



# 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. CALIFORNIA STATE LIBRARY**

**NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE CALIFORNIA STATE LIBRARY**

NOTICE IS HEREBY GIVEN that the California State Library (CSL), pursuant to the authority vested in it by Section 87306 of the Government Code, proposes amendments to its conflict-of-interest code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302 and section 87306 of the Government Code.

The CSL proposes to amend its conflict-of-interest code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

This amendment simplifies the CSL's conflict-of-interest code by designating individual job classifications and adopts a streamlined format suggested by the Fair Political Practices Commission. Furthermore, this amendment makes other technical changes to reflect the current organizational structure of the State Library. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than November 4, 2013, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than October 21, 2013, by contacting the Contact Person set forth below.

The CSL has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written ex-

planation of the reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

The CSL has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, the CSL must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective as and less burdensome on the affected persons than the proposed amendments.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to:

Victor Pong  
 California State Library  
 900 N Street, 4th Floor #422  
 Sacramento, CA 95814  
 Phone: (916) 651-0983  
 Fax: (916) 651-0979  
 E-mail: [victor.pong@library.ca.gov](mailto:victor.pong@library.ca.gov)

**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**

MULTI-COUNTY AGENCY:	Central Sierra Economic Development District Los Gatos Saratoga High School District
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A written comment period has been established commencing on **September 20, 2013** and closing on **November 4, 2013**. Written comments should be directed to the Fair Political Practices Commission, Attention Barbara Smith, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his/her review, unless any interested person or his/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/her or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **November 4, 2013**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

#### **COST TO LOCAL AGENCIES**

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

#### **EFFECT ON HOUSING COSTS AND BUSINESSES**

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

#### **AUTHORITY**

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

#### **REFERENCE**

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

#### **CONTACT**

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

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

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

### **TITLE 5. BOARD OF EDUCATION**

#### **AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5, REGARDING CIVIC CENTER ACT**

**NOTICE IS HEREBY GIVEN** that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

#### **PUBLIC HEARING**

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing at 1:30 p.m. on November 4, 2013, at 1430 N Street, Room 1801, Sacramento, California. The room is wheelchair

accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the public hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

#### WRITTEN COMMENT PERIOD

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

Debra Thacker, Regulations Coordinator  
 Administrative Support and Regulations  
 Adoption Unit  
 California Department of Education  
 1430 N Street, Room 5319  
 Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to [regcomments@cde.ca.gov](mailto:regcomments@cde.ca.gov).

Comments must be received by the Regulations Coordinator prior to 5:00 p.m. on November 4, 2013. All written comments received by CDE staff during the public comment period are subject to disclosure under the Public Records Act.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposed regulations.

#### AUTHORITY AND REFERENCE

Authority: Sections 33031 and 38134, Education Code.

References: Sections 38131 and 38134, Education Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law, known as the Civic Center Act, authorizes a school district governing board to grant the use of school facilities or grounds as a civic center, for specified purposes, upon terms and conditions deemed proper by the governing board. Existing law authorizes a school district governing board to charge a fee, not to exceed the school district's direct costs, as defined, for use of the school facilities or grounds by entities that promote youth and school activities or that arrange for and supervise sports league activities for youths.

Senate Bill (SB) 1404 expands the definition of direct costs that a school district governing board may charge an entity for the use of school facilities or grounds to include a specified share of the operating and maintenance costs proportional to the entity's use of the school facilities or grounds under this provision, and a share of the costs for maintenance, repair, restoration, and refurbishment of the school facilities or grounds proportional to that entity's use of school facilities or grounds, as specified. SB 1404 requires the Superintendent of Public Instruction to develop, and the SBE to adopt, regulations to be used by a school district in determining the costs to charge an organization using school facilities or grounds an amount proportional to the organization's use of the school facilities or grounds to maintain, repair, restore, and refurbish the school facilities or grounds and to limit the proportional costs related to maintenance, repair, restoration, and refurbishment to only a school's non-classroom space and grounds.

School districts make valuable contributions to their communities by providing needed space for recreational activities and are obligated to protect and preserve public school facilities and grounds for the safety and enjoyment of the pupils and community members who use the school facilities or grounds.

School districts also provide access to school facilities and grounds to organizations that promote physical activity, before- and after-school care, recreation, tutoring, and other activities that benefit the residents of those communities.

In order to promote youth and school activities, these regulations will encourage all school districts to maximize opportunities to make available and accessible public school facilities and grounds to their communities as civic centers.

The CDE reviewed all state legislation relating to the Civic Center Act and found that none exist that are inconsistent or incompatible with these regulations.

#### DISCLOSURES REGARDING THE PROPOSED ACTION/ FISCAL IMPACT

*The SBE has made the following initial determinations:*

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulations or class of regulations.

The proposed regulations do not require a report to be made.

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: None.

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

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

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

Cost impacts on a representative private person or businesses: The SBE 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 businesses: The proposed regulations would not have an effect on any small business because the proposed amendments only affect local educational agencies and would have no impact on the private sector.

#### RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

The benefits of the proposed regulations include statewide consistency and transparency by establishing a methodology for calculating direct cost fees. The proposed regulations make public the steps taken by a

school district to set fees for the use of facilities and grounds, while reserving a school district's flexibility to respond to local conditions or concerns that might be raised by the community.

In order to promote youth and school activities, these regulations will encourage all school districts to maximize opportunities to make public school facilities and grounds available and accessible to their communities as civic centers. Efficient school site utilization supporting a variety of community-based programs is a positive impact on public safety, health, and welfare for all Californians.

#### CONSIDERATION OF ALTERNATIVES

The SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

#### CONTACT PERSONS

Inquiries concerning the content of this regulation should be directed to:

Kathleen Smothers, Administrator  
School Facilities and Transportation Services  
Division  
California Department of Education  
1430 N Street, Room 1201  
Sacramento, CA 95814  
Telephone: 916-323-3926  
[KSmothers@cde.ca.gov](mailto:KSmothers@cde.ca.gov)

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Hillary Werrick, Legal Secretary, at 916-319-0860.

#### INITIAL STATEMENT OF REASONS AND INFORMATION

The SBE has prepared an Initial Statement of Reasons for the proposed regulation and has available all the information upon which the proposal is based.

TEXT OF PROPOSED REGULATION AND  
CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulation, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/rel/rrr/>.

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 Regulations Coordinator.

You may obtain a copy of the Final Statement of Reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

REASONABLE ACCOMMODATION FOR ANY  
INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Kathleen Smothers, School Facilities and Transportation Services Division, 1430 N Street, Room 1201, Sacramento, CA, 95814; telephone, 916-323-3926. It is recommended that assistance be requested at least two weeks prior to the hearing.

**TITLE 5. CALIFORNIA STATE  
TEACHERS' RETIREMENT SYSTEM**

NOTICE OF INTENTION TO AMEND THE  
CONFLICT-OF-INTEREST CODE OF THE  
CALIFORNIA STATE TEACHERS'  
RETIREMENT SYSTEM

NOTICE IS HEREBY GIVEN that the California State Teachers' Retirement System (CalSTRS), pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendments to its Conflict-of-Interest Code. The purpose of these amendments is to implement the requirements of sec-

tions 87300 through 87302, and section 87306 of the Government Code.

CalSTRS proposes to amend its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

The amendments include changes to position titles, addition and deletion of designated positions and revisions to disclosure categories. The amendments also make other technical changes to reflect the current organizational structure of CalSTRS. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than November 4, 2013, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than October 18, 2013, by contacting the Contact Person set forth below.

CalSTRS has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person set forth below.

CalSTRS has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In making these proposed amendments, CalSTRS must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the amendments are proposed or would

be as effective and less burdensome to affected persons than the proposed amendments.

All inquiries concerning this proposed amendment and any communication required by this notice shall be directed to:

Jill Lukins  
 Ethics & Compliance Counsel  
 California State Teachers' Retirement System  
 100 Waterfront Place  
 West Sacramento, CA 95605

**TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**

**Amend and Update Regulations 1001, 1006, 1007, 1052, 1055, 1070, 1071, 1950, and Commission Procedures D-1, D-10, and D-11**

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code § 11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

**Public Comments Due by NOVEMBER 4, 2013, at 5:00 p.m.**

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by email at [Cheryl.Smith@post.ca.gov](mailto:Cheryl.Smith@post.ca.gov) or by letter to the:

Commission on POST  
 1601 Alhambra Boulevard  
 Sacramento, CA 95816-7083

Following the close of the public comment period, the Commission may adopt the proposal substantially as described below or may modify the original proposal with sufficiently related changes. With the exception of technical or grammatical changes, the full text of a modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as the contact person. The Commission will also mail the full text to persons who submit written comments related to the proposal or who have requested notification of any changes.

**AUTHORITY AND REFERENCE**

This proposal is made pursuant to the authority vested by Penal Code § 13503 — POST powers and § 13506 — POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code § 13503(e) — POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

At its July 16, 2013 meeting, the Commission approved proposed amendments to Learning Domains throughout the *Training and Testing Specifications for Peace Officer Basic Courses* publication. The proposed changes included:

- Added definitions for “Cheating in Basic Courses” and “Peace Officer Trainee”
- Outline the process for training presenters to report cheating and establish investigative process
- Clarifying the practice/preparation process for exercise and scenario tests

Penal Code § 13510 requires that POST develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers. This proposed action will update the training regulations which include definitions, minimum training standards, and waiver of training.

The benefits anticipated by the proposed amendments to the regulations will be to update the training specifications for Peace Officer Basic Courses which will increase the effectiveness of law enforcement standards for Peace officers in preserving peace, protection of public health and safety, and welfare of California.

During the process of developing these regulations and amendments, POST has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

All changes to curriculum begin with recommendations from law enforcement practitioners or in some cases via legislative mandates. POST then facilitates meetings attended by curriculum advisors and subject matter experts who provide recommended changes to existing curriculum. The completed work of all committees is presented to the POST Commission for final review and adoption. Upon adoption of the proposed amendments, academies and course presenters will be

required to teach and test the updated curriculum. The proposed effective date is February 1, 2014.

#### LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

#### FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with § 17500) of the Government Code, Division 4. This proposal does not impose other nondiscretionary costs or savings on local agencies. This proposal does not result in any costs or savings in federal funding to the state.

#### COSTS OR SAVINGS TO STATE AGENCIES

POST anticipates no additional costs or savings to state agencies.

#### BUSINESS IMPACT/SMALL BUSINESSES

The Commission has made an initial determination that this regulatory proposal would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses, as defined by Government Code § 11342.610, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.

#### ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

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

#### RESULTS OF ECONOMIC IMPACT ASSESSMENT PER GOVERNMENT CODE SECTION 11346.3

The adoption of the proposed amendments of regulations will neither create nor eliminate jobs in the state of

California, nor result in the elimination of existing businesses or create or expand businesses in the state of California.

The proposed amendments of regulations will increase the effectiveness of law enforcement standards for Peace officers in preserving peace, protection of public health and safety, and welfare of California.

#### COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

#### EFFECT ON HOUSING COSTS

None.

#### CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the agency, or otherwise identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the action is proposed; or would be as effective as, and less burdensome to, affected private persons than the proposed action; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

#### CONTACT PERSON

Please direct inquires or written comments about the proposed regulatory action to the following:

Cheryl Smith  
Commission on POST  
1601 Alhambra Boulevard  
Sacramento, CA 95816-7083  
(916) 227-0544 or  
[Cheryl.Smith@post.ca.gov](mailto:Cheryl.Smith@post.ca.gov)  
FAX (916) 227-6932

or

Patti Kaida  
Commission on POST  
1601 Alhambra Boulevard  
Sacramento, CA 95816-7083  
(916) 227-4847 or  
[Patti.Kaida@post.ca.gov](mailto:Patti.Kaida@post.ca.gov)  
FAX (916) 227-5271

### TEXT OF PROPOSAL

Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at: 1601 Alhambra Boulevard, Sacramento, CA 95816. These documents are also located on the POST Website at: <http://www.post.ca.gov/regulatory-actions.aspx>.

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

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person named above.

To request a copy of the Final Statement of Reasons once it has been prepared, submit a written request to the contact person named above.

### TITLE 19. GOVERNOR'S OFFICE OF EMERGENCY SERVICES

The California Governor's Office of Emergency Services ("Office") proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

### PUBLIC HEARING

The Office will hold a public hearing starting at 2 p.m. on Monday, November 4, 2013 at the Multipurpose Room, California Governor's Office of Emergency Services, 3650 Schriever Avenue, Mather, California 95655. This room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing also submit a written copy of their testimony at the hearing.

### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Office. Comments may also be submitted by facsimile (FAX) at (916) 845-8734, or by e-mail to [jack.harrah@calema.ca.gov](mailto:jack.harrah@calema.ca.gov) (Please entitle the e-mail "CalARP COMMENTS" in capital letters). The written comment period closes at

5:00 p.m. on November 4, 2013. The Office will consider only comments received at that time. Submit comments to:

Hazardous Materials Section, Fire and Rescue  
Division  
California Governor's Office of Emergency  
Services  
ATTN: Jack Harrah  
3650 Schriever Avenue  
Mather, CA 95655

### AUTHORITY AND REFERENCE

Health and Safety Code Section 25534.05 authorizes the Office to adopt these proposed regulations. The proposed regulations implement, interpret and make specific sections 25533 to 25543.3 of the Health and Safety Code.

### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Accidental Release Prevention (CalARP) program was created by Senate Bill 1889, effective January 1, 1997, replacing the similar California Risk Management and Prevention Program (RMPP). The CalARP program was intended to implement the Federal Risk Management Plan program, a Clean Air Act program, pursuant to Part 68 of Title 40, Code of Federal Regulations (CFR).

Three tables of chemicals or "regulated substances" are regulated under the CalARP program. Tables 1 and 2, found in section 2770.5 of Title 19, California Code of Regulations (19 CCR), Chapter 4.5 were taken from the tables found in 40 CFR, Part 68, section 68.130. Table 1 is the Federal table of toxic substances, and Table 2 is the Federal table of flammable substances. Table 3 is the "California specific" table of toxic substances. A stationary source that has a regulated substance in a process in a quantity over the threshold indicated in Table 1 must prepare a risk management plan (RMP) both for the CalARP program, and for the Federal RMP program. If the stationary source has a regulated substance in a process in a quantity over the threshold indicated in Table 3 but not Table 1, then a CalARP RMP may be required, but not a Federal RMP.

One of the provisions of SB 1889 was a petition process for any person to propose changes to Table 3, either to raise or lower the threshold amount, or to either add or delete a chemical. A section was reserved in the original CalARP regulations, but, up to now, this petition process was never added. This action corrects that oversight.

The original regulations also took the toxic "endpoint" data from Part 68 of 40 CFR. The "endpoint" is

the concentration of the regulated substance in air above which incapacitation and permanent injury may occur. It is used to estimate the extent of an accidental release plume. This means that data is available for the 77 chemicals on Table 1, but not for over 200 chemicals on Table 3, for the purpose of estimating the impact of an accidental release on the surrounding population and the environment. A full set of toxic endpoints for all of Table 3 regulated substances has been provided to the Office by the Office of Environmental Health Hazard Assessment, as provided for in 19 CCR 2750.2, and is incorporated into Appendix A by this action.

*Anticipated Benefits of the Proposed Regulation:*

The overall objective of the regulation is to ensure the protection of public health, public safety and the environment. An additional benefit is increased worker safety at industrial plants handling hazardous materials.

*Determination of Inconsistency/Incompatibility with Existing State Regulations:*

The Office has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Office has concluded that these are the only regulations that concern offsite consequences of industrial processes using listed regulated substances.

adverse economic impact, including the ability of California businesses to compete with businesses in other states, *will not* be significant.

Significant effects on housing costs: None.

Results of the Economic Impact Analysis/Assessment

The Office concludes that it is (1) unlikely that the proposed amendment will eliminate any jobs in California, (2) unlikely that the proposed amendment will create any jobs in California, (3) unlikely that the proposed amendment will create any new businesses in California, (4) unlikely that the proposed amendment will eliminate any existing businesses in California, and (5) unlikely that the proposed amendment will cause the expansion of any business in California.

Benefits of the proposed action: The proposed regulations will help to make large-scale chemical operations safer for human health, safety, the environment and property. They will help planners and responders to respond to potential chemical releases.

Small business: It is not anticipated that the proposed regulation amendments will affect small businesses. The reason for this is that the CalARP program mainly affects large-scale industrial processes. Small businesses typically do not handle the regulated chemicals, or, if they do, they typically do not handle a sufficient quantity of the chemicals to reach the threshold for regulation.

DISCLOSURES REGARDING THE PROPOSED ACTION

*The Office 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 reimbursable in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

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

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

Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action *will* directly affect businesses statewide, including some small businesses, the Office concludes that the

CONSIDERATION OF ALTERNATIVES

The two major elements of proposed amended regulations are a direct mandate of the Legislature, as signed by the governor, and chaptered in the Health and Safety Code. However, in accordance with Section 11346.5(a)(13) of the Government Code, the Office must determine that no reasonable alternative it considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective in implementing the statutory policy or other provision of law.

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Jack Harrah, Senior Emergency Services  
Coordinator  
Hazardous Materials Section, Fire and Rescue  
Division  
California Governor's Office of Emergency  
Services  
3650 Schriever Ave, Mather, CA 95655  
Telephone: (916) 845-8759

The backup contact person for these inquiries is:

Thomas E. Campbell, Deputy Chief for Hazmat  
Fire and Rescue Division  
California Governor's Office of Emergency  
Services  
3650 Schriever Ave, Mather, CA 95655  
Telephone: (916) 845-8751

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Mr. Harrah at the above address.

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

The Office will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons and a draft small business impact study. Copies may be obtained from the Office upon request to Jack Harrah at the address or phone number listed above.

**AVAILABILITY OF CHANGED OR  
MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Office may adopt the proposed regulations if they remain substantially the same as described in this notice. The Office may make changes in the proposed regulations before adopting them. The text of any modified regulations will be made available to the public with the changes clearly marked at least fifteen (15) days before the Office adopts the regulations as revised. The modified text can be requested from the contact person listed above, or may be accessed on the CalEMA (or Cal OES) Website. The Office will accept written comments on the modi-

fied regulations for 15 days after the date on which the text is made available.

**AVAILABILITY OF THE FINAL STATEMENT  
OF REASONS**

The Office will prepare a Final Statement of Reasons when all comments have been received and considered, prior to closing the rulemaking record. The statement may be requested from the contact person listed above.

**AVAILABILITY OF DOCUMENTS ON  
THE INTERNET**

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

**PETITION DECISION**

**CALIFORNIA ENERGY COMMISSION**

**State Energy Resources Conservation and  
Development Commission**

**Athans Petition for Rulemaking  
to Delay Effective Date of  
the 2013 Nonresidential Building  
Standards, California Code of  
Regulations, title 24, parts 1 and 6  
Docket No. 13-BSTD-02  
Order No. 13-0827-8**

**ORDER OF THE CALIFORNIA ENERGY  
COMMISSION DENYING PETITION  
FOR RULEMAKING**

**I. INTRODUCTION**

Mr. George Athans, Vice President of Athans Enterprises, Inc., has petitioned for a rulemaking proceeding to stay for three, or at least two, years the implementation of the 2013 Building Energy Efficiency Standards as they relate to new nonresidential buildings. For the reasons explained below, we deny the petition.

For additional information regarding this matter, please contact Mr. Pippin C. Brehler, at (916) 654-5056, or [Pippin.Brehler@energy.ca.gov](mailto:Pippin.Brehler@energy.ca.gov). Inter-

ested persons have a right to obtain a copy of the petition and other related documents from the Energy Commission.<sup>1</sup>

## II. PROCEDURAL HISTORY

The Energy Commission is statutorily directed to adopt cost-effective building design and construction standards that increase energy and water conservation and efficiency.<sup>2</sup> After a lengthy and complex public process, the Energy Commission adopted the 2013 update to the Building Energy Efficiency Standards, located in parts 1 and 6 of title 24 of the California Code of Regulations (“Standards”). These regulations were subsequently approved by the Building Standards Commission, and will become effective on January 1, 2014.

On June 17, 2013, the Energy Commission received a request from Mr. George Athans, Vice President of Athans Enterprises, Inc., for a three-year moratorium on the 2013 Standards. On June 27, 2013, Energy Commission staff sent Mr. Athans a letter informing him that because these Standards are regulations that were duly adopted by the Commission, Mr. Athans’ request is, in substance, for a petition for a rulemaking proceeding to amend the regulations to change their effective date. Mr. Athans confirmed he wanted to file such a petition, and on July 8, 2013, the Energy Commission received a petition from Mr. Athans, under section 1221 of title 20 of the California Code of Regulations. Mr. Athans submitted additional information on July 18, 2013 to complete his petition and to clarify that he sought a three-year, or at least a two-year, stay of the nonresidential portions of the Standards for new buildings, so that the Standards would not take effective until January 1, 2017, or, in the alternative, January 1, 2016. Mr. Athans supplemented this information on July 22, 2013 with a report from the Rand Corporation on new, nonresidential construction permit valuations in California for 2000–2010.

On July 25, 2013, the Executive Director certified Mr. Athans’ petition as complete and scheduled the petition to be heard at the next Commission business meeting.<sup>3</sup>

## III. ANALYSIS

Mr. Athans presents seven grounds for his request to change the effective date of the Standards which are adopted under the authority of Public Resources Code, Section 25402. In considering the merits of the petition, Energy Commission staff analyzed the information submitted by Mr. Athans, gathered additional information, and reviewed the record of the Standards.

<sup>1</sup> Gov. Code § 11340.7.

<sup>2</sup> Pub. Res. Code § 25402.

<sup>3</sup> Cal. Code Regs., tit 20, § 1221.

### A. Impact on the Construction Industry

The first three, and the last, of the grounds presented for a stay contend that the nonresidential building industry, particularly for new construction, remains depressed and suffers from high unemployment following the recession of 2009. (See Athans Petition, §§ 3.1–3.3, 3.7.) According to Mr. Athans, the Standards will unduly hinder economic recovery and growth in this sector.

The Energy Commission considered the economy and the impact of the 2013 Building Energy Efficiency Standards on building construction during the rulemaking.<sup>4</sup> In response to stakeholder concerns, the Commission revised the proposed Standards to lessen the economic impact on builders while continuing to realize significant energy savings as compared to existing law and practices.<sup>5</sup> Moreover, the Commission analyzed the economic impact on the nonresidential building sector in its Economic and Fiscal Impact Statement and the accompanying Appendix.<sup>6</sup> That analysis explains that for a typical 15,000 square foot nonresidential building, the additional construction costs attributed to the 2013 Standards is about \$3 per square foot, or \$45,000 for the entire building. Assuming nonresidential construction costs average \$150 per square foot, the Commission determined that the additional costs from the proposed Standards would only increase the cost of the building by about 1.8%.

The overall benefit of the Standards in expected energy savings over a 30-year design life for a nonresidential building is expected to be about 30% over the currently-effective 2008 Standards, and is expected to outweigh the costs by a ratio of at least 1.28 to 1. Accordingly, in adopting the Standards, the Energy Commission found them to be cost-effective. In addition, the 2013 Standards are not expected to eliminate jobs. The Standards may create new jobs to perform the compliance procedures required and save money through decreased energy costs.<sup>7</sup>

In support of his petition, Mr. Athans submitted data from the Rand Corporation of new, nonresidential

<sup>4</sup> Cal. Code Regs., tit. 24, part 1, § 1–324(d).

<sup>5</sup> See Initial Statement of Reasons for the 2013 Building Energy Efficiency Standards, at pp. 39–42 (summarizing the changes made to the Standards even before they were initially proposed), available at: [http://www.energy.ca.gov/title24/2013standards/rulemaking/documents/2012-02-24\\_ISOR\\_2013\\_Building\\_Efficiency\\_Standards.pdf](http://www.energy.ca.gov/title24/2013standards/rulemaking/documents/2012-02-24_ISOR_2013_Building_Efficiency_Standards.pdf).

<sup>6</sup> Economic and Fiscal Impact Statement (Std. 399), Initial costs for a small business and initial costs for a typical business, Appendix pp. 1–2. available at: [http://www.energy.ca.gov/title24/2013standards/rulemaking/documents/final\\_rulemaking\\_documents/04\\_Signed\\_399.pdf](http://www.energy.ca.gov/title24/2013standards/rulemaking/documents/final_rulemaking_documents/04_Signed_399.pdf).

<sup>7</sup> See also Notice of Proposed Action, February 7, 2012, pp. 27–28, available at: [http://www.energy.ca.gov/title24/2013standards/rulemaking/notices/2012-02-07\\_NOPA\\_2013\\_Building\\_Efficiency\\_Standards.pdf](http://www.energy.ca.gov/title24/2013standards/rulemaking/notices/2012-02-07_NOPA_2013_Building_Efficiency_Standards.pdf).

construction permit valuations in all California cities and counties, for the decade 2000–2010. The data shows that total statewide permit nonresidential valuation, in millions, peaked at \$22,544 in 2007, and fell to \$11,196 in 2010. The Rand data shows that nonresidential construction activity fell from 2000 through 2003, rose from 2003 through 2007, then dipped in 2008 and fell in 2009 and 2010. In comparison, the 2001 Building Energy Efficiency Standards became effective June 1, 2001. The 2005 Standards became effective October 1, 2005, with revisions effective September 11, 2006. The next edition of the Standards, adopted in 2008, did not become effective until January 1, 2010. Given this, we are unable to discern any correlation, much less causation, between the Building Energy Efficiency Standards and an increase or decrease in nonresidential construction activity.

Further, the economy has improved since 2010, when California’s unemployment rate hit a high of 12.4%. In contrast, the unemployment rate when the Energy Commission adopted the 2013 Standards was 10.7%, and in June 2013, the rate was 8.5%.<sup>8</sup>

The record of the 2013 Budding Energy Efficiency Standards rulemaking proceeding, as well as the information submitted in support of this petition, does not lead us to conclude that an additional initial cost of 1.8%, which will be recouped through decreased energy costs, will significantly impact the rate of nonresidential building construction in this state. On the other hand, delaying the effective date of the Standards will forego the significant energy savings expected from buildings constructed in compliance with the Standards, and lead to increased energy consumption and associated environmental impacts that will continue over the lives of these buildings. Therefore, we decline to grant the petition on these grounds.

**B. Cost–Effectiveness of the Standards**

In support of his petition for a moratorium, Mr. Athans also asserts that the Standards are not cost-effective because the Energy Commission’s supporting analysis is based on manufacturers’ representations and fails to consider “other related costs and requirements in implementing these proposed new standards.” (Athans Petition, § 3.4.)

Contrary to Mr. Athans’ assertion, manufacturers’ representations are not the sole basis for the costs of measures in the Standards.<sup>9</sup> Additionally, it is unclear

what “other related costs” were excluded from consideration.

Before it began preparing the text of the proposed Standards for the 2013 update, the Commission updated and published a “Life–Cycle Methodology” and a “Time Dependent Valuation of Energy for Developing Building Efficiency Standards.”<sup>10</sup> The Life–Cycle Methodology uses a net–present–value approach to consider the time–dependent value of electricity and natural gas over the expected life of each proposed building energy efficiency measure (either 15 or 30 years, depending on the measure) in each of the sixteen designated California climate zones. Accepted discount rates are used to calculate the present worth of the future costs and benefits of each measure. The present value of the costs is compared against the present value of the benefits. For a measure to be adopted into the Standards, the present value of the savings (benefits) must outweigh the present value of the costs.

The following costs and savings were considered in the Life–Cycle Methodology for the 2013 Standards:

1. First cost of the measure, including labor and construction costs
2. Energy savings over the life of the measure
3. Operation and maintenance cost of the measure
4. Replacement costs of the measure

The Commission used a variety of techniques to obtain the first costs for a measure, including obtaining quotes from manufacturers, wholesalers, and distributors, reviewing published data from retailers’ websites, and using the construction industry estimating resource RS Means Catalogue. The measure cost that is used in the life–cycle analysis is the “final” cost to the building owner, and includes all markups and profits that are expected to be applied to the product through the distribution chain.

The life–cycle costs were presented at public workshops held before the rulemaking proceeding, and were revised in response to public comment. The results of this research and discussions were presented in the Codes and Standards Enhancement Initiative (CASE) reports that were among the “documents relied upon” for the Standards.<sup>11</sup> For example, the “Nonresidential & High–Rise Residential Fenestration Requirements”

<sup>8</sup> See Employment Development Department News Release No. 13–32, July 18, 2013, available at: [http://www.edd.ca.gov/about\\_edd/News\\_Releases.htm](http://www.edd.ca.gov/about_edd/News_Releases.htm).

<sup>9</sup> See Cal. Code Regs., tit. 24, part 1, § 1–324(b).

<sup>10</sup> See [http://www.energy.ca.gov/title24/2013standards/prerule-making/documents/general\\_cec\\_documents/2011-01-14\\_LCC\\_Methodology\\_2013.pdf](http://www.energy.ca.gov/title24/2013standards/prerule-making/documents/general_cec_documents/2011-01-14_LCC_Methodology_2013.pdf); [http://www.energy.ca.gov/title24/2013standards/prerulemaking/documents/general\\_cec\\_documents/Title24\\_2013\\_TDV\\_Methodology\\_Report\\_23Feb2011.pdf](http://www.energy.ca.gov/title24/2013standards/prerulemaking/documents/general_cec_documents/Title24_2013_TDV_Methodology_Report_23Feb2011.pdf).

<sup>11</sup> See: [http://www.energy.ca.gov/title24/2013standards/rulemaking/documents/ISOR\\_Documents\\_Relied\\_Upon.pdf](http://www.energy.ca.gov/title24/2013standards/rulemaking/documents/ISOR_Documents_Relied_Upon.pdf).

CASE report lays out the cost basis for the fenestration improvements under the 2013 Standards.<sup>12</sup>

Mr. Athans has not presented any evidence or levied any criticism of these methodologies or costs, but merely asserts, without support, that the standards were not cost-effective. As explained above, the Standards were clearly cost-effective, based on a wide range of evidence. Nothing presented in the petition changes our conclusion that the Standards are cost-effective. Therefore, we decline to grant the petition on this ground.

#### C. Construction Industry's Awareness

Mr. Athans' fifth contention is that the building construction industry is not fully aware of the additional costs and time necessary to design and construct new buildings that comply with the Standards. (Athans Petition, § 3.5.)

We recognize that with each update, the Building Energy Efficiency Standards take a significant step forward in sophistication. The Commission has taken steps to help ensure that training is made available to building owners, developers, contractors, and architects to help these groups to understand the 2013 Standards. In cooperation with the Commission, the investor-owned utilities, such as Southern California Edison, and organizations such as the California Building Officials and the International Code Council, provide training throughout California on the 2013 Standards. The Energy Commission provides a free service known as the Energy Standards Hotline to answer questions on the current and upcoming Standards. The Commission is also developing informational materials to help explain the 2013 Standards.

Therefore, as the Commission believes the construction industry to be aware of the Standards and has taken several steps to ensure that the industry is able to comply with them, we decline to grant the petition on this ground.

#### D. Effects on Building Design

Mr. Athans' sixth contention is that the Standards will increase building space requirements, thereby increasing construction costs and making building design more difficult. (Athans Petition, § 3.6.) This contention presumes that the 2013 Standards will require additional equipment in buildings that would not have been required before, or alternatively, that energy-efficient products take up more space than less-efficient equipment. The petition does not however, elaborate upon what equipment may fall into these categories or what provisions in the 2013 Standards would require additional space.

<sup>12</sup> See: [http://www.energy.ca.gov/title24/2013standards/prerulemaking/documents/current/Reports/Nonresidential/Envelope/2013\\_CASE\\_NR\\_Fenestration\\_Reqs\\_Sept\\_2011.pdf](http://www.energy.ca.gov/title24/2013standards/prerulemaking/documents/current/Reports/Nonresidential/Envelope/2013_CASE_NR_Fenestration_Reqs_Sept_2011.pdf).

The 2013 Standards do not require additional equipment that would not otherwise be required in a building, and the Standards do not significantly impact the conditioned volume of the building. Additionally, nothing in the rulemaking record for the 2013 Standards suggests that energy-efficient equipment requires more space than standard equipment. For example, efficient lighting equipment is the same shape and size as conventional equipment. The same is true for energy-saving controls for lighting and heating, ventilating, and air-conditioning systems, fenestration products, chillers, water heating equipment, and other products. At most, improved insulation requirements may increase the thickness of the walls, which may cause a slight reduction in the conditioned volume of a building relative to a building of the same external dimensions built to the requirements of the 2008 Standards. But no evidence has been presented that this will necessarily occur, or that the impact will be significant. Therefore, we find no evidence to suggest that the 2013 Standards will increase building space requirements, that increasing building space requirements would significantly increase costs, or that the Standards are not cost-effective. We decline to grant the petition on this ground.

#### IV. CONCLUSION

The 2013 Building Energy Efficiency Standards fulfill the Energy Commission's statutory mandate to adopt cost-effective energy and water efficiency standards for buildings. They are a foundational element in implementing California's energy policies, including having a reliable, economic, and environmentally-sound energy supply, and zero net energy new nonresidential buildings by 2030.<sup>13</sup> These Standards protect consumers from unnecessary energy costs, conserve natural resources, minimize environmental degradation, and ensure a safe, reliable, and affordable energy supply. Their importance is brought into even greater relief by the onset of climate change.

Delaying implementation of these Standards would result in greater energy use and environmental degradation than necessary, at significant cost to consumers, natural resources, and the reliability of our energy supply, over the entire lives of the buildings that will be constructed to these standards over the next two or three years. Delaying them would compromise the Energy Commission's ability to fulfill its statutory mandate to adopt these standards and establish sound energy policy.<sup>14</sup> The Standards are cost-effective and have not been shown to hinder economic growth. The evidence

<sup>13</sup> Pub. Res. Code §§ 25001, 25300(a)-(b); see also Notice of Proposed Action, pp. 4-5, citing 2008 Energy Action Plan, 2007 California Energy Commission Integrated Energy Policy Report; 2008 California Public Utilities Commission Long-Term Energy Efficiency Strategic Plan.

<sup>14</sup> See Cal. Code Regs., tit. 24, part 1, § 1-324(e).

presented does not change these conclusions; indeed, independent inquiry affirms them.

To ensure that our state's policy goals are met, and given the lack of evidence to support delaying the effective date of the Standards, we deny the petition.

The California Energy Commission directs the Executive Director to take, on behalf of the Commission, all actions reasonably necessary to perfect this decision, including but not limited to preparing and filing this Order and all appropriate documents with the Building Standards Commission and the Office of Administrative Law for publication in the California Regulatory Notice Register per Government Code section 11340.7.

Date: August 27, 2013

#### CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of an Order duly and regularly adopted at a meeting of the California Energy Commission held on August 27, 2013.

AYE: Douglas, Hochschild, McAllister, Scott

NAY:

ABSENT: Weisenmiller

ABSTAIN:

/s/

Harriet Kallemeyn,  
Secretariat

### PROPOSITION 65

#### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

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

#### NOTICE OF AVAILABILITY OF HAZARD IDENTIFICATION MATERIALS TO SUPPORT RECONSIDERATION OF LISTING:

### CHEMICALS LISTED VIA THE LABOR CODE AS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE REPRODUCTIVE TOXICITY

SEPTEMBER 20, 2013

The Office of Environmental Health Hazard Assessment (OEHHA) announces the availability for public review of a hazard identification document to support the reconsideration of chemicals listed under Proposition 65 as known to cause reproductive toxicity. The chemicals were added to the Proposition 65 list on the basis of reproductive toxicity via the Labor Code mechanism.<sup>1</sup> OEHHA is initiating this action based on changes to the federal regulations that affect the basis for the original listings via the Labor Code mechanism. Specifically, in March 2012, the federal Occupational Safety and Health Administration (OSHA) amended the regulations contained in CFR<sup>2</sup> Title 29, section 1910.1200. These changes have affected the use of this section as a definitive source for identifying chemicals as known to cause reproductive toxicity by the Labor Code mechanism.

This notice marks the beginning of a 45-day public comment period on this document. The public comment period will close on **November 4, 2013**. Copies of the document are available from OEHHA's web site. The document may also be requested from OEHHA's Proposition 65 Implementation Office by calling (916) 445-6900.

The Developmental and Reproductive Toxicant Identification Committee (DARTIC) will consider whether the chemicals covered in the hazard identification document should remain listed under Proposition 65 as known to cause reproductive toxicity. The DARTIC will consider these chemicals at its meeting on November 21, 2013 in Sacramento. The venue and agenda will be announced in a subsequent public notice. OEHHA will send comments received on the hazard identification document for these chemicals to DARTIC members prior to the meeting.

OEHHA, a department of the California Environmental Protection Agency, is the lead agency for the implementation of Proposition 65<sup>3</sup>. The Developmental and Reproductive Toxicant Identification Committee (DARTIC) advises and assists OEHHA in compiling the list of chemicals known to the State to cause reproductive toxicity, as required by Proposition 65. The DARTIC serves as the State's qualified experts for determining whether a chemical has been clearly shown

<sup>1</sup> HSC section 25249.8(a).

<sup>2</sup> CFR refers to the Code of Federal Regulations.

<sup>3</sup> The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq.

through scientifically valid testing according to generally accepted principles to cause reproductive toxicity.

**OEHHA must receive comments and any supporting documentation on the hazard identification document by 5:00 p.m. on Monday, November 4, 2013.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [P65Public.comments@oehha.ca.gov](mailto:P65Public.comments@oehha.ca.gov). Please include "Labor Code Chemicals Reconsideration" in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the addresses below:

Mailing Address: Ms. Cynthia Oshita  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, California 95812-4010  
Fax: (916) 323-2265  
Street Address: 1001 I Street  
Sacramento, California 95814

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

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

**NOTICE OF INTENT TO CHANGE THE BASIS  
FOR LISTING AS KNOWN TO THE STATE OF  
CALIFORNIA TO CAUSE REPRODUCTIVE  
TOXICITY:**

**1,2-DIBROMO-3-CHLOROPROPANE,  
ETHYLENE OXIDE AND LEAD**

**SEPTEMBER 20; 2013**

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) intends to change the basis for the listing of *1,2-dibromo-3-chloropropane (DBCP)*, *ethylene oxide* and *lead* as known to the state to cause reproductive toxicity under the Safe Drinking Water and Toxic Enforcement Act of 1986<sup>1</sup>. DBCP, ethylene oxide<sup>2</sup> and lead were originally added February 27, 1987 to the Proposition 65 list as causing reproductive toxicity pursuant to Labor Code Section 6382(d) which is incorpo-

<sup>1</sup> Commonly known as Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 is codified in Health and Safety Code section 25249.5 *et seq.*

<sup>2</sup> Ethylene oxide was listed February 27, 1987 as causing reproductive toxicity (female reproductive endpoint); two additional reproductive toxicity endpoints (developmental and male reproductive toxicity) were added August 7, 2009.

rated by reference in Health and Safety Code Section 25249.8(a). Male and female reproductive toxicity and developmental toxicity are the general endpoints noted for lead and ethylene oxide, and male reproductive toxicity is noted for DBCP. OEHHA intends to change the basis of these listings to the "formally required to be labeled or identified" listing mechanism<sup>3</sup>.

Chemical	CAS No.	Reproductive Toxicity Endpoints	Reference*
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	Male reproductive toxicity	Title 29, CFR, Section 1910.1044
Ethylene oxide	75-21-8	Male reproductive toxicity Female reproductive toxicity Developmental toxicity	Title 29, CFR, Section 1910.1047  US EPA (2013) <sup>4</sup>
Lead	--	Male reproductive toxicity Female reproductive toxicity Developmental toxicity	Title 29, CFR, Section 1910.1025

\*CFR is the Code of Federal Regulations; US EPA is the US Environmental Protection Agency

OEHHA is initiating this action based on changes to the federal regulations that affect the basis for the original listings. Specifically, in March 2012, the federal Occupational Safety and Health Administration (OSHA) amended the regulations contained in CFR<sup>5</sup> Title 29, section 1910.1200. These changes have affected the use of this section as a definitive source for identifying chemicals that are known to cause reproductive toxicity.

**Background on listing via the formally required to be labeled or identified mechanism:** A chemical must

<sup>3</sup> See Health and Safety Code section 25249.8(b) and Title 27, Cal. Code of Regs., section 25902. All further references are to sections of Title 27 of the California Code of Regulations, unless indicated otherwise.

<sup>4</sup> US EPA Office of Pesticide Programs, Notice of Pesticide Registration, Name of Pesticide Product: Ethylene Oxide, EPA registration number 89514-1, May 20, 2013.

<sup>5</sup> CFR refers to the Code of Federal Regulations throughout this document.

be listed under Proposition 65<sup>6</sup> and its implementing regulations (Section 25902) when a state or federal agency has formally required it to be labeled or identified as causing cancer or reproductive toxicity.

According to Section 25902(b):

- “[F]ormally required’ means that a mandatory instruction, order, condition, or similar command, has been issued in accordance with established policies and procedures of an agency of the state or federal government to a person or legal entity outside of the agency. The action of such agency may be directed at one or more persons or legal entities and may include formal requirements of general application;”
- “[L]abeled’ means that a warning message about the carcinogenicity or reproductive toxicity of a chemical is printed, stamped, written, or in any other manner placed upon the container in which the chemical is present or its outer or inner packaging including any material inserted with, attached to, or otherwise accompanying such a chemical;”
- “[I]dentified’ means that a required message about the carcinogenicity or reproductive toxicity of the chemical is to be disclosed in any manner to a person or legal entity other than the person or legal entity who is required to make such disclosure”; and
- As causing reproductive toxicity means: “. . . the required label or identification uses any words or phrases intended to communicate a risk of reproductive harm to men or women or both, or a risk of birth defects or other developmental harm.”

OEHHA is the lead agency for Proposition 65 implementation. After a state or federal agency has required that a chemical be labeled or identified as causing cancer or reproductive toxicity, OEHHA evaluates whether listing under Proposition 65 is required pursuant to the definitions set out in Section 25902.

**OEHHA’s determination:** *DBCP*, *ethylene oxide* and *lead* are required to be identified or labeled to communicate a risk of reproductive toxicity by OSHA regulations. In addition, the US Environmental Protection Agency (US EPA) also requires labels to communicate a risk of reproductive toxicity for ethylene oxide.

Language from the OSHA regulations and US EPA warning requirements which meets the requirements of Section 25902 is quoted below for each of these three chemicals.

**1,2-Dibromo-3-chloropropane (DBCP)**

“1910.1044(n)(1)(ii)

<sup>6</sup> See Health and Safety Code section 25249.8(b).

The employer shall assure that each employee is informed of the following:

“1910.1044(n)(1)(ii)(a)

The information contained in Appendix A. . .”

Appendix A, under “II. Health Hazard Data”, states:

“. . .2. Chronic exposure. Prolonged or repeated exposure to DBCP has been shown to cause sterility in humans. It also has been shown to produce cancer and sterility in laboratory animals and has been determined to constitute an increased risk of cancer in man.”<sup>7</sup>

**Ethylene oxide**

“1910.1047(j)(2)(i)(A)

The employer shall post and maintain legible signs demarcating regulated areas and entrances or access ways to regulated areas that bear the following legend:

“DANGER  
ETHYLENE OXIDE  
MAY CAUSE CANCER  
MAY DAMAGE FERTILITY OR THE  
UNBORN CHILD  
RESPIRATORY PROTECTION AND  
PROTECTIVE CLOTHING MAY BE  
REQUIRED IN THIS AREA  
AUTHORIZED PERSONNEL ONLY”

“1910.1047(j)(2)(i)(B)

Prior to June 1, 2016, employers may use the following legend in lieu of that specified in paragraph (j)(2)(i)(A) of this section:

“DANGER  
ETHYLENE OXIDE  
CANCER HAZARD AND  
REPRODUCTIVE HAZARD  
AUTHORIZED PERSONNEL ONLY  
RESPIRATORS AND PROTECTIVE  
CLOTHING MAY BE REQUIRED TO BE  
WORN IN THIS AREA”

“1910.1047(j)(2)(ii)(A)

The employer shall ensure that labels are affixed to all containers of EtO [ethylene oxide] whose contents are capable of causing employee exposure at or above the action level or whose contents may reasonably be foreseen to cause employee exposure above the excursion limit, and that the labels remain affixed when the containers of EtO leave the workplace. For the purposes of this paragraph (j)(2)(ii), reaction vessels, storage

<sup>7</sup> The OSHA regulation for DBCP quoted above can be accessed online at: [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=10061](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10061).

tanks, and pipes or piping systems are not considered to be containers.”

“1910.1047(j)(2)(ii)(B)

Prior to June 1, 2015, employers may include the following information on containers of EtO in lieu of the labeling requirements in paragraph (j)(1)(i) of this section:

“1910.1047(j)(2)(ii)(B)(1)

DANGER  
CONTAINS ETHYLENE OXIDE  
CANCER HAZARD AND REPRODUCTIVE HAZARD;

“1910.1047(j)(2)(ii)(B)(2)

A warning statement against breathing airborne concentrations of EtO.”

“1910.1047(j)(2)(ii)(C)

The labeling requirements under this section do not apply where EtO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when it is labeled pursuant to that Act and regulations issued under that Act by the Environmental Protection Agency.”<sup>8</sup>

The US EPA 2013 required precautionary statements on the conditional registration and use label for ethylene oxide (registration number 89514-1) reads:

**“DANGER! CANCER HAZARD AND REPRODUCTIVE HAZARD**

...

**“OTHER POSSIBLE DELAYED HEALTH EFFECTS:**

“May cause nervous system injury, cataracts, adverse reproductive effects, chromosomal and mutagenic changes, and cancer.

...

**“DO NOT REMOVE THIS LABEL”**

**Lead**

“1910.1025(g)(2)(vii)(A)

The employer shall ensure that labels of bags or containers of contaminated protective clothing and equipment include the following information:

“DANGER: CLOTHING AND EQUIPMENT CONTAMINATED WITH LEAD MAY DAMAGE FERTILITY OR THE UNBORN CHILD. CAUSES DAMAGE TO THE

CENTRAL NERVOUS SYSTEM. DO NOT EAT, DRINK OR SMOKE WHEN HANDLING. DO NOT REMOVE DUST BY BLOWING OR SHAKING. DISPOSE OF LEAD CONTAMINATED WASH WATER IN ACCORDANCE WITH APPLICABLE LOCAL, STATE, OR FEDERAL REGULATIONS.”

“1910.1025(l)(1)(i)

Each employer who has a workplace in which there is a potential exposure to airborne lead at any level shall inform employees of the content of Appendices A and B of this regulation.”

Appendix A under “II. Health Hazard Data” states:

“(2) Long-term (chronic) overexposure. Chronic overexposure to lead may result in severe damage to your blood-forming, nervous, urinary and reproductive systems. . .

“Chronic overexposure to lead impairs the reproductive systems of both men and women. Overexposure to lead may result in decreased sex drive, impotence and sterility in men. Lead can alter the structure of sperm cells raising the risk of birth defects. There is evidence of miscarriage and stillbirth in women whose husbands were exposed to lead or who were exposed to lead themselves. Lead exposure also may result in decreased fertility, and abnormal menstrual cycles in women. The course of pregnancy may be adversely affected by exposure to lead since lead crosses the placental barrier and poses risks to developing fetuses. Children born of parents either one of whom were exposed to excess lead levels are more likely to have birth defects, mental retardation, behavioral disorders or die during the first year of childhood.”

Appendix B in “XI. SIGNS — PARAGRAPH (M)” states:

“The standard requires that the following warning sign be posted in the work areas when the exposure to lead exceeds the PEL [Permissible Exposure Limit]:

“DANGER  
LEAD MAY DAMAGE FERTILITY OR THE UNBORN CHILD  
CAUSES DAMAGE TO THE CENTRAL NERVOUS SYSTEM  
DO NOT EAT, DRINK OR SMOKE IN THIS AREA

“However, prior to June 1, 2016, employers may use the following legend in lieu of that specified above:

<sup>8</sup> The OSHA regulation for ethylene oxide quoted above can be accessed online at: [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=standards&p\\_id=10070](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10070).

“WARNING  
LEAD WORK AREA  
POISON  
NO SMOKING OR EATING”<sup>9</sup>

**Request for comments:** OEHHA is requesting comments as to whether these chemicals meet the criteria set forth in the Proposition 65 regulations for listings via the formally required to be labeled or identified mechanism (Section 25902). Because these are ministerial listings, comments should be limited to whether OSHA requires that DBCP, ethylene oxide or lead be labeled to communicate a risk of reproductive harm. OEHHA cannot consider scientific arguments concerning the weight or quality of the evidence considered by OSHA when it established the labeling requirement and will not respond to such comments if they are submitted.

In order to be considered, **OEHHA must receive comments by 5:00 p.m. on MONDAY, October 21, 2013.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [P65Public.comments@oehha.ca.gov](mailto:P65Public.comments@oehha.ca.gov). Please include “Formally Required — DBCP” or “Formally Required — ETHYLENE OXIDE” or “Formally Required — LEAD” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the address below.

**Mailing Address:** Ms. Cynthia Oshita  
Office of Environmental  
Health Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, California  
95812-4010

**Fax:** (916) 323-2265

**Street Address:** 1001 I Street  
Sacramento, California 95814

Any public comments received will be posted after the close of the comment period. If you have any questions, please contact Ms. Oshita at [cynthia.oshita@oehha.ca.gov](mailto:cynthia.oshita@oehha.ca.gov) or at (916) 445-6900.

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

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

<sup>9</sup> The OSHA regulation on lead quoted above can be accessed online at: [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=STANDARDS&p\\_id=10030](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10030).

**NOTICE OF INTENT TO CHANGE THE BASIS  
FOR LISTING  
AS KNOWN TO THE STATE OF CALIFORNIA  
TO CAUSE REPRODUCTIVE TOXICITY:  
DICHLOROACETIC ACID**

**SEPTEMBER 20, 2013**

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) intends to change the basis for the listing of dichloroacetic acid as known to the state to cause reproductive toxicity under the Safe Drinking Water and Toxic Enforcement Act of 1986<sup>1</sup>.

Dichloroacetic acid was originally added to the Proposition 65 list as causing reproductive toxicity on August 7, 2009, pursuant to Labor Code Section 6382(d), which is incorporated by reference in Health and Safety Code Section 25249.8(a). Dichloroacetic acid was listed based on its identification as causing male reproductive toxicity in the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs). The TLVs were previously incorporated by reference into the federal Occupational Health and Safety Administration (OSHA) Hazard Communication Standards (Title 29, Code of Federal Regulations, section 1900.1200<sup>2</sup>).

OEHHA is initiating this action based on changes to certain federal regulations that affect the basis for the original listing. In March 2012, OSHA extensively amended the regulations contained in Title 29, C.F.R., section 1910.1200. Section 1910.1200(d)(3)(ii), which specifically referred to the ACGIH TLV list, was deleted in the 2012 version of the regulation. OEHHA has determined that these changes have eliminated the ACGIH TLVs as a definitive source for identifying chemicals that are known to cause reproductive toxicity.

However, OEHHA has determined that dichloroacetic acid meets the criteria for listing via the “authoritative bodies” listing mechanism<sup>3</sup> and is providing this notice of its intent to change the basis for listing the chemical based on identification of male reproductive and developmental endpoints. Dichloroacetic acid will not be removed from the Proposition 65 list during this process.

<sup>1</sup> Commonly known as Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 is codified in Health and Safety Code section 25249.5 *et seq.*

<sup>2</sup> The Code of Federal Regulations will hereafter be cited as C.F.R.

<sup>3</sup> See Health and Safety Code section 25249.8(b) and Title 27, California Code of Regulations, section 25306. All further references are to sections of Title 27 of the California Code of Regulations, unless indicated otherwise.

Chemical	CAS No.	Reproductive Toxicity Endpoints	Reference	Chemical Uses
Dichloroacetic acid (DCA)	79-43-6	Male reproductive toxicity Developmental toxicity	U.S. Environmental Protection Agency (U.S. EPA, 2003a,b)	Industrial chemical intermediate (used in manufacture of other chemicals), water disinfection byproduct, cauterizing agent for removal of skin growths

**Background on listing via the authoritative bodies mechanism:** A chemical must be listed under Proposition 65 and its implementing regulations (Section 25306) when two conditions are met:

1. An authoritative body formally identifies the chemical as causing reproductive toxicity (Section 25306(d)(1)).
2. The evidence considered by the authoritative body meets the sufficiency criteria contained in the regulations (Section 25306(g)).

However, the chemical is not listed if scientifically valid data that were not considered by the authoritative body clearly establish that the sufficiency of evidence criteria were not met (Section 25306(h)).

The U.S. Environmental Protection Agency (U.S. EPA) is one of several institutions designated as authoritative for the identification of chemicals as causing reproductive toxicity (Section 25306(l)).

OEHHA is the lead agency for implementation of Proposition 65<sup>4</sup>. After an authoritative body has made a determination that a chemical causes cancer or reproductive toxicity, OEHHA evaluates whether listing under Proposition 65 is required using the criteria contained in the regulations.

**OEHHA's determination:** Dichloroacetic acid (DCA) meets the criteria for listing as known to the State to cause reproductive toxicity under Proposition 65, based on findings by U.S. EPA (2003a,b), as outlined below.

**Formal identification and sufficiency of evidence:** OEHHA is relying on U.S. EPA's conclusion that DCA causes developmental and male reproductive effects. U.S. EPA published a Toxicological Review of Dichloroacetic Acid that provides a comprehensive review and summary of the available toxicological data on DCA (U.S. EPA, 2003a). In this Toxicological Review, under "Major Conclusions in the Characterization of Hazard and Dose Response", U.S. EPA concludes that DCA causes male reproductive and developmental toxicity:

*"Reproductive/Developmental Toxicity.*

In males, DCA causes decreases in testicular weight and viable sperm production. Testicular effects were observed in rats and dogs. Dogs are apparently the most sensitive species, displaying testicular toxicity at a dose substantially lower than for other test species. In female rats, DCA exposure during gestation can lead to impaired fetal maturation and result in soft tissue anomalies (primarily of cardiac origin) in the offspring." (pages 96-97, U.S. EPA, 2003a)

This conclusion meets the formal identification requirement criteria of Section 25306(d)(1)<sup>5</sup>.

EPA (2003a) also highlights the consistency of the numerous animal studies in demonstrating the reproductive and developmental toxicity of DCA:

- "There is an extensive and consistent data base demonstrating the reproductive toxicity of DCA in males and females (Katz et al., 1981; Yount et al., 1982; Bhat et al., 1991; Cicmanec et al., 1991; Toth et al., 1992; De Angelo et al., 1996; Linder et al., 1997; Smith et al., 1992; Epstein et al., 1992)." (page 61, U.S. EPA, 2003a)
- "In female rats, DCA exposure during gestation resulted in the impairment of fetal maturation and soft tissue anomalies (primarily of cardiac origin) indicating that the developing fetus is susceptible to DCA-induced toxicity (Smith et al., 1992)." (page 73, U.S. EPA, 2003a)

The Toxicological Review (U.S. EPA, 2003a) supported U.S. EPA's online Integrated Risk Information System (IRIS) entry for DCA, which includes an oral reference dose (RfD) of 0.004 mg/kg-day (U.S. EPA, 2003b). The RfD was based on "lesions observed in the testes, cerebrum, cerebellum, and liver" in dogs (U.S. EPA, 2003b). U.S. EPA (2003b) summarizes the relevant results of the study that provided the lowest observed adverse effect level (LOAEL) on which the RfD was based, as well as other relevant studies, as follows:

<sup>5</sup> "the chemical. . . is the subject of a report which is published by the authoritative body and which concludes that the chemical causes. . . reproductive toxicity".

<sup>4</sup> Health and Safety Code section 25249.12 and Title 27, Cal. Code of Regs., section 25102(o).

- “Microscopic testicular lesions, which included syncytial giant cell formation and degeneration of testicular germinal epithelium, were also noted in treated males at all doses. Lesion severity increased with dose. The testicular changes were apparent in 4/5 males at the low dose and in all animals in the mid- and high-dose groups; these lesions were also considered to be primary. A LOAEL of 12.5 mg/kg-day can be identified based on visual organ effects (neurological changes, hepatic vacuolization, and testicular effects) and increases in liver weight.”

“Although DCA-induced testicular toxicity has not been investigated in the human, it has been reported in rodent models. Bhat et al. (1991) reported significantly ( $p < 0.01$ ) decreased testes weight and signs of tissue atrophy with no mature spermatozoa and few spermatocytes in seminiferous tubules of male Sprague-Dawley rats exposed to 1,100 mg/kg-day DCA (in drinking water) for 90 days. Katz et al. (1981) administered doses of 0, 125, 500, or 2000 mg/kg-day DCA via gavage to adult rats (10–15/sex/dose) daily for 3 months. All males at 2,000 mg/kg-day and 40% of males at 500 mg/kg-day exhibited testicular germinal epithelial degeneration. Further, all males at 2,000 mg/kg-day had aspermatogenic testes with syncytial giant cells in the germinal epithelium and epididymis ducts that were devoid of spermatozoa. Twenty percent of the 500 mg/kg-day males also had syncytial giant cells. No other effects were noted at 500 or 125 mg/kg-day; no reproductive tissue effects were noted in females at any dose. Some evidence of regeneration of germinal epithelium with spermatogenesis was noted in some, high-dose males maintained for 5 weeks on a normal control diet postexposure. Based on these results, a NOAEL of 125 mg/kg-day was identified. (U.S. EPA, 2003b)”

The Toxicological Review (U.S. EPA, 2003a) and IRIS entry (U.S. EPA, 2003b) meet the formal identification criterion in Section 26306(d)(2)(C)<sup>6</sup>.

OEHHA has reviewed the studies or study descriptions cited by U.S. EPA (2003a,b) in support of its conclusions regarding the male reproductive and developmental toxicity of DCA, relative to the criteria in Sec-

tion 25306(g). The criteria for listing DCA as known to cause reproductive toxicity (male reproductive and developmental endpoints) by the authoritative bodies mechanism have been met. Therefore, OEHHA has determined that DCA must stay on the Proposition 65 list.

**Request for comments:** OEHHA is requesting comments as to whether this chemical meets the criteria set forth in the Proposition 65 regulations for listings via the authoritative bodies listing mechanism (Section 25306) and should, therefore, remain on the list of chemicals known to the State to cause reproductive toxicity, with the additional endpoint of developmental toxicity.

In order to be considered, **comments must be received by OEHHA by 5:00 p.m. on MONDAY, October 21, 2013.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [P65Public.comments@oehha.ca.gov](mailto:P65Public.comments@oehha.ca.gov). Please include “Dichloroacetic acid” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the address below:

Mailing Address: Ms. Cynthia Oshita  
Office of Environmental  
Health Hazard Assessment  
P.O. Box 4010, MS-19B  
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Fax: (916) 323-2265  
Street Address: 1001 I Street  
Sacramento, California 95814

Comments received during the public comment period will be posted on the OEHHA web site after the close of the comment period.

If you have any questions, please contact Ms. Oshita at [cynthia.oshita@oehha.ca.gov](mailto:cynthia.oshita@oehha.ca.gov) or at (916) 445-6900.

## REFERENCES

U.S. Environmental Protection Agency (EPA), 2003a. Toxicological Review of Dichloroacetic Acid (CAS No 79-43-6) In Support of Summary Information on the Integrated Risk Information System (IRIS). August 2003. EPA 635/R-03/007. U.S. EPA, Washington, D.C. Available online at: <http://www.epa.gov/iris/toxreviews/0654tr.pdf>.

U.S. Environmental Protection Agency (EPA), 2003b. Integrated Risk Information System (IRIS). Available online at: <http://www.epa.gov/iris/subst/0654.htm>.

<sup>6</sup> [the document is] Published by the authoritative body in a publication such as, but not limited to, the federal register. . . .”

OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT

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

NOTICE OF INTENT TO CHANGE THE BASIS  
FOR LISTING AS KNOWN TO THE STATE OF  
CALIFORNIA TO CAUSE REPRODUCTIVE  
TOXICITY: HEXAFLUOROACETONE AND  
PHENYLPHOSPHINE

SEPTEMBER 20, 2013

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) intends to change the basis for the listing of *hexafluoroacetone* and *phenylphosphine* as known to the state to cause reproductive toxicity under the Safe Drinking Water and Toxic Enforcement Act of 1986.<sup>1</sup> These chemicals (hexafluoroacetone on August 1, 2008 and phenylphosphine on August 7, 2009) were added to the Proposition 65 list as known to cause reproductive toxicity pursuant to Labor Code Section 6382(d) which is incorporated by reference in Health and Safety Code Section 25249.8(a).

OEHHA intends to modify the basis of these listings as shown in the table below. Both chemicals will continue to be listed via the Labor Code mechanism.<sup>2</sup>

Chemical	CASNo.	Reproductive Toxicity Endpoint	Reference*
Hexafluoroacetone	684-16-2	Male reproductive toxicity	CCR, Title 8 sections 339 and 5155; ACGIH (1977)**
Phenylphosphine	638-21-1	Male reproductive toxicity***	CCR, Title 8 sections 339 and 5155; ACGIH (1977)**

\*CCR is the Cal. Code of Regs. ACGIH is the American Conference of Governmental Industrial Hygienists.

\*\* ACGIH 1977. *Documentation of the threshold limit values for substances in workroom air with supplements for those substances*

<sup>1</sup> Commonly known as Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 is codified in Health and Safety Code section 25249.5 *et seq.*

<sup>2</sup> See Health and Safety Code section 25249.8(a) and Labor Code Section 6382(d).

*added or changed since 1971*, 3rd ed., 4th printing. *Supplements for those Substances Added or Changed, Years 1971-1973.*

\*\*\*Developmental toxicity was incorrectly noted in the original listing.

OEHHA is initiating this action based on changes to the federal regulations that affect the basis for the original listing. Specifically, in March 2012, the federal Occupational Safety and Health Administration (OSHA) amended the regulations contained in CFR Title 29, section 1910.1200. These changes have affected the use of this section of Title 29 as a definitive source for identifying chemicals that are known to cause reproductive toxicity.

**Background on listing via the Labor Code mechanism:** Health and Safety Code section 25249.8(a) incorporates Labor Code Sections 6382(b)(1) and 6382(d) into Proposition 65. OEHHA must list substances identified by reference in Labor Code Section 6382(b)(1) or by reference in Labor Code Section 6382(d) as causing cancer or reproductive toxicity.

Labor Code section 6382(d) states, “[I]n addition to those substances on the director’s list of hazardous substances, any substance within the scope of the federal Hazard Communication Standard (29 C.F.R. Sec. 1910.1200) is a hazardous substance subject to this chapter.” [emphasis added]

By referencing “the director’s list,” Section 6382(d) expressly refers to chemicals that appear on the List of Hazardous Substances prepared by the Director of the Department of Industrial Relations pursuant to Labor Code section 6380. Chemicals are added to the Director’s List through several routes, including chemicals identified via Title 8, Cal. Code of Regs., section 5155, Airborne Contaminants (Table AC-1. Permissible Exposure Limits for Chemical Contaminants). The basis for the addition of hexafluoroacetone and phenylphosphine to the Director’s List was the chemicals’ inclusion in Table AC-1 based on the American Conference of Governmental Industrial Hygienists’ (ACGIH) *Supplements for those Substances Added or Changed, Years 1971-1973*.<sup>3</sup> Copies of the documentation are available from OEHHA via the contact information provided below.

OEHHA is the lead agency for Proposition 65 implementation. OEHHA evaluates whether listing under Proposition 65 is required under the Labor Code mechanism by determining the toxicological basis relied on by the Department of Industrial Relations in adding a chemical to the Director’s list.

<sup>3</sup> American Conference of Governmental Industrial Hygienists. 1977. *Documentation of the threshold limit values for substances in workroom air with supplements for those substances added or changed since 1971*, 3rd ed., 4th printing. *Supplements for those Substances Added or Changed, Years 1971-1973.*

**OEHHA's determination:** The basis for addition of hexafluoroacetone and phenylphosphine to the Director's List is a risk of male reproductive toxicity.

In making this determination, OEHHA relied upon the following documents, which are included in the administrative record for this action:

### 1. The Director's List

In developing the California Department of Industrial Relations (DIR) Hazardous Substances List (The Director's List) (Cal. Code of Regs., Title 8, section 339, adopted in 1983), the Director draws from several sources pursuant to Labor Code section 6382 including: (1) International Agency for Research on Cancer (IARC); (2) U.S. Environmental Protection Agency lists pursuant to the federal Clean Air and Clean Water Acts; (3) Substances listed by the state Occupational Safety and Health Standards Board as airborne chemical contaminants; (4) California Department of Pesticide Regulation's list of Restricted Materials; (5) Information Alerts put out by the state's Hazard Evaluation and Information Service pursuant to Labor Code Section 147.2.

As relevant to the current listings, both hexafluoroacetone and phenylphosphine were added to the Director's List because they were listed as airborne chemical contaminants by the state Occupational Safety and Health Standards Board based on their inclusion in California's General Safety Order Section 5155.

### 2. General Industry Safety Order Section 5155 Rulemaking Documents

Hexafluoroacetone and phenylphosphine appear in Table AC-1 of California's General Industry Safety Order Section 5155. The state Occupational Safety and Health Standards Board adopted the Section 5155 order and its accompanying tables in 1975 to "regulate employee exposure to airborne substances in order to assure. . . that no employee will suffer material impairment of health or functional capacity" if exposed to these chemicals.<sup>4</sup>

A May 30, 1975 memo from Frederick Hodges, M.D. with the Health Protection Division of Cal/OSHA to Ronald T. Renaldi, then the Director of Cal/OSHA Standards Board, explains that Table AC-1, which lists permissible exposure limits for the airborne contaminants, was based on threshold limit values (TLVs) adopted by ACGIH. The memo states that the chemicals and TLVs for Table AC-1 are based in relevant part on "subsequent changes and additions instituted by the ACGIH during the period 1970-1974."

The ACGIH 1977 publication, *Documentation of the threshold limit values for substances in workroom air*

*with supplements for those substances added or changed since 1971*, contains supplements that describe these "subsequent changes and additions."<sup>5</sup> These supplements are the source of the information used by the state Occupational Safety and Health Standards Board in adopting the Section 5155 order. Because the Board relied only upon information available to it at the time of the rulemaking, OEHHA exclusively is using the 1971-1973 supplements in this current listing.

### 3. ACGIH's Documentation of the Threshold Limit Values for Substances in Workroom Air (1971-1973 Supplements)

The 1971-1973 ACGIH Threshold Limit Values documentation<sup>6</sup> discusses the health effects of the chemicals evaluated by ACGIH. These chemicals include hexafluoroacetone and phenylphosphine.

#### *Hexafluoroacetone*

The ACGIH documentation for hexafluoroacetone<sup>7</sup> specifies that the TLV was based on a 1971 Haskell Laboratory Report noting severe but reversible testicular damage in rats and dogs exposed to hexafluoroacetone. It further discusses a separate study in rats that demonstrated decreased spermatogenesis in the animals after repeated exposures to higher doses. The level of exposure in the Haskell Laboratory study that caused severe testicular damage was considered injurious to both rats and dogs, and the TLV was based on a lower exposure level in that study that was identified as a "no-effect level."

#### *Phenylphosphine*

The ACGIH documentation for phenylphosphine<sup>8</sup> cites a 1970 Haskell Laboratory Report that noted testicular effects, including irreversible testicular damage in rats and beagle dogs exposed to phenylphosphine at chronic levels. On the basis of this report, ACGIH recommended a threshold level that was below the level that caused these effects. The threshold level adopted by ACGIH and relied upon for the Cal/OSHA rulemaking was in part based upon male reproductive effects, specifically testicular damage.

**Request for comments:** OEHHA is requesting comments as to whether these chemicals meet the criteria set forth in the Proposition 65 regulations for listings via the Labor Code mechanism. Because these are ministerial listings, comments should be limited to the appearance of these chemicals on the Director's List or on the

<sup>4</sup> Occupational Safety and Health Standards Board, 1982. Initial Statement of Reasons, General Industry Safety Order 5155, Airborne Contaminants.

<sup>5</sup> American Conference of Governmental Industrial Hygienists. 1977. *Documentation of the threshold limit values for substances in workroom air with supplements for those substances added or changed since 1971*, 3rd ed., 4th Supplements for those Substances Added or Changed, Years 1971-1973.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Section 5155 list. OEHHA cannot consider scientific arguments concerning the weight or quality of the evidence considered by Cal/OSHA, and will not respond to such comments if they are submitted.

In order to be considered, **OEHHA must receive comments by 5:00 p.m. on MONDAY, OCTOBER 21, 2013.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [P65Public.comments@oehha.ca.gov](mailto:P65Public.comments@oehha.ca.gov). Please include “Labor Code — HEXAFLUOROACETONE” or “Labor Code — PHENYLPHOSPHINE” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the address below.

**Mailing Address:** Ms. Cynthia Oshita  
Office of Environmental  
Health Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, CA 95812-4010

**Fax:** (916) 323-2265

**Street Address:** 1001 I Street  
Sacramento, CA 95814

Any public comments received will be posted after the close of the comment period. If you have any questions, please contact Ms. Oshita at [cynthia.oshita@oehha.ca.gov](mailto:cynthia.oshita@oehha.ca.gov) or at (916) 445-6900.

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

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

**NOTICE OF INTENT TO CHANGE THE BASIS  
FOR LISTING  
AS KNOWN TO THE STATE OF CALIFORNIA  
TO CAUSE  
REPRODUCTIVE TOXICITY: NITROUS  
OXIDE**

**SEPTEMBER 20, 2013**

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) intends to change the basis for the listing of nitrous oxide as known to the state to cause reproductive toxicity under the Safe Drinking Water and Toxic Enforcement Act of 1986<sup>1</sup>.

Nitrous oxide was originally added to the Proposition 65 list as causing reproductive toxicity on August 1, 2008 pursuant to Labor Code Section 6382(d), which is incorporated by reference in Health and Safety Code Section 25249.8(a). Nitrous oxide was listed based on its identification as causing developmental toxicity in the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs). The TLVs were previously incorporated by reference into the federal Occupational Health and Safety Administration (OSHA) Hazard Communication Standards (Title 29, Code of Federal Regulations, section 1900.1200)<sup>2</sup>.

OEHHA is initiating this action based on changes to certain federal regulations that affect the basis for the original listing. Specifically, in March 2012, OSHA extensively amended the regulations contained in Title 29, C.F.R., section 1910.1200. Title 29, C.F.R. 1910.1200(d)(3)(ii), which specifically referred to the ACGIH TLV list, was deleted in the 2012 version of the regulation. OEHHA has determined that these changes have eliminated the ACGIH TLVs as a definitive source for identifying chemicals that are known to cause reproductive toxicity.

However, OEHHA has determined that nitrous oxide meets the criteria for listing via the “authoritative bodies” listing mechanism<sup>3</sup> and is providing this notice of its intent to change the basis for listing the chemical based on developmental and female reproductive toxicity. Nitrous oxide will not be removed from the Proposition 65 list during this process.

<sup>1</sup> Commonly known as Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 is codified in Health and Safety Code section 25249.5 *et seq.*

<sup>2</sup> The Code of Federal Regulations will hereafter be cited as C.F.R.

<sup>3</sup> See Health and Safety Code section 25249.8(b) and Title 27, California Code of Regulations, Section 25306. All further references are to sections of Title 27 of the California Code of Regulations, unless indicated otherwise.

Chemical	CAS No.	Reproductive Toxicity Endpoints	References	Chemical Use
Nitrous Oxide (N <sub>2</sub> O)	10024-97-2	Female reproductive toxicity Developmental Toxicity	NIOSH (1994a,b)	Anesthetic, analgesic, anxiolytic foaming agent for whipped cream, oxidant for organic compounds, nitrating agent for alkali metals, auto racing engine injection.

**Background on listing via the authoritative bodies mechanism:** A chemical must be listed under Proposition 65 and its implementing regulations (Section 26306) when two conditions are met:

1. An authoritative body formally identifies the chemical as causing reproductive toxicity (Section 25306(d)(1)).
2. The evidence considered by the authoritative body meets the sufficiency criteria contained in the regulations (Section 25306(g)).

However, the chemical is not listed if scientifically valid data that were not considered by the authoritative body clearly establish that the sufficiency of evidence criteria were not met (Section 25306(h)).

The National Institute for Occupational Safety and Health (NIOSH) is one of several institutions designated as an authoritative body for the identification of chemicals as causing reproductive toxicity (Section 25306(l)).

OEHHA is the lead agency for implementation of Proposition 65<sup>4</sup>. After an authoritative body has made a determination that a chemical causes cancer or reproductive toxicity, OEHHA evaluates whether listing under Proposition 65 is required using the criteria contained in the regulations.

**OEHHA's determination:** Nitrous oxide (N<sub>2</sub>O) meets the criteria for listing as known to the State to cause reproductive toxicity under Proposition 65, based on findings of NIOSH (NIOSH, 1994a,b), as outlined below.

**Formal identification and sufficiency of evidence:** OEHHA is relying on NIOSH's conclusion that N<sub>2</sub>O causes developmental and female reproductive effects. This conclusion meets the formal identification requirement of Section 26306(d)(1)<sup>5</sup> and is made in two NIOSH documents:

- ALERT: (Request for Assistance in) Controlling Exposures to Nitrous Oxide During Anesthetic Administration (NIOSH, 1994a)

- Technical Report: Control of Nitrous Oxide in Dental Operatories (NIOSH, 1994b)

NIOSH cites both animal and human studies in support of its identification of N<sub>2</sub>O as causing developmental and female reproductive toxicity (NIOSH, 1994a,b).

The conclusions in the NIOSH reports include the following:

- "CONCLUSIONS . . . Data from animal studies demonstrate that exposure to N<sub>2</sub>O may cause adverse reproductive effects. Studies of workers exposed to N<sub>2</sub>O have reported adverse health effects such as reduced fertility, spontaneous abortion, and neurological, renal, and liver disease. The recommendations in this Alert should therefore be followed to minimize worker exposures." (page 3, NIOSH, 1994a)
- "HEALTH EFFECTS. Animal studies have shown adverse reproductive effects in female rats exposed to airborne concentrations of N<sub>2</sub>O [Corbett et al. 1973; Vieira 1979; Vieira et al. 1980, 1983]. Data from these studies indicate that exposure to N<sub>2</sub>O during gestation can produce adverse health effects in the offspring." (page 2, NIOSH, 1994a)
- "Several studies of workers have shown that occupational exposure to N<sub>2</sub>O causes adverse effects such as reduced fertility [Rowland et al. 1992], spontaneous abortions, and neurologic, renal, and liver disease [Cohen et al. 1980]. A recent study [Rowland et al. 1992] reported that female dental assistants exposed to unscavenged N<sub>2</sub>O for 5 or more hours per week had a significant risk of reduced fertility compared with unexposed female dental assistants. The exposed assistants had a 59% decrease in probability of conception for any given menstrual cycle compared with the unexposed assistants. For dental assistants who used scavenging systems during N<sub>2</sub>O administration, the probability of conception was

<sup>4</sup> Health and Safety Code section 25249.12 and Title 27, Cal. Code of Regs., section 25102(o).

<sup>5</sup> "the chemical . . . is the subject of a report which is published by the authoritative body and which concludes that the chemical causes . . . reproductive toxicity"

not significantly different from that of the unexposed assistants.” (page 2, NIOSH, 1994a)

- “Be aware that N<sub>2</sub>O may cause the following health effects:
  - Decreases in mental performance, audiovisual ability, and manual dexterity
  - Adverse reproductive effects” (worker factsheet included in NIOSH, 1994a)

In addition, NIOSH has otherwise identified nitrous oxide as causing reproductive toxicity by basing a Recommended Exposure Limit in part on that toxicological endpoint.<sup>6</sup>

“The NIOSH Recommended Exposure Limit (REL) is 25 parts per million (ppm) of air or less during administration. The REL is based on avoidance of reproductive and impaired psychomotor health effects.” (page iii, NIOSH, 1994b)

The cited reports (NIOSH, 1994a,b) meet the formal identification criterion in Section 25306(d)(2)(C)<sup>7</sup>.

OEHHA has reviewed the studies or study descriptions cited by NIOSH (1994a,b) as providing the basis for NIOSH’s conclusions regarding the female reproductive and developmental toxicity of N<sub>2</sub>O, relative to the criteria in Section 25306(g). The criteria for listing N<sub>2</sub>O as known to cause reproductive toxicity by the authoritative bodies mechanism have been met. Therefore, OEHHA has determined that N<sub>2</sub>O must stay on the Proposition 65 list, and an additional endpoint should be added to the existing listing.

**Request for comments:** OEHHA is requesting comments as to whether this chemical meets the criteria set forth in the Proposition 65 regulations for listings via the authoritative bodies mechanism (Section 25306) and should, therefore, remain on the list of chemicals known to the state to cause reproductive toxicity, with the additional endpoint of female reproductive toxicity.

In order to be considered, comments must be received by OEHHA by 5:00 p.m. on **MONDAY October 21, 2013**. We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to [P65Public.comments@oehha.ca.gov](mailto:P65Public.comments@oehha.ca.gov). Please include “nitrous oxide” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the address below.

**Mailing Address:** Ms. Cynthia Oshita  
Office of Environmental  
Health Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, CA 95812-4010  
(916) 323-2265

**Fax:** 1001 I Street

**Street Address:** Sacramento, CA 95814

Comments received during the public comment period will be posted on the OEHHA web site after the close of the comment period.

If you have any questions, please contact Ms. Oshita at [cynthia.oshita@oehha.ca.gov](mailto:cynthia.oshita@oehha.ca.gov) or at (916) 445-6900.

**References**

National Institute for Occupational Safety and Health (NIOSH), 1994a. *NIOSH Alert: Request for Assistance in Controlling Exposures to Nitrous Oxide During Anesthetic Administration*. NIOSH Publication No. 94-100. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, NIOSH, April 1994. Available online at: <http://www.cdc.gov/niosh/docs/94-100/>.

National Institute for Occupational Safety and Health (NIOSH), 1994b. *Technical Report: Control of Nitrous Oxide in Dental Operatories*. NIOSH Publication No. 94-129. U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, NIOSH, Division of Physical Sciences and Engineering, Engineering Control Technology Branch, Cincinnati, OH. September 1994. (Authors: McGlothlin James D., Crouch Keith G., Mickelson R. L.)

**OFFICE OF ENVIRONMENTAL  
HEALTH HAZARD ASSESSMENT**

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

**NOTICE TO INTERESTED PARTIES  
PROPOSITION 65 LISTED CHEMICALS  
AFFECTED BY HAZARD  
COMMUNICATIONS STANDARD  
AMENDMENTS**

**SEPTEMBER 20, 2013**

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) intends to take various actions related to certain chemicals listed under Proposition 65 as known to cause reproductive toxicity that were added pursuant to

<sup>6</sup> “the chemical . . . has otherwise been identified as causing . . . reproductive toxicity by the authoritative body in a document that indicates that such identification is a final action”

<sup>7</sup> “[the document is] Published by the authoritative body in a publication such as, but not limited to, the federal register. . . .”

Labor Code Section 6382(d), which is incorporated by reference in Health and Safety Code Section 25249.8(a). The basis for these listings was the chemicals' identification as causing reproductive toxicity in the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLVs) or their inclusion in 29 C.F.R. part 1910, subpart Z, on "Toxic and Hazardous Substances". The TLVs and subpart Z were previously specified in the federal Occupational Health and Safety Administration (OSHA) Hazard Communication Standards (Title 29, Code of Federal Regulations, section 1900.1200)<sup>1</sup> as sources to be treated "as establishing that the chemicals listed in them are hazardous".

OEHHA is initiating these actions based on changes to the federal regulations that affect the basis for the original listings. Specifically, in March 2012, OSHA extensively amended the regulations contained in Title 29, C.F.R., section 1910.1200. In the 2012 version of the regulation, section 1910.1200(d)(3)(ii), which specifically referred to the ACGIH TLV list, and section 1910.1200(d)(3)(i), which specifically referred to the subpart Z regulation on Toxic and Hazardous Substances, were deleted. OEHHA has determined that these changes have eliminated the ACGIH TLVs and

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<sup>1</sup> The Code of Federal Regulations will hereafter be cited as C.F.R.

subpart Z as definitive sources for identifying chemicals that are known to cause reproductive toxicity.

OEHHA has determined that certain chemicals listed via the mechanism and bases described above continue to meet the criteria for listing as known to cause reproductive toxicity, based either on their inclusion on the Director's List of the Department of Industrial Relations<sup>2</sup>, also incorporated by reference in Labor Code section 6382(d), or via the "formally required" listing mechanism<sup>3</sup> or the authoritative bodies listing mechanism.<sup>4</sup> OEHHA will separately publish notices concerning the proposed change of basis for the individual listings. Certain other chemicals will be referred to the state's qualified experts, the Developmental and Reproductive Toxicant Identification Committee (DARTIC), for consideration of retention of listing. The table below summarizes the action for each affected chemical. **The public will be given the opportunity to comment on these actions. Separate notices will be published for the actions, which will include information on public comment period dates.**

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<sup>2</sup> Title 8 California Code of Regulations §339.

<sup>3</sup> See Health and Safety Code section 25249.8(b) and Title 27, Cal. Code of Regulations, section 25902. All further references are to sections of Title 27 of the California Code of Regulations, unless indicated otherwise.

<sup>4</sup> See Health and Safety Code section 25249.8(b) and Title 27, California Code of Regulations, section 25306.

Chemical	CASNo.	Action <sup>5</sup>
<i>tert</i> -Amy methyl ether	994-05-8	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
n-Butyl glycidyl ether	2426-08-6	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
Carbaryl	63-25-2	Issue Notice of Intent to Change Basis for Listing as known to cause reproductive toxicity to authoritative bodies mechanism based on NIOSH findings.
Chloroform	67-66-3	Refer to the DARTIC to determine whether to retain chemical on the Proposition 65 list as known to cause reproductive toxicity.
2-Chloropropionic acid	598-78-7	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
1,2-Dibromo-3-chloropropane	96-12-8	Issue Notice of Intent to Change Basis for Listing as known to cause reproductive toxicity to “formally required” mechanism based on OSHA requirements.
Dichloroacetic acid	79-43-6	Issue Notice of Intent to Change Basis for Listing as known to cause reproductive toxicity to authoritative bodies mechanism based on U.S. EPA findings.
Diglycidyl ether	2238-07-5	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
N,N-Dimethyl-acetamide	127-19-5	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
Ethyl- <i>tert</i> -butyl ether	637-92-3	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
Ethylene oxide	75-21-8	Issue Notice of Intent to Change Basis for Listing as known to cause reproductive toxicity to “formally required” mechanism based on OSHA and US EPA requirements.

<sup>5</sup> DIR: Department of Industrial Relations; US EPA: US Environmental Protection Agency; NIOSH: National Institute for Occupational Safety and Health.

Chemical	CAS No.	Action
2-Ethylhexanoic acid	149-57-5	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
Hexafluoroacetone	684-16-2	Issue Notice of Intent to Change Basis for Labor Code Listing based on California DIR Director's List.
Lead	—	Issue Notice of Intent to Change Basis for Listing as known to cause reproductive toxicity to "formally required" mechanism based on OSHA requirements.
Methyl n-butyl ketone	591-78-6	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
Methyl isopropyl ketone	563-80-4	Refer to the DARTIC to determine whether to retain chemical on the Proposition 65 list.
α-Methyl styrene	98-83-9	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
Nitrous oxide	10024-97-2	Issue Notice of Intent to Change Basis for Listing to authoritative bodies mechanism based on NIOSH findings.
p,p'-Oxybis (benzene sulfonyl hydrazide)	80-51-3	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
Phenyl glycidyl ether	122-60-1	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
Phenylphosphine	638-21-1	Issue Notice of Intent to Change Basis for Labor Code Listing based on California DIR Director's List.
1,3,5-Triglycidyl-s-triazinetriene	2451-62-9	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.
4-Vinyl cyclohexene	100-40-3	Refer to the DARTIC to determine whether to retain chemical on the Proposition 65 list as known to cause reproductive toxicity.
Vinyl cyclohexene dioxide	106-87-6	Refer to the DARTIC to determine whether to retain listing as causing reproductive toxicity.

If you have any questions, please contact Carol Monahan Cummings, OEHHA Chief Counsel, at [carol.monahan-cummings@oehha.ca.gov](mailto:carol.monahan-cummings@oehha.ca.gov) or (916) 322-0493.

**OAL REGULATORY  
DETERMINATIONS**

**DETERMINATION OF ALLEGED  
UNDERGROUND REGULATION**

**(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](mailto:mmolina@oal.ca.gov).

**DEPARTMENT OF STATE HOSPITALS**

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

**2013 OAL DETERMINATION NO. 4  
(OAL FILE NO. CTU2013-0214-01)**

**REQUESTED BY: MICHAEL G. ST. MARTIN**  
**CONCERNING: Administrative Directive No. 655 concerning the Copy and Shipment Center issued by Coalinga State Hospital, California Department of State Hospitals**  
**DETERMINATION ISSUED PURSUANT TO GOVERNMENT CODE SECTION 11340.5.**

**SCOPE OF REVIEW**

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the

challenged rule meets the definition of “regulation” as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California Code of Regulations, title 1, section 250.<sup>1</sup> OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

**CHALLENGED RULE**

At issue is whether Administrative Directive No. 655 (AD 655) concerning the Copy and Shipment Center, issued by Coalinga State Hospital, California Department of State Hospitals (Department),<sup>2</sup> effective on December 11, 2012, attached hereto as Exhibit A, is an underground regulation. AD 655 incorporates by reference Internal Management Directives Nos. 624 and 651 and Administrative Directive 608.

**DETERMINATION**

OAL determines that AD 655 and the incorporated by reference documents (IMD 624 and IMD 651) meet the definition of “regulation” that should have been adopted pursuant to the APA, except in those instances where AD 655 and the incorporated by reference documents (IMD 624 and IMD 651) restate existing statute or duly adopted regulation.

**FACTUAL BACKGROUND**

On March 21, 2008, Michael G. St. Martin (Petitioner) submitted a petition to OAL challenging a version of Administrative Directive 624 (AD 624) issued by Coalinga State Hospital (CSH), a state hospital under the jurisdiction of the Department of State Hospitals. AD 624 was issued by CSH on August 9, 2007. That version of AD 624 was found by OAL to meet the definition of a

<sup>1</sup> As defined by title 1, section 250(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.

<sup>2</sup> Pursuant to AB 1470 (Stats. 2012, ch. 24), the Department of State Hospitals was created and state hospitals which were formerly under the jurisdiction of the Department of Mental Health (DMH) are now under the jurisdiction of the Department. Pursuant to Welfare and Institutions Code section 4005.5, all regulations relating to state hospitals adopted by the State Department of Mental Health are vested in the Department.

“regulation” as defined in Government Code section 11342.600 that should have been adopted pursuant to the APA, i.e., an underground regulation, in OAL 2008 Determination No. 24.

On August 9, 2010, the Department adopted regulation sections 4415 and 4420 of title 9 of the California Code of Regulations. Section 4415 provides a definition of “mail” and section 4420 is titled “Limitations on Size, Weight, Volume and Frequency/Number of Packages Allowed.” Sections 4415 and 4420 addressed some of the issues covered by the August 9, 2007 version of AD 624.

On January 21, 2011, OAL received a petition from Petitioner challenging Internal Management Directive 624 (IMD 624) issued by the Department. IMD 624 was effective on October 12, 2010, and revised on November 10, 2010. IMD 624 dealt with many of the same issues addressed herein and is titled: “Individuals’ Mail and Packages.” It is attached hereto as Exhibit B. On April 6, 2011, the Department provided a Certification signed by the Deputy Director pursuant to title 1, section 280, of the California Code of Regulations, certifying that the Department would not use, enforce, or attempt to enforce the challenged IMD 624.

On February 14, 2013, OAL received a petition from Petitioner challenging AD 655 issued by the Department of State Hospitals — Coalinga State Hospital (CSH). AD 655 is titled “Copy and Shipping Center.” It was issued by the Executive Director of CSH and was effective as of December 11, 2012. The Petitioner alleges that AD 655 meets the definition of a “regulation” that should have been adopted pursuant to the APA, but was not. The Petitioner challenges the entire AD 655, which incorporates by reference Internal Management Directive 624 (Exhibit C), Internal Management Directive 651 (Exhibit D) and Administrative Directive 608 (AD 608 was not provided by Petitioner, and therefore, was not reviewed by OAL), all issued by the Department of State Hospitals — CSH. The versions of the incorporated documents (IMD 624, IMD 651 and AD 608) are not indicated in AD 655. The August 21, 2012 version of IMD 624 and the November 10, 2011 version of IMD 651 were provided by Petitioner, and therefore, are the documents that were considered by OAL.

On June 10, 2013, OAL received a response to the petition from the Department. The Department argues that AD 655 does not meet the definition of a regulation that should have been adopted pursuant to the APA for the following reasons:

1. AD 655, IMD 624 and IMD 651 are not regulations. They are guides as to how mail and copy services are to be handled.
2. AD 655 does not apply generally, but only applies to CSH.

3. AD 655 is not “quasi-legislative.”
4. AD 655 is a restatement of law.
5. AD 655 is exempt pursuant to Government Code section 11340.9(d) as it concerns the “internal management” of CSH.
6. AD 655 should be exempt as it is issued by CSH and relates only to CSH like rules adopted by the wardens of particular prisons that only concern their prison are exempt.
7. AD 655 is a matter of DSH policy and is constitutionally permissible.

OAL received no comments from the public.

On July 10, 2013, OAL received the Petitioner’s rebuttal to the Department’s response. The rebuttal did not raise any new, relevant issues.

### UNDERGROUND REGULATIONS

Government Code section 11340.5, subdivision (a), provides that:

No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of Government Code section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of “regulation” as defined in Government Code section 11342.600 and should have been adopted pursuant to the APA (Gov. Code sec.11340(b)). An OAL determination is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

### ANALYSIS

CSH is a state mental health hospital under the jurisdiction of the Department.<sup>3</sup> CSH, like other state mental hospitals, has limited authority to act as an independent

<sup>3</sup> Welfare and Institutions Code section 4100 states: The department [of Mental Health] has jurisdiction over the following institutions: . . . (b) Coalinga State Hospital. . . .

entity. The responsibility of governing all state mental hospitals lies with the Department. Welfare and Institutions Code section 4101 provides that:

Except as otherwise specifically provided elsewhere in this code, all of the institutions under the jurisdiction of the State Department of State Hospitals shall be governed by uniform rule and regulation of the State Department of State Hospitals and all of the provisions of this chapter shall apply to the conduct and management of those institutions.

Thus, the Department has the authority to adopt regulations governing state hospitals, including CSH, and has, in fact, done so in the past. (See, *infra*.)

The individuals committed to CSH are either “LPS” or “non-LPS” patients. Non LPS patients are patients that are placed in or committed to CSH pursuant to legal authority other than the Lanterman–Petris–Short (LPS) Act,<sup>4</sup> commencing with Section 5000, of Part 1, Division 5 of the Welfare and Institutions Code. For example, (Welfare and Institutions Code section 6600, et seq.), the Sexually Violent Predator Law, provides that inmates of the Department of Corrections and Rehabilitation who are found by a court to be sexually violent predators are committed as a patient of the Department. The Department places the patient in an appropriate facility.<sup>5</sup>

OAL’s authority to issue a determination extends only to the limited question of whether the challenged rule is a “regulation” subject to the APA.<sup>6</sup> This analysis will determine (1) whether the challenged rule is a “regulation” within the meaning of Government Code section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

<sup>4</sup> Pursuant to Welfare and Institutions Code section 5001, the Lanterman–Petris–Short (LPS) Act provides for care for mentally disordered persons, developmentally disabled persons, and persons impaired by chronic alcoholism. According to the Department’s website (<http://www.dsh.ca.gov/Coalinga/> viewed on July 24, 2013), CSH treats forensically committed individuals, mostly sexually violent predators from the California Department of Corrections and Rehabilitation, not LPS patients.

<sup>5</sup> Welfare and Institutions Code section 6604 states:

. . . If the court or jury determines that the person is a sexually violent predator, the person shall be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility designated by the Director of Mental Health.

<sup>6</sup> We note that the Department’s response also requested that if OAL found AD 655 to contain underground regulations, then OAL “allow DSH to continue use of A.D. 655 until valid regulations can be promulgated. . . .” OAL does not have the authority to allow a state agency to continue to use a rule found to be an underground regulation. OAL does not have the authority to enforce its determinations; however, state agencies should conduct themselves in accordance with the law.

A regulation is defined in Government Code section 11342.600 as:

. . . 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.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4<sup>th</sup> 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, § 11342, subd. (g)).<sup>7</sup>

As stated in *Tidewater*, the first element used to identify a “regulation” is whether the rule applies generally. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.<sup>8</sup>

AD 655 and the incorporated by reference documents (IMD 624 and IMD 651) apply to all individuals committed to CSH, to persons who send or receive mail to or from individuals committed to CSH, and the employees of CSH. As *Tidewater* points out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. Individuals committed to CSH, their correspondents and employees of CSH are clearly defined classes of persons. The first element is, therefore, met.

The second element used to identify a “regulation” as stated in *Tidewater* is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

As noted above, Welfare and Institutions Code section 4100 states that the Department has jurisdiction over CSH. Welfare and Institutions Code section 4101 requires all of the institutions under the jurisdiction of the Department be governed by uniform rule and regulation of the Department. In addition, Welfare and Insti-

<sup>7</sup> Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

<sup>8</sup> See also *Roth v. Department Of Veterans Affairs*, (1980) 110 Cal.App.3d 14, 19; 167 Cal.Rptr. 552, 557.

tutions Code section 4027, which applies to Non-LPS patients, states:

The State Department of Mental Health may adopt regulations concerning patients' rights and related procedures applicable to the inpatient treatment of mentally ill offenders receiving treatment . . . , persons receiving treatment as mentally disordered sex offenders, and inmates of jail psychiatric units.

AD 655 and the incorporated by reference documents (IMD 624 and IMD 651) affect all aspects of the Copy and Shipping Center at CSH. AD 655 establishes limitations and requirements on the procedures for sending and receiving mail, provides for very detailed requirements for the obtaining of appointments and the processing of packages, the transfer of funds from the patient's accounts, the retention of funds, copy restrictions and the sealing and confiscating of mail and packages of all CSH patients. AD 655, therefore, implements Welfare and Institutions Code sections 4100 and 4101 which deal with the Department's responsibilities to adopt regulations to govern state hospitals with respect to Non-LPS patients. In addition, AD 655 implements, interprets and makes specific Welfare and Institutions Code section 4027 which permits the Department to adopt regulations concerning patients' rights and related procedures. The second element in *Tidewater* is thereby met.

AD 655 and the incorporated by reference documents (IMD 624 and IMD 651) therefore meet the definition of "regulation" in Government Code section 11342.600 with respect to all matters that are not restatements of law.

The final issue to examine is whether the challenged rule falls within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies or specific exemptions that pertain to a particular rulemaking agency or a specific program. Pursuant to Government Code section 11346, the procedural requirements established in the APA "shall not be superseded or modified by any subsequent legislation *except to the extent that the legislation shall do so expressly.*" (Emphasis added.)

As discussed below, OAL finds no APA exemption applicable to AD 655 and the incorporated by reference documents (IMD 624 and IMD 651). However, certain provisions contained in AD 655 and the incorporated by reference documents (IMD 624 and IMD 651), are not underground regulations in that they are restatements of law.

AGENCY RESPONSE

The Department proposed many reasons to consider with respect to their contention that AD 655 and the incorporated by reference documents (IMD 624 and IMD 651) do not contain underground regulations.

1. The Department's contention that AD 655 is a restatement of law is in some respects correct. Any provision that is only a reiteration of a statute or a duly adopted regulation is not an underground regulation. The provision is merely a reiteration of law if it does not further implement, interpret or make specific the statute or regulation. Other provisions that further implement, interpret or make specific the statute or regulation that were not enacted by the Legislature or adopted through the APA process, are underground regulations. Therefore, the various provisions of AD 655, IMD 624 and IMD 651 that simply restate a statute or a duly adopted regulation and do not further implement, interpret or make specific the statute or regulation that is being restated, is not an underground regulation. For instance, IMD 624 defines "mail" as:

. . . paper documents sent in a standard sized, legal sized, or special handling envelope (Priority mail, express mail, etc.) with a weight of 16 ounces or less, and thickness of 1/2 inches or less.

This definition is a restatement of section 4415 of title 9 of the California Code of Regulations.

Another example of a restatement of law appears in IMD 651. It states that:

Each package sent and each package received shall not be more than 24 inches long by 19 inches in length by 12 inches high, and shall weigh no more than 30 pounds.

This is a restatement of section 4420(b) of title 9 of the California Code of Regulations. Restatements of statutes and duly adopted regulations are not underground regulations.

2. The Department asserts that AD 655 should be exempt as it is issued by CSH and relates only to CSH, like rules adopted by the wardens of particular prisons that only concern their prison are exempt. The Department is referring to an exemption found in Penal Code section 5058(c)(1) and is commonly referred to as a "local rule" exemption. However, this "local rule" exemption *only* applies to prisons under the jurisdiction of the California Department of Corrections and Rehabilitation. Neither the Department nor OAL

has the authority to grant this APA exemption to the Department. A “local rule” exemption for the Department must be expressly provided by the Legislature. (Gov. Code, sec. 11346.) We note that the Legislature did add Section 7295 to the Welfare and Institutions Code in 2012, which provides the Department with a very limited exemption from the APA. This exemption is for the development of a “list of items that are deemed contraband and prohibited on hospital grounds and [to] control and eliminate contraband on hospital grounds.” Pursuant to section 7295 of the Welfare and Institutions Code, a state hospital shall form a contraband committee, comprised of hospital management and employees designated by the hospital’s director, to develop the list of contraband items. The committee shall develop the list with the participation of patient representatives, or the patient government of the hospital, if one is available, and the Office of Patients’ Rights. “Contraband” means materials, articles, or goods that a patient is prohibited from having in his or her possession because the materials, articles, or goods present a risk to the safety and security of the facility. AD 655 does not concern the adoption of a “contraband” list. Therefore, that exemption does not apply. The Department has not identified any other specific statutory exemptions applicable to actions by the Department, and OAL is likewise unaware of any.

3. The Department alleges that AD 655 and its incorporated IMD 624 and IMD 651 are not regulations but rather “a guide to the staff at the facility of how to handle the mail and how to handle the use of funds.” As indicated *supra*, Government Code section 11340.5 specifically states that agencies shall not use “guidelines” that meet the definition of “regulation” unless adopted pursuant to the APA. As discussed *supra*, AD 655 and the incorporated by reference documents (IMD 624 and IMD 651), meet the definition of “regulation.”
4. The Department’s contention that a “rule does not apply ‘generally’ when it relates to practices for which there is a need for flexible approaches” is without merit. The Department alleges that since AD 655 only applies to CSH, it does not apply generally. Such is not the case as is discussed, *supra*. CSH is a hospital which admits a class of persons that changes as patients come and go. It is an open class. Therefore, AD 655 is a general rule because it applies to this open class. Furthermore, the APA explicitly states that only exemptions *expressed* by the Legislature are valid and the

Legislature has not adopted an exemption for “flexibility.”

5. The Department’s request that CDCR’s statutory exemption should apply to them is not a matter within the authority of the Department or OAL. The Department contends that due to the fact that they have forensic patients and because CSH is situated on CDCR’s premises, Penal Code section 5058(c)(1) should apply to them. However, the statutory exemption in Penal Code section 5058(c)(1) currently only applies to CDCR and OAL is without authority to extend an exemption beyond that articulated by the Legislature.
6. The Department’s contention that AD 655 is not quasi-legislative is incorrect. The term “quasi-legislative” is not defined in the APA, so we look to the judicial meaning of quasi-legislative to determine whether the challenged action reflects the exercise of quasi-legislative power. *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4<sup>th</sup> 557, *supra* at 574–575, states that “[a] written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially legislative in nature even if it merely interprets applicable law.” The challenged rules in AD 655 and the incorporated by reference documents (IMD 624 and IMD 651) that are not restatements of law, are written statements of policy that indicate how the Department intends to apply rules concerning the Copy and Shipping Center generally as to all current and future patients. Therefore, those challenged rules that are not restatements of statutes or regulation are the exercise of quasi-legislative action on the part of the Department.
7. The Department’s contention that AD 655 is exempt pursuant to the internal management exemption in the APA is not valid. Government Code section 11340.9(d) states that “[a] regulation that relates only to the internal management of the state agency” is exempt. The courts have interpreted this exemption very narrowly. The courts have indicated that this exemption only applies if:
  - The rule affects **only** the employees of the issuing agency, AND
  - The rule does not involve “a matter of serious consequence involving an important public interest.” (See *Poschman v. Dumke* (1973) 31 Cal.App.3d 932 and *Grier v. Kizer* (1990) 219 Cal.App.3d 422).

AD 655 does not affect solely the employees of the Department, but also affects the patients of CSH and those sending mail to, or receiving mail from, the patients. Having not met the first prong listed above, OAL finds that the internal management exemption does not apply.

- 8. The Department’s contention that AD 655 is a matter of departmental “policy” and is “constitutionally permissible” may be true; however, there is no express statutory exemption from complying with the APA process if a rule is departmental “policy” or “constitutionally permissible.”

CONCLUSION

In accordance with the above analysis, OAL determines that AD 655 and the incorporated by reference documents (IMD 624 and IMD 651) meet the definition of “regulation” that should have been adopted pursuant to the APA, except in those instances where AD 655 and the incorporated by reference documents (IMD 624 and IMD 651) restate existing statute or duly adopted regulation.

Date: August 26, 2013 /s/ Debra M. Cornez Director /s/ Elizabeth A. Heidig Senior Counsel

cc: Cliff Allenby Alice Lee

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 3, 2013 To: Nicholas Wilds From: Chapter Two Compliance Unit

Subject: 2013 OAL DETERMINATION NO. 5 (S) (CTU2013-0711-01) (Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation page 8 titled “Property Limits,” of the California Correctional Institution (CCI) Orientation Manual.

On July 11, 2013, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether page 8 titled “Property Limits,” of the California Correctional Institution (CCI) Orientation Manual, constitutes an underground regulation. The rule appears to be in the Orientation Manual of the California Correctional Institution in Tehachapi, California (Page 8 of the manual is the only page provided). No title or author contribution was provided except for the designation on the upper left hand corner that states: “CCI Orientation Manual Facilities A and B SHU/ASU”). Page 8 of the CCI Orientation Manual, titled “Property Limits,” appears to have been issued by the warden of CCI. A copy 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,<sup>1</sup> which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>2</sup> 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

<sup>1</sup> “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.

<sup>2</sup> 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.

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 CCI and applies solely to the inmates of the CCI. Inmates housed at other institutions are governed by those other institutions’ criteria for Property Limits. 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.<sup>3</sup>

<sup>3</sup> 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  
Director

\_\_\_\_\_/s/  
Elizabeth A. Heidig  
Senior Counsel

Copy: Dr. Jeffrey Beard  
Tim Lockwood

**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](mailto:mmolina@oal.ca.gov).

**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION**

Date: September 3, 2013  
To: Robert Dahl  
From: Chapter Two Compliance Unit  
Subject: **2013 OAL DETERMINATION NO. 6 (S)**  
**(CTU2013-0715-01)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation the “Behavioral Incentive Program” contained in the California State Prison — Sacramento Psychiatric Services Unit Orientation Handbook

On July 15, 2013, the Office of Administrative Law (OAL) received your petition asking for a determination as to whether the “Behavioral Incentive Program” constitutes an underground regulation. The challenged rule is in the California State Prison — Sacramento Psychiatric Services Unit (PSU) Orientation Handbook (revised December 2012). This California State Prison — Sacramento Psychiatric Services Unit Orientation Handbook (revised December 2012) was approved by B. Brizendine, Psy.D., Senior Psychologist Supervisor — PSU I, K. Morgan, Ph.D., Senior Psychologist Su-

pervisor — PSU II and R. O’Brien, PSU Captain, 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,<sup>1</sup> which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>2</sup> 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:

<sup>1</sup> “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.

<sup>2</sup> 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.

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 California State Prison — Sacramento Psychiatric Services Unit and applies solely to the inmate-patients of the California State Prison — Sacramento Psychiatric Services Unit. Inmates housed at other institutions are governed by those other institutions’ criteria for their behavioral incentive programs. Therefore, the challenged 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.<sup>3</sup>

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  
Director

\_\_\_\_\_/s/  
Elizabeth A. Heidig  
Senior Counsel

Copy: Dr. Jeffrey Beard  
Tim Lockwood

<sup>3</sup> 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.]

**SUMMARY OF REGULATORY  
ACTIONS**

**REGULATIONS FILED WITH  
SECRETARY OF STATE**

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

File# 2013-0729-01  
BOARD OF ACCOUNTANCY  
Continuing Education

This rulemaking action largely conforms California rules for continuing education of accountants to the national standards reflected in the National Association of State Boards of Accountancy's Statement of Standards for Continuing Professional Education (Revised January, 2012). In addition, the action makes continuing education requirements for those applying for reissuance of cancelled licenses, whose practice experience is five or more years old, the same as for those converting from inactive to active status. The action also reduces the amount of continuing education hours that must be spent on issues of fraud.

Title 16  
California Code of Regulations  
ADOPT: 80.1, 80.2, 87.1 AMEND: 12, 12.5, 37, 80, 81, 87, 87.8, 87.9, 88, 88.1, 88.2, 89 REPEAL: 87.1, 87.7  
Filed 09/10/2013  
Effective 01/01/2014  
Agency Contact: Matthew Stanley (916) 561-1792

File# 2013-0731-01  
CALIFORNIA ARCHITECTS BOARD  
Delegation of Certain Functions

This rulemaking by the California Architects Board (CAB) amends title 16, section 103 of the California Code of Regulations by adding the authority to approve settlement agreements for the revocation or surrender of a licensee's California architecture license to the list of powers delegated by the CAB board to the executive officer.

Title 16  
California Code of Regulations  
AMEND: 103  
Filed 09/09/2013  
Effective 01/01/2014  
Agency Contact: Hattie Johnson (916) 575-7203

File# 2013-0830-03  
DEPARTMENT OF CONSERVATION  
Conflict of Interest Code

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

Title 14  
California Code of Regulations  
AMEND: 1670  
Filed 09/10/2013  
Effective 10/10/2013  
Agency Contact: Michael P. Krug (916) 445-3598

File# 2013-0821-04  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
IDEA Part C Timelines for Early Assessment and Evaluation

This action proposes to make a change without regulatory effect to California Code of Regulations title 17, section 52086 in order to make it consistent with changes to federal regulations by removing an option for extension of time for completion of evaluation and assessment for early intervention services. Section 52086 currently includes a subdivision that allows a parent to request an extension of the 45-day time line for completion of evaluation and assessment.

Title 17  
California Code of Regulations  
AMEND: 52086  
Filed 09/10/2013  
Agency Contact: Hilary Sisson (916) 601-5356

File# 2013-0812-02  
DEPARTMENT OF FOOD AND AGRICULTURE  
Light Brown Apple Moth Interior Quarantine

This regulatory action removes currently designated quarantine areas for the Light Brown Apple Moth and adopts requirements for establishing a quarantine area and for removing the designation.

Title 3  
California Code of Regulations  
AMEND: 3434(b), 3434(c)  
Filed 09/10/2013  
Effective 01/01/2014  
Agency Contact: Stephen S. Brown (916) 654-1017

File# 2013-0905-03  
DEPARTMENT OF FOOD AND AGRICULTURE  
Japanese Beetle Eradication Area

This emergency regulatory action establishes El Dorado County as an area of eradication for the Japanese beetle (*Popillia japonica*). The effect of the amendment

provides authority for the state to perform eradication activities against the Japanese beetle within El Dorado County. At this time, the other counties also proclaimed to be eradication areas are Los Angeles, Merced, Orange, Placer, Riverside, Sacramento, San Bernardino and San Diego County.

Title 3  
California Code of Regulations  
AMEND: 3589(a)  
Filed 09/06/2013  
Effective 09/06/2013  
Agency Contact: Stephen S. Brown (916) 654-1017

File# 2013-0829-01  
DEPARTMENT OF INSURANCE  
Mental Health Parity

The Department of Insurance (Department) submitted this emergency readoption action to keep in effect the regulations adopted in OAL File No. 2013-0228-04E. In that action, the Department adopted in title 10 of the California Code of Regulations four sections pertaining to treatment of autism under a new article pertaining to mental health parity. The regulations pertain to insurer coverage under disability or health insurance policies, as further specified under Insurance Code sections 10144.5 and 10144.51, of therapies for individuals diagnosed with pervasive developmental disorder or autism. The proposed regulations prohibit specified conditions or limitations on coverage of these therapies when determined to be medically necessary to ensure compliance with the Mental Health Parity Act.

Title 10  
California Code of Regulations  
ADOPT: 2562.1, 2562.2, 2562.3, 2562.4  
Filed 09/09/2013  
Effective 09/09/2013  
Agency Contact: George Teekell (415) 538-4390

File# 2013-0801-01  
DEPARTMENT OF TOXIC SUBSTANCES  
CONTROL  
RCRA — Listed Hazardous Waste Container Residues

This action without regulatory effect corrects a reference to title 22, California Code of Regulations, section 66261(d).

Title 22  
California Code of Regulations  
AMEND: 66261.33  
Filed 09/05/2013  
Agency Contact: Charles Corcoran (916) 327-4499

File# 2013-0726-01  
EDUCATION AUDIT APPEALS PANEL  
Audits of K-12 LEAs — FY 2013-14

This action makes two nonsubstantive changes to the audit guide: updates the name of a federal agency and adds a statute reference citation pursuant to a statutory change.

Title 5  
California Code of Regulations  
AMEND: 19816, 19828.4  
Filed 09/05/2013  
Agency Contact:  
Timothy E. Morgan (916) 445-7745

File# 2013-0827-04  
FISH AND GAME COMMISSION  
Upland Game Bird Stamp

This regulatory action amends section 313 to make it current with Fish and Game Code sections 3682.1 and 3682.2 by requiring hunting validations on license documents under the Automated License Data System (ALDS), instead of attaching upland game birds stamps, and no longer allowing for possession of an upland game bird stamp alone, as is indicated in the current regulation, to entitle the holder of the license to take upland game birds. The amendment also provides that any person hunting under the authority of a valid junior hunting license is exempt from section 313.

Title 14  
California Code of Regulations  
AMEND: 313  
Filed 09/10/2013  
Effective 09/16/2013  
Agency Contact: Sheri Tiemann (916) 654-9872

File# 2013-0827-05  
FISH AND GAME COMMISSION  
Upland Game Bird Hunting

The Fish and Game Commission proposed to amend section 300 of title 14 of the California Code of Regulations on upland game bird hunting to adjust the annual number of sage grouse permits, increase the possession limit to triple the daily bag limit, establish an early archery season for pheasant, and provide for a year round Eurasian collard-dove season in Imperial County.

Title 14  
California Code of Regulations  
AMEND: 300  
Filed 09/10/2013  
Effective 09/16/2013  
Agency Contact: Sheri Tiemann (916) 654-9872

File# 2013-0809-01  
 VICTIM COMPENSATION AND GOVERNMENT  
 CLAIMS BOARD  
 Involvement in the Qualifying Crime of Prostitution

This rulemaking action by the California Victim Compensation and Government Claims Board (VCGCB) amends section 649.56 in title 2 of the California Code of Regulations. Specifically, this action adds subdivision (d) to section 649.56 to clarify that victims of human trafficking pursuant to Penal Code section 236.1, who are forced to commit acts of prostitution against their will, have not committed the crime of prostitution. These human trafficking victims therefore are not disqualified from receiving compensation from the VCGCB for crimes committed against them in connection with such prostitution.

Title 2  
 California Code of Regulations  
 AMEND: 649.56  
 Filed 09/09/2013  
 Effective 09/09/2013  
 Agency Contact: Geoff Feusahrens (916)491-3863

**CCR CHANGES FILED  
 WITH THE SECRETARY OF STATE  
 WITHIN April 10, 2013 TO  
 September 11, 2013**

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

**Title 2**

- 09/09/13 AMEND: 649.56
- 08/23/13 ADOPT: 1859.90.3 AMEND: 1859.2, 1859.51, 1859.61, 1859.90.2, 1859.90.4, 1859.104, 1859.164.2, 1859.184.1
- 08/12/13 ADOPT: 579, 579.1, 579.2, 579.4, 579.24
- 07/24/13 AMEND: 599.500, 599.508
- 07/23/13 AMEND: 35101
- 06/25/13 ADOPT: 1859.97 AMEND: 1859.2, Form SAB 50-02, 1859.90.2
- 06/24/13 AMEND: 18247.5, 18413, 18427.1
- 06/03/13 AMEND: 43000, 43001, 43002, 43003, 43004, 43005, 43006, 43007, 43008, 43009
- 05/16/13 ADOPT: 59740

- 05/15/13 AMEND: 599.500, 599.501, 599.502, 599.508
- 04/16/13 AMEND: 23000
- 04/12/13 ADOPT: 51.4, 52.11, 56.5, 58.12, 58.13, 61 AMEND: 51.2, 51.6, 52.1, 52.4, 52.8, 53.2, 53.3, 54.1, 55.2, 56.3, 56.4, 57.1, 58.2, 59.1, 59.3, 60.1, 60.3

**Title 3**

- 09/10/13 AMEND: 3434(b), 3434(c)
- 09/06/13 AMEND: 3589(a)
- 08/12/13 AMEND: 3435(b)
- 08/09/13 AMEND: 3423(b)
- 07/30/13 AMEND: 3435(b)
- 07/11/13 AMEND: 3591.12(a)
- 07/08/13 AMEND: 1701, 1701.1, 1701.2, 1702, 1703.2, 1703.3 REPEAL: 1703.4, 1703.5
- 07/02/13 AMEND: 1310
- 06/26/13 AMEND: 2751(b)
- 06/19/13 AMEND: 3435(b)
- 06/19/13 AMEND: 3435(b)
- 05/23/13 ADOPT: 6558, 6577, 6880, 6884, 6886 AMEND: 6452, 6452.2, 6452.4 (renumbered to 6881), 6890 (renumbered to 6864)
- 05/22/13 AMEND: 3434(b)
- 05/20/13 AMEND: 3434(b)
- 05/06/13 ADOPT: 1350 AMEND: 1354
- 04/16/13 AMEND: 3435(b)

**Title 4**

- 09/03/13 AMEND: 4180, 4181
- 08/16/13 ADOPT: 10170.1, 10170.2, 10170.3, 10170.4, 10170.5, 10170.6, 10170.7, 10170.8, 10170.9, 10170.10, 10170.11, 10170.12, 10170.13, 10170.14, 10170.15
- 08/06/13 ADOPT: 2086, 2086.1, 2086.5, 2086.6, 2086.7, 2086.8, 2086.9, 2087, 2087.5, 2087.6, 2088, 2088.6, 2089, 2089.5, 2089.6, 2090, 2090.5, 2090.6, 2091, 2091.5, 2091.6, 2092, 2092.5, 2092.6, 2093
- 07/31/13 AMEND: 12357, 12463, 12464
- 07/25/13 AMEND: 5170, 5190, 5205, 5212, 5230, 5250
- 07/22/13 AMEND: 8072
- 07/22/13 AMEND: 10322, 10325, 10326
- 07/08/13 ADOPT: 5342, 5343, 5344, 5345, 5346, 5347, 5348
- 06/03/13 AMEND: 12101, 12120, 12122, 12126, 12130, 12132, 12140, 12142, 12200, 12200.3, 12200.5, 12200.6, 12200.10B, 12200.14, 12200.20, 12202, 12203, 12203A, 12203.2, 12203.3, 12205.1, 12218, 12218.7, 12218.8, 12218.9, 12220, 12220.3, 12220.5, 12220.6,

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	12220.14, 12220.20, 12222, 12223, 12225.1, 12233, 12235, 12238, 12239, 12301, 12301.1, 12302, 12303, 12304, 12305, 12309, 12310, 12342, 12345, 12349, 12350, 12351, 12352, 12354, 12357, 12358, 12359, 12370, 12372, 12401, 12402, 12403, 12404, 12464, 12480, 12492, 12496, 12500, 12503, 12505, 12508, 12591	08/13/13	ADOPT: 15209 AMEND: 15201, 15210, 15210.1, 15475, 15477, 15481, 15484, 15496, 15497
06/03/13	AMEND: 5170, 5190, 5205, 5212, 5230, 5250	08/01/13	AMEND: 5199(g)(3)(B)
05/23/13	ADOPT: 12364 AMEND: 12004	07/23/13	AMEND: 1933, 5541, 5543, 5559, 5600, 6170
05/22/13	ADOPT: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060	07/02/13	AMEND: 3329
05/16/13	AMEND: 10192, 10193, 10194, 10195, 10196, 10197, 10198	07/01/13	ADOPT: 9792.5.4, 9792.5.5. 9792.5.6. 9792.5.7, 9792.5.8, 9792.5.9, 9792.5.10, 9792.5.11, 9792.5.12, 9792.5.13, 9792.5.14, 9792.5.15.
05/16/13	ADOPT: 5255, 5256 AMEND: 5170, 5230, 5250, 5560, 5580		AMEND: 9792.5.1., 9792.5.3, 9793, 9794, 9795
05/03/13	AMEND: 1843.2	07/01/13	AMEND: 5197
05/02/13	AMEND: 1658	07/01/13	AMEND: 9795.1, 9795.3
04/23/13	AMEND: 8035(e)	07/01/13	ADOPT: 9785.5, 9792.6.1, 9792.9.1, 9792.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.7, 9792.10.8, 9792.10.9
<b>Title 5</b>			AMEND: 9785, 9792.6, 9792.9, 9792.10, 9792.12
09/05/13	AMEND: 19816, 19828.4	07/01/13	ADOPT: 37, 10159 AMEND: 1, 11, 11.5, 14, 17, 30, 31.2, 31.7, 33, 35, 35.5, 36, 38, 100, 105, 106, 10160
08/12/13	AMEND: 58312	06/26/13	ADOPT: 10133.31, 10133.32, 10133.33, 10133.34, 10133.35, 10133.36 AMEND: 9813.1, 10116.9, 10117, 10118, 10133.53, 10133.55, 10133.57, 10133.58, 10133.60 REPEAL: 10133.51, 10133.52
08/12/13	AMEND: 80003, 80004, 80048.6	06/26/13	ADOPT: 10206, 10206.1, 10206.2, 10206.3, 10206.4, 10206.5, 10206.14, 10206.15, 10207, 10208 AMEND: 10205, 10205.12
07/10/13	AMEND: 80021.1, 80023, 80023.1, 80023.2, 80025.5 REPEAL: 80024.1, 80024.2, 80024.2.1, 80024.3.2, 80024.4, 80024.5	06/24/13	AMEND: 8352
06/12/13	ADOPT: 19847 AMEND: 19816, 19816.1, 19818, 19824, 19829, 19837.3	05/30/13	AMEND: 4994
06/05/13	AMEND: 19816, 19816.1, 19839	05/08/13	AMEND: 5004(d)(2)
05/23/13	ADOPT: 30000.5, 30010, 30040, 30040.2, 30040.6, 30041, 30041.5, 30042, 30042.5, 30044.5 AMEND: 30000, 30001, 30002, 30005, 30009, 30020, 30021, 30022, 30030, 30032, 30033	05/07/13	AMEND: 17000 Appendix
05/14/13	ADOPT: 30737, 30738 AMEND: 30730, 30731, 30733, 30734, 30736	05/06/13	AMEND: 1529, 1532, 1532.1, 1532.2, 1535, 5150, 5189, 5190, 5191, 5192, 5194, 5198, 5200, 5201, 5202, 5206, 5207, 5208, 5209, 5210, 5211, 5212, 5213, 5214, 5217, 5218, 5220, 8358, 8359
05/01/13	AMEND: 80054	04/24/13	AMEND: 2940.8
<b>Title 8</b>		04/15/13	AMEND: 354, 371.2, 373, 376.1, 386
08/29/13	AMEND: 1533	<b>Title 9</b>	
08/27/13	AMEND: 5155	06/06/13	ADOPT: 14200, 14210, 14220, 14230, 14240
08/22/13	AMEND: 32147, 32380, 32802	05/09/13	AMEND: 7156, 7158.8, 7159, 7160, 7160.5, 7161.5, 7162, 7163, 7211, 7263,
08/19/13	ADOPT: 32999, 33000, 33001, 33002, 33003, 33004, 33005, 33006, 33007, 33008, 33009, 33010, 33011, 33012, 33013		
08/13/13	ADOPT: 9795.1.5, 9795.1.6, 9795.5 AMEND: 9795.1, 9795.3		

7302, 7310, 7312, 7320, 7321, 7322,  
7330, 7332

04/25/13 ADOPT: 709, 709.1  
04/12/13 AMEND: 1.74, 701

**Title 10**

09/09/13 ADOPT: 2562.1, 2562.2, 2562.3, 2562.4  
08/27/13 AMEND: 2690, 2690.1, 2690.2  
08/05/13 AMEND: 2498.5  
07/31/13 AMEND: 2498.6  
07/17/13 AMEND: 2498.5  
07/16/13 AMEND: 2498.6  
07/15/13 ADOPT: 6650, 6652, 6654, 6658, 6660,  
6662, 6664, 6666, 6668, 6670  
07/10/13 ADOPT: 6410, 6420, 6422, 6424, 6440,  
6442, 6444  
07/03/13 AMEND: 2548.3, 2548.19, 2548.21,  
2548.24, 2548.25  
06/27/13 ADOPT: 6456  
06/25/13 AMEND: 2698.401  
06/13/13 ADOPT: 2594, 2594.1, 2594.2, 2594.3,  
2594.4, 2594.5, 2594.6, 2594.7  
05/20/13 AMEND: 2698.95(a)  
05/13/13 AMEND: 2632.19

**Title 11**

08/21/13 ADOPT: 31.25 REPEAL: 101.1  
08/21/13 ADOPT: 31.26 REPEAL: 101.2  
08/21/13 AMEND: 31.7  
08/06/13 AMEND: 1955  
07/08/13 AMEND: 1005, 1007, 1008

**Title 13**

08/15/13 AMEND: 2700, 2701, 2702, 2703, 2704,  
2705, 2706, 2707, 2708, 2709, 2710,  
2711  
07/31/13 AMEND: 1968.2, 1968.5, 1971.1,  
1971.5  
07/24/13 AMEND: 599  
05/07/13 ADOPT: 426.00  
04/18/13 AMEND: 1956.8

**Title 14**

09/10/13 AMEND: 313  
09/10/13 AMEND: 300  
09/10/13 AMEND: 1670  
08/27/13 AMEND: 703  
08/27/13 AMEND: 670 REPEAL: 678  
08/19/13 AMEND: 1299.03(b)(2)(A)  
08/06/13 AMEND: 13055  
07/22/13 ADOPT: 18751.2.2, 18751.2.3 AMEND:  
18751.2, 18751.2.1  
06/28/13 AMEND: 228  
06/26/13 AMEND: 1059(a)  
06/25/13 AMEND: 354, 360, 361, 362, 363, 364,  
708.9  
06/19/13 AMEND: 816.01(c)(3), 826.01(c)(2),  
870.21(d)  
06/17/13 AMEND: 7.50  
04/29/13 AMEND: 27.80

**Title 15**

08/27/13 ADOPT: 8125  
08/06/13 AMEND: 2000  
07/30/13 AMEND: 3075  
07/29/13 AMEND: 3000, 3190, 3213, 3334  
05/16/13 AMEND: 3173.2, 3174

**Title 16**

09/10/13 ADOPT: 80.1, 80.2, 87.1 AMEND: 12,  
12.5, 37, 80, 81, 87, 87.8, 87.9, 88, 88.1,  
88.2, 89 REPEAL: 87.1, 87.7  
09/09/13 AMEND: 103  
08/08/13 AMEND: 1920, 1937.11  
08/07/13 AMEND: 811, 832.05, 832.06, 832.35  
REPEAL: 832.14, 854  
08/07/13 ADOPT: 1399.620, 1399.621, 1399.622,  
1399.623  
08/07/13 AMEND: 1399.501, 1399.502,  
1399.503, 1399.506, 1399.507,  
1399.507.5, 1399.511, 1399.512,  
1399.520, 1399.521, 1399.521.5,  
1399.523, 1399.523.5, 1399.526,  
1399.527, 1399.530, 1399.540,  
1399.543, 1399.545, 1399.547,  
1399.557, 1399.570, 1399.571,  
1399.572, 1399.610, 1399.612,  
1399.616, 1399.617, 1399.618, 1399.619  
REPEAL: 1399.512  
08/07/13 AMEND: 811, 832.05, 832.06, 832.35  
REPEAL: 832.14, 854  
08/07/13 ADOPT: 1399.620, 1399.621, 1399.622,  
1399.623  
08/07/13 AMEND: 1399.501, 1399.502,  
1399.503, 1399.506, 1399.507,  
1399.507.5, 1399.511, 1399.512,  
1399.520, 1399.521, 1399.521.5,  
1399.523, 1399.523.5, 1399.526,  
1399.527, 1399.530, 1399.540,  
1399.543, 1399.545, 1399.547,  
1399.557, 1399.570, 1399.571,  
1399.572, 1399.610, 1399.612,  
1399.616, 1399.617, 1399.618, 1399.619  
REPEAL: 1399.512  
07/30/13 REPEAL: 367.7  
07/24/13 ADOPT: 1398.15  
07/23/13 AMEND: 2502, 2516, 2525, 2526,  
2526.1, 2527, 2529, 2530, 2535, 2562,  
2575, 2580, 2581, 2581.1, 2582, 2584,  
2585, 2885.1  
07/16/13 AMEND: 4154  
07/15/13 ADOPT: 1355.45  
07/15/13 AMEND: 1833  
06/26/13 AMEND: 1600

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06/25/13 AMEND: 4102, 4114, 4122, 4141, 4163, 4181  
 06/20/13 AMEND: 1379.50  
 06/10/13 ADOPT: 5.5, 18, 19, 20, 21, 22 AMEND: 21 (renumbered to 36.1), 26, 98  
 06/06/13 AMEND: 2006  
 05/20/13 AMEND: 4402  
 05/17/13 ADOPT: 3340.4 AMEND: 3340.1, 3340.43  
 05/08/13 AMEND: 1380.1  
 05/02/13 ADOPT: 3340.17.1, 3340.17.2, AMEND: 3340.1, 3340.16, 3340.16.4, 3340.16.5, 3340.17, 3340.18, 3340.42, 3340.42.2, 3340.45, 3394.5  
 04/22/13 AMEND: 2268.2, 2271  
 04/16/13 ADOPT: 1364.50  
 04/16/13 AMEND: 1132  
 04/15/13 ADOPT: 1508, 1508.1, 1508.2, 1508.3  
 04/10/13 ADOPT: 1149, 1150, 1151, 1152, 1153

**Title 17**

09/10/13 AMEND: 52086  
 08/12/13 AMEND: 2641.55  
 08/12/13 ADOPT: 30456, 30456.1, 30456.2, 30456.4, 30456.6, 30456.8, 30456.10, 30456.12  
 07/16/13 ADOPT: 7000, 7002, 7004, 7006, 7008, 7010, 7012, 7014, 7016  
 07/01/13 AMEND: 100000  
 06/26/13 AMEND: 91022  
 06/26/13 AMEND: 1230, 2641.57  
 06/24/13 ADOPT: 95943 AMEND: 95802, 95830, 95833, 95910, 95911, 95912, 95913, 95920, 95921, 95942, 96010, 96022  
 06/13/13 ADOPT: 56068, 56069, 56070, 56071, 56072, 56073, 56074, 56620, 56621, 56622, 56623, 56624, 56625 AMEND: 56101  
 05/06/13 ADOPT: 54521, 54522, 54523, 54524, 54525, 54526, 54527, 54528, 54529, 54530, 54531, 54532, 54533, 54534, 54535 AMEND: 54500, 54505, 54520 REPEAL: 54521, 54522, 54523, 54524, 54525  
 04/25/13 AMEND: 94508, 94509

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08/28/13 AMEND: 1703  
 08/28/13 AMEND: 1703  
 07/24/13 AMEND: 462.040  
 07/16/13 AMEND: 4601, 4603, 4604, 4605  
 07/11/13 AMEND: 1532, 1533.1, 1533.2, 1534, 1535, 1598  
 06/25/13 ADOPT: 2000  
 05/31/13 ADOPT: 17052.6  
 05/28/13 AMEND: 1685.5

**Title 19**

07/17/13 AMEND: 557.4, 557.5, 557.8, 557.13, 557.23, 561.2, 567, 567.8, 573, 574.4, 575.1, 575.3, 575.6, 575.8, 575.13, 575.16, 577.2, 578.6, 591.6, 592.1, 592.2, 593.1, 594.3, 594.4, 594.5, 595.5 and 596

**Title 20**

08/28/13 ADOPT: 1240, 3200, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208  
 04/18/13 ADOPT: 1680, 1681, 1682, 1683, 1684

**Title 21**

06/24/13 ADOPT: 2653, 2654, 2655, 2656, 2657, 2658

**Title 22**

09/05/13 AMEND: 66261.33  
 08/28/13 ADOPT: 69501, 69501.1, 69501.2, 69501.3, 69501.4, 69501.5, 69502, 69502.1, 69502.2, 69502.3, 69503, 69503.1, 69503.2, 69503.3, 69503.4, 69503.5, 69503.6, 69503.7, 69504, 69504.1, 69505, 69505.1, 69505.2, 69505.3, 69505.4, 69505.5, 69505.6, 69505.7, 69505.8, 69505.9, 69506, 69506.1, 69506.2, 69506.3, 69506.4, 69506.5, 69506.6, 69506.7, 69506.8, 69506.9, 69506.10, 69507, 69507.1, 69507.2, 69507.3, 69507.4, 69507.5, 69507.6, 69508, 69509, 69509.1, 69510  
 08/28/13 ADOPT: 69501, 69501.1, 69501.2, 69501.3, 69501.4, 69501.5, 69502, 69502.1, 69502.2, 69502.3, 69503, 69503.1, 69503.2, 69503.3, 69503.4, 69503.5, 69503.6, 69503.7, 69504, 69504.1, 69505, 69505.1, 69505.2, 69505.3, 69505.4, 69505.5, 69505.6, 69505.7, 69505.8, 69505.9, 69506, 69506.1, 69506.2, 69506.3, 69506.4, 69506.5, 69506.6, 69506.7, 69506.8, 69506.9, 69506.10, 69507, 69507.1, 69507.2, 69507.3, 69507.4, 69507.5, 69507.6, 69508, 69509, 69509.1, 69510  
 08/19/13 ADOPT: 70438.2  
 05/30/13 AMEND: 70723, 71523, 71835, 72535, 73525, 74723, 75051, 75335, 76539, 76874, 76919, 78429, 79331, 79781, 79795, 79805  
 05/22/13 ADOPT: 64651.12, 64651.13, 64651.15, 64651.48, 64651.52, 64651.54, 64651.61, 64651.62, 64654.8, 64656.5, 64664.2, 64665.5 AMEND: 63011, 63012, 63020, 63021, 63052, 64650, 64651.88, 64652, 64652.5, 64653, 64655, 64656, 64660, 64662, 64663,

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	64664, 64666 REPEAL: 64657,	06/25/13 AMEND: 25805
	64657.10, 64657.20, 64657.30,	04/10/13 AMEND: 25805
	64657.40, 64657.50	
05/15/13	ADOPT: 66274.1, 66274.2, 66274.3,	<b>Title 28</b>
	66274.4, 66274.5, 66274.7, 66274.8	07/05/13 ADOPT: 1300.67.005
<b>Title 23</b>		<b>Title MPP</b>
08/07/13	ADOPT: 5001, 5002, 5003, 5004, 5005,	07/01/13 ADOPT: 40-038 AMEND: 22-071,
	5006, 5007, 5008, 5009, 5010, 5011,	22-072, 22-305, 40-036, 40-103,
	5012, 5013, 5014, 5015, 5016	40-105, 40-107, 40-119, 40-125,
08/07/13	ADOPT: 5001, 5002, 5003, 5004, 5005,	40-128, 40-131, 40-173, 40-181,
	5006, 5007, 5008, 5009, 5010, 5011,	40-188, 40-190, 41-405, 42-209,
	5012, 5013, 5014, 5015, 5016	42-213, 42-221, 42-302, 42-406,
07/26/13	ADOPT: 3979.6	42-407, 42-716, 42-721, 42-751,
07/03/13	AMEND: 595	42-769, 44-101, 44-102, 44-111,
07/01/13	ADOPT: 3007	44-113, 44-115, 44-133, 44-205,
06/24/13	ADOPT: 3919.13	44-207, 44-211, 44-304, 44-305,
06/04/13	ADOPT: 3939.45	44-313, 44-314, 44-315, 44-316,
06/03/13	AMEND: 5000	44-317, 44-318, 44-325, 44-327,
04/25/13	AMEND: 2920	44-340, 44-350, 44-352, 47-220,
<b>Title 27</b>		47-320, 48-001, 80-301, 80-310,
08/08/13	AMEND: 25805	82-612, 82-812, 82-820, 82-824,
07/11/13	AMEND: 25805	82-832, 89-110, 89-201 REPEAL:
		44-400, 44-401, 44-402, 44-403