/10/11 ADOPT: 10030, 10031, 10032, 10033, 10034, 10035, 10036, 10037
 07/27/11 AMEND: 5064
 07/21/11 ADOPT: 1844.1
 07/20/11 AMEND: 4800, 4801, 4802
 07/20/11 AMEND: 150
 07/12/11 AMEND: 1606, 1974, 1954.1, 1957, 1959, 1976, 1976.8, 1976.9, 1977, 1978, 1979, 1979.1
 07/01/11 ADOPT: 5000, 5010, 5020, 5021, 5030, 5031, 5032, 5033, 5034, 5035, 5036, 5037, 5038, 5039, 5050, 5051, 5052, 5053, 5054, 5060, 5061, 5062, 5063, 5064, 5065, 5066, 5080, 5081, 5082, 5100, 5101, 5102, 5103, 5104, 5105, 5106, 5107, 5120, 5130, 5131, 5132, 5133, 5140, 5141, 5142, 5143, 5144, 5150, 5151, 5152, 5153, 5154, 5170, 5180, 5181, 5182, 5183, 5190, 5191, 5192, 5193, 5194, 5200, 5210, 5211, 5212, 5220, 5221, 5230, 5231, 5232, 5240, 5241, 5250, 5251, 5260, 5265, 5266, 5267, 5268, 5269, 5270, 5275, 5280, 5281, 5282, 5283, 5290, 5291, 5300, 5310, 5311, 5312, 5313, 5314, 5315, 5320, 5321, 5330, 5340, 5350, 5360, 5361, 5362, 5363, 5369, 5370, 5371, 5380, 5400, 5410, 5411, 5420, 5421, 5422, 5423, 5430, 5431, 5432, 5433, 5434, 5435, 5440, 5450, 5460, 5461, 5470, 5480, 5490, 5491, 5492, 5493, 5494, 5500, 5510, 5520, 5530, 5531, 5532, 5533, 5534, 5540, 5550, 5560, 5570, 5571, 5572, 5573, 5580, 5590
 06/24/11 ADOPT: 10030, 10031, 10032, 10033, 10034, 10035, 10036
 06/21/11 AMEND: 1876
 06/15/11 ADOPT: 340 AMEND: 221, 222, 226, 230, 288, 300 REPEAL: 262
 05/31/11 AMEND: 8078.2

Title 5

08/15/11 ADOPT: 19817.2, 19817.5, 19840, 19846.1 AMEND: 19815, 19816, 19816.1, 19817.1, 19846
 08/15/11 ADOPT: 40050.2
 08/15/11 ADOPT: 40050.3
 08/15/11 AMEND: 40100.1
 08/15/11 AMEND: 40404
 08/15/11 AMEND: 40405.1

08/15/11 ADOPT: 40509
 08/15/11 ADOPT: 40513
 08/15/11 ADOPT: 40514
 08/15/11 ADOPT: 40515
 08/15/11 ADOPT: 40516
 08/15/11 ADOPT: 41021
 08/15/11 ADOPT: 41022
 08/04/11 ADOPT: 1039.1
 08/04/11 AMEND: 80047, 80047.1, 80047.2, 80047.3, 80047.4, 80047.5, 80047.6, 80047.7, 80047.8, 80047.9, 80048.6
 06/21/11 AMEND: 58771
 06/20/11 ADOPT: 80048.9, 80048.9.4 AMEND: 80046.1, 80048.5, 80070.1, 80070.2, 80070.3, 80070.4, 80070.5, 80070.6 REPEAL: 80046, 80070.7, 80070.8
 05/23/11 ADOPT: 13075.3, 13075.6, 13075.7, 13075.8, 13075.9 AMEND: 13075.1, 13075.2, 13075.4 (renumbered from 13075.3), 13075.5 (renumbered from 13075.4)
 05/02/11 ADOPT: 19817.2, 19817.5, 19840, 19846.1 AMEND: 19815, 19816, 19816.1, 19817.1, 19846
 05/02/11 ADOPT: 80036.4 AMEND: 80034, 80036, 80036.1, 80036.2, 80036.3, REPEAL: 80036.5

Title 7

08/16/11 AMEND: 218

Title 8

09/06/11 AMEND: 8608
 08/29/11 AMEND: 1504, 3207
 08/10/11 ADOPT: 3302 AMEND: 3308
 08/05/11 ADOPT: 1603.1 AMEND: 1504, 1600, 1602, 1603
 08/01/11 AMEND: 16423 REPEAL: 16450, 16451, 16452, 16453, 16454, 16455, 16460, 16461, 16462, 16463, 16464
 07/28/11 ADOPT: 6799.1 AMEND: 6755
 07/07/11 ADOPT: 1610 (section heading), 1610.1, 1610.2, 1610.3, 1610.4, 1610.5, 1610.6, 1610.7, 1610.8, 1610.9, 1611 (section heading), 1611.1, 1611.2, 1611.3, 1611.4, 1611.5, 1612 (section heading), 1612.1, 1612.2, 1612.3, 1612.4, 1613 (section heading), 1613.1, 1613.2, 1613.3, 1613.4, 1613.5, 1613.6, 1613.7, 1613.8, 1613.9, 1613.10, 1614, 1615 (section heading), 1615.1, 1615.2, 1616 (section heading), 1616.1, 1616.2, 1616.3, 1616.4, 1616.5, 1616.6, 1616.7, 1617 (section heading), 1617.1, 1617.2, 1617.3, 1618 (section heading), 1618.1, 1618.2, 1618.3, 1618.4, 1619 (section

	heading), 1619.1, 1619.2, 1619.3, 1619.4, 1619.5 AMEND: 1694, 2940.7, 6060	05/24/11 AMEND: Article 20, section 51.15 05/24/11 AMEND: Article 20, section 51.24
06/27/11	REPEAL: 10119, 10120	Title 13
06/20/11	AMEND: 10250.1	08/23/11 ADOPT: 345.00 AMEND: 345.02, 345.04, 345.15, 345.18, 345.20, 345.22, 345.23, 345.26
06/02/11	AMEND: 5154(j)(1)	08/16/11 AMEND: 1800
05/31/11	AMEND: 5155	07/06/11 ADOPT: 1231.2 AMEND: 1200, 1201, 1217, 1221, 1222, 1232
05/20/11	AMEND: 341.13, 341.14, 341.16, 341.17	07/01/11 AMEND: 156.00, 156.01
05/03/11	AMEND: 3657	Title 13, 17
05/02/11	AMEND: 16423 REPEAL: 16450, 16451, 16452, 16453, 16454, 16455, 16460, 16461, 16462, 16463, 16464	06/20/11 AMEND: Title 13: 2299.5 and Title 17: 93118.5
04/26/11	AMEND: 3209	Title 14
Title 9		09/08/11 AMEND: 300, 311
08/08/11	ADOPT: 4500, 4510, 4520	08/30/11 ADOPT: 3550.16
Title 10		08/29/11 AMEND: 502
08/11/11	AMEND: 2731	08/08/11 ADOPT: 1052.5 AMEND: 895, 916.9, 936.6, 956.9, 1052, 1052.1, 1052.2
08/01/11	AMEND: 3012.3	08/03/11 ADOPT: 1051.3, 1051.4, 1051.5, 1051.6, 1051.7 AMEND: 895
07/27/11	AMEND: 2770.1, 2847.3	07/22/11 AMEND: 852.60.2, 852.60.3, 852.60.4, 852.61.1, 852.61.2, 852.61.3, 852.61.5, 852.61.6, 852.61.7, 852.61.8, 852.61.9, 852.61.10, 852.61.11, 852.61.12, 852.62.1, 852.62.2, 852.62.3
07/25/11	AMEND: 2222.12	07/14/11 AMEND: 791, 791.7, 792, 793, 794, 795, 796 REPEAL: 791.5
07/13/11	AMEND: 210, 221	07/12/11 ADOPT: 749.6
07/08/11	AMEND: 2699.6707	07/08/11 ADOPT: 708.1, 708.2, 708.3, 708.4, 708.5, 708.6, 708.7, 708.8, 708.9, 708.10, 708.11, 708.12, 708.13, 708.14, 708.15, 708.16, 708.17 AMEND: 360, 361, 362, 363, 364, 365, 366, 353, 354, 478.1, 702, 711 REPEAL: 708
07/07/11	AMEND: 260.204.9	06/21/11 AMEND: 7.50
06/30/11	AMEND: 2699.6700, 2699.6709, 2699.6721, 2699.6725	06/16/11 AMEND: 7.00, 7.50
05/31/11	REPEAL: 2274.74, 2274.77	06/13/11 AMEND: 632
05/23/11	AMEND: 2698.99	06/09/11 AMEND: 27.20, 27.25, 27.30, 27.32 (renumbered to 27.35), 27.35 (renumbered to 27.40), 27.45, 27.50, 27.65, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.54, 28.55, 28.56, 28.58, 28.65, 52.10, 150.16 REPEAL: 27.40, 28.51, 28.52, 28.53, 28.57
05/16/11	AMEND: 2498.6	05/19/11 AMEND: 632
05/04/11	ADOPT: 260.004.1	05/12/11 ADOPT: 28301
04/25/11	ADOPT: 1409.1, 1414, 1422.4, 1422.4.1, 1422.4.5, 1422.5, 1422.6, 1422.6.1, 1422.6.2, 1422.6.3, 1422.7, 1422.7.1, 1422.9, 1422.10, 1422.11, 1422.12, 1424, 1437, 1950.122, 1950.122.2.1, 1950.122.4, 1950.122.4.1, 1950.122.5, 1950.122.5.1, 1950.122.5.2, 1950.122.5.3, 1950.122.5.4, 1950.122.6, 1950.122.7, 1950.122.8, 1950.122.9, 1950.122.10, 1950.122.11, 1950.122.12, 1950.122.15, 1950.205.1, 1950.209, 1950.307 AMEND: 1404, 1409, 1411, 1430.5, 1431, 1433, 1436, 1454, 1550, 1552, 1557, 1950.003, 1950.122.2, 1950.123, 1950.204.3, 1950.204.4, 1950.301, 1950.314.8, 1950.316, 1950.317	05/11/11 AMEND: 27.80
Title 11		05/03/11 AMEND: 790, 815.05, 816.01, 816.02, 816.03, 816.05, 817.02, 817.03, 818.02, 818.03, 825.05, 825.07, 826.01, 826.02, 826.03, 826.05, 827.01, 827.02
09/02/11	ADOPT: 101.2	05/02/11 AMEND: 925.7, 925.10, 926.9, 926.10, 927.5, 928.5, 928.6, 945.4, 965.4
09/02/11	AMEND: 101.1	
06/06/11	AMEND: 51.7	
06/01/11	AMEND: Article 20, section 51.2	
05/31/11	AMEND: Article 20, section 51.25	
05/25/11	ADOPT: Article 20, section 51.27	

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05/02/11 AMEND: 898.2
 04/29/11 ADOPT: 1570, 1571, 1572, 1572.1,
 1572.2, 1573, 1573.1, 1573.2, 1573.3,
 1573.4, 1573.5, 1573.6, 1574, 1575,
 1575.1, 1575.2, 1575.3, 1576
 04/25/11 AMEND: 1670

Title 15

08/16/11 ADOPT: 3769, 3769.1, 3769.2, 3769.3,
 3769.4, 3769.5, 3769.6
 08/03/11 AMEND: 3000
 07/28/11 ADOPT: 3084.8, 3084.9, 3086 AMEND:
 3000, 3084, 3084.1, 3084.2, 3084.3,
 3084.4, 3084.5, 3084.6, 3084.7, 3137,
 3173.1, 3179, 3193, 3220.4, 3482, 3630,
 3723 REPEAL: 3085
 07/19/11 AMEND: 3090, 3176.4, 3315, 3323
 07/07/11 ADOPT: 3076.4, 3076.5 AMEND: 3076,
 3076.1, 3076.2, 3076.3
 06/27/11 AMEND: 3140
 06/20/11 ADOPT: 8007, 8008 AMEND: 8000
 06/15/11 ADOPT: 3571, 3582, 3590, 3590.1,
 3590.2, 3590.3 AMEND: 3000
 06/15/11 ADOPT: 3571, 3582, 3590, 3590.1,
 3590.2, 3590.3 AMEND: 3000
 06/14/11 AMEND: 3000, 3045.3, 3123, 3134,
 3250.4, 3269.1, 3274, 3383, 3482
 06/02/11 AMEND: 3378
 05/26/11 ADOPT: 1747.1, 1749.1, 1750.1
 AMEND: 1706, 1747, 1748, 1749, 1750,
 1752, 1756, 1757, 1767
 05/26/11 AMEND: 3025, 3291, 3296, 3300, 3301,
 3383, 3397 REPEAL: 3302
 05/13/11 REPEAL: 1
 05/11/11 AMEND: 3335
 04/29/11 ADOPT: 3359.1, 3359.2, 3359.3, 3359.4,
 3359.5, 3359.6, 3359.7 AMEND: 3000

Title 16

09/13/11 AMEND: 3830
 09/07/11 ADOPT: 319.1
 09/01/11 AMEND: 1793.5
 08/31/11 AMEND: 2411, 2414
 08/24/11 AMEND: 1399.157, 1399.160.3,
 1399.160.6
 08/18/11 ADOPT: 1315.50, 1315.53, 1315.55
 08/18/11 AMEND: 995
 08/17/11 AMEND: 974
 08/03/11 AMEND: 999
 08/01/11 AMEND: 1327
 07/21/11 AMEND: 1005
 07/20/11 ADOPT: 4145 AMEND: 4141
 07/12/11 ADOPT: 1399.547
 07/01/11 AMEND: 2070, 2071
 06/14/11 AMEND: 1398.44, 1399, 1399.85
 06/06/11 AMEND: 4144 now 4147

05/24/11 ADOPT: 1810.1, 1810.2, 1816.8, 1820,
 1820.5, 1821, 1822 AMEND: 1800,
 1802, 1803, 1804, 1805, 1805.1, 1806,
 1807, 1807.2, 1810, 1811, 1812, 1813,
 1814, 1815, 1816, 1816.1, 1816.2,
 1816.3, 1816.4, 1816.5, 1816.6, 1816.7,
 1819.1, 1832, 1833.1, 1833.2, 1850.6,
 1850.7, 1870, 1870.1, 1874, 1877, 1880,
 1881, 1886, 1886.10, 1886.20, 1886.30,
 1886.40, 1886.50, 1886.60, 1886.70,
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