



# California Regulatory Notice Register

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

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**PROPOSED ACTION ON REGULATIONS**

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**TITLE 2. FAIR POLITICAL PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulation at a public hearing on or after **February 19, 2009**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **February 17, 2009**.

**BACKGROUND/OVERVIEW**

Currently, Section 82015(b)(2)(B)(iii) of the Political Reform Act, Sections 81000–91015 of the Government Code, requires candidates who are elected officers or members of the California Public Utilities Commission to report with their agency any behested payments for a legislative, governmental, or charitable purpose, if those payments, whether separately or in the aggregate, meet or exceed \$5,000 in one year from one source. The Commission has not previously provided a report to facilitate such reporting.

Regulation 18215.3 creates the report on which officials will disclose these payments. The regulation explains what information must be included on the report and where and when it must be filed. Also explained is a process for posting the reports on the official’s website, or if none, posting on the website of the agency with whom the official files his or her campaign statements. If the behested payments are made to produce an event, the officials need not itemize the payments. If more than one official behests the same payment by the same person, each official must report the full amount on a separate form.

**REGULATORY ACTION**

Adopt 2 Cal. Code Regs. Section 18215.3:  
Proposed Regulation 18215.3 would create a uniform report for behested payments. The regulation would ex-

plain the requirements listed in the statute and state that the Commission and local agencies will post the forms or the information found thereon on their websites. If a local agency has no website, the Commission will post the information.

**SCOPE**

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

**FISCAL IMPACT STATEMENT**

Fiscal Impact on Local Government. This regulation will not have an impact on any local entity or program.

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

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

**AUTHORITY**

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

**REFERENCE**

The purpose of this regulation is to implement, interpret, and make specific Government Code Section 82015.

**CONTACT**

Any inquiries should be made to Heather M. Rowan, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, CA 95814; telephone (916) 322–5660 or 1–866–ASK–FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.html?id=351>.

**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: TAHOE RESOURCE  
CONSERVATION DISTRICT  
KERN COMMUNITY  
COLLEGE DISTRICT  
METROPOLITAN TRANS-  
PORTATION COMMISSION  
MOJAVE DESERT AIR  
QUALITY MANAGEMENT  
DISTRICT

A written comment period has been established commencing on **January 16, 2009**, and closing on **March 2, 2009**. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **March 2, 2009**. 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 Ivy Branaman, 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 Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**TITLE 2. FAIR POLITICAL  
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political

cal Practices Commission will consider the proposed regulation at a public hearing on or after **February 19, 2009**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **February 17, 2009**.

**BACKGROUND/OVERVIEW**

Section 87100 states that “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Regulations 18700 et., seq. are what is known as the “eight–step process” for determining when a public official has a conflict of interest based upon a financial interest. Step 4 involves a determination as to whether or not a public official’s economic interest is indirectly or directly involved in a governmental decision. Depending on the type of economic interest involved in the governmental decision, (e.g. business entity, source of income, source of gift, real property or personal finances) Regulation 18704 directs public officials to subsequent Regulations 18704.1–18704.5 which describe when an official’s economic interest is directly involved in a governmental decision. If the criteria in these regulations are not satisfied, these regulations then direct public officials to other regulations for indirectly involved economic interests. However, nowhere in the Act or related regulations is it ever explicitly stated that those economic interests that are not directly involved are deemed indirectly involved, though those are the only two options. This regulatory amendment is intended to provide clarification that when an economic interest is not directly involved in a governmental decision it is indirectly involved.

**REGULATORY ACTION**

Amend 2 Cal. Code Regs. Section 18704:

The Commission may consider whether to adopt an amendment to Regulation 18704. Following is the proposed amendment language to be added after subdivision (a) of Regulation 18704:

“(b) If a public official’s economic interest is not directly involved in a governmental decision it is indirectly involved.”

**SCOPE**

The Commission may adopt the language noticed herein, or it may choose new language to implement its

decisions concerning the issues identified above or related issues.

**FISCAL IMPACT STATEMENT**

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

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

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

**AUTHORITY**

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

**REFERENCE**

The purpose of these regulations is to implement, interpret, and make specific Government Code Section 87100.

**CONTACT**

Any inquiries should be made to Sukhi Brar, Counsel, Legal Division, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322–5660 or 1–866–ASK–FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.html?id=351>.

**TITLE 4. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

**AMENDED NOTICE OF PROPOSED RULEMAKING, ORIGINALLY NOTICED JANUARY 2, 2009 (REG. 2009, #1–Z)**

**“Advertising and Merchandising of Alcoholic Beverages”**

The California Department of Alcoholic Beverage Control (“Department”) proposes to amend the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to amend Section 106 of Title 4, Article 16 of the California Code of Regulations, concerning the advertising and merchandising of alcoholic beverages.

PUBLIC HEARING AND COMMENT PERIOD

The Department has EXTENDED the scheduled public hearing from:

Date and Time: Tuesday, February 17, 2009;  
9:00 A.M. – 3:00 P.M.

Location: Board of Equalization, 450 N Street,  
Room 121, Sacramento CA 95814

Purpose: To receive written and/or oral comments about this action

**TO:**

Date and Time: WEDNESDAY, MARCH 4, 2009;  
9:00 A.M. – 3:00 P.M.

Location: Board of Equalization, 450 N Street,  
Room 121, Sacramento CA 95814

Purpose: To receive written and/or oral comments about this action

The written comment period will now close Tuesday, March 4, 2009 at 5:00 p.m. Any person may submit written comments about the proposed amendments. To be considered by the Department, written comments should be directed to:

Matthew D. Botting, General Counsel  
Department of Alcoholic Beverage Control  
3927 Lennane Drive, Suite 100  
Sacramento, CA 95834  
Telephone: (916) 419-2500  
E-mail: [matthew.botting@abc.ca.gov](mailto:matthew.botting@abc.ca.gov)  
Fax: (916) 419-2599

INFORMATIVE DIGEST AND POLICY  
STATEMENT OVERVIEW

Remains the same as previously submitted and incorporated herein by reference.

LOCAL MANDATE

Remains the same as previously submitted and incorporated herein by reference.

IMPACT ON PRIVATE PERSONS/BUSINESSES

Remains the same as previously submitted and incorporated herein by reference.

IMPACT ON BUSINESS

Remains the same as previously submitted and incorporated herein by reference.

IMPACT ON SMALL BUSINESSES

Remains the same as previously submitted and incorporated herein by reference.

SIGNIFICANT EFFECT ON HOUSING COSTS

Remains the same as previously submitted and incorporated herein by reference.

COSTS OR SAVINGS TO ANY STATE AGENCY

Remains the same as previously submitted and incorporated herein by reference.

COST TO ANY LOCAL AGENCY OR SCHOOL  
DISTRICT THAT MUST BE REIMBURSED IN  
ACCORDANCE WITH GOVERNMENT  
CODE SECTION 17500-17630

Remains the same as previously submitted and incorporated herein by reference.

OTHER NON-DISCRETIONARY COST OR  
SAVINGS IMPOSED UPON LOCAL AGENCIES

Remains the same as previously submitted and incorporated herein by reference.

COST OR SAVINGS IN FEDERAL FUNDING  
TO THE STATE

Remains the same as previously submitted and incorporated herein by reference.

CONSIDERATION OF ALTERNATIVES

Remains the same as previously submitted and incorporated herein by reference.

AVAILABILITY OF STATEMENT OF REASONS  
AND TEXT OF PROPOSED REGULATIONS

Remains the same as previously submitted and incorporated herein by reference.

AVAILABILITY OF CHANGED  
OR MODIFIED TEXT

Remains the same as previously submitted and incorporated herein by reference.

**TITLE 10. CALIFORNIA DEPARTMENT  
OF REAL ESTATE**

NOTICE OF PROPOSED CHANGES IN  
THE REGULATIONS OF THE REAL  
ESTATE COMMISSIONER

Jeff Davi, Real Estate Commissioner, proposes to adopt, amend and/or repeal the proposed regulations described below in Title 10, California Code of Regulations, after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commissioner proposes to adopt, amend and/or repeal sections 2716.1, 2790.1.5, 2797, and 2810.5 in Title 10 of the California Code of Regulations (CCR).

PUBLIC COMMENTS

The Commissioner or his representative will hold a public hearing starting at 10:00 a.m., on March 6, 2009, at the Department of Real Estate Examination Room, located at 2200 X Street, Suite 120B, Sacramento, California. The Examination 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 submit a written copy of their testimony to the Commissioner.

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commissioner. The written comment period closes on March 6, 2009. All written comments must be received by 5:00 p.m. on that date at the Department's Sacramento Office as follows:

David B. Seals, Real Estate Counsel  
Department of Real Estate  
2201 Broadway  
P.O. Box 187000  
Sacramento, CA 95818-7000

Telephone: (916) 227-0791

Comments may be sent via electronic mail to regulations@dre.ca.gov or via fax to David B. Seals at (916) 227-9458.

AUTHORITY AND REFERENCE

The changes to the regulations are authorized by Business and Professions Code sections 10080, 10226, 11001, 11011, and 11281 to implement, interpret or make specific Business and Professions Code sections 10153.4, 10201, 10209.5, 10210, 10214.5, 10215, 11003, 11004.5, 11010, 11018.5, and 11232 and Civil Code section 1351.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

SUMMARY OF EXISTING LAWS  
AND REGULATIONS

Sections 10201, 10209.5, 10210, 10214.5 and 10215 of the Business and Professions Code specify the maximum fees to be charged for the various licenses of real estate brokers and salespersons, for the renewal or late renewal of those licenses, and for examinations required to obtain the licenses. As a result of various factors, in 1997, Section 10226 of the Business and Professions Code was amended and Section 10226.5 was adopted to require the Department to assess the fees charged and revenues to be raised from those fees to determine if fees should be raised or lowered. Section 2716.1 was adopted in 2003 to stabilize the fees while maintaining compliance with the new and amended statutes. The changes proposed herein in Regulation Section 2716.1 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Section 11011 of the Business and Professions Code specifies the maximum filing fees in connection with applications to the Department relating to subdivisions. As a result of various factors, in 1997, Section 10226 of the Business and Professions Code was amended and Section 10226.5 was adopted to require the Department to assess the fees charged and revenues raised from those fees to determine if fees should be raised or lowered. Section 2790.1.5 was adopted in 2003 to stabilize the fees while maintaining compliance with the new and amended statutes. The changes proposed herein in Regulation Section 2790.1 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Section 11018.5(e) of the Business and Professions Code states that the commissioner shall issue a public report if the commissioner finds with respect to any sub-

division that reasonable arrangements have been or will be made as to the interest of each of the purchasers of lots, apartments, or condominiums in the subdivision with respect to the management, maintenance, preservation, operation, use, right of resale, and control of their lots, apartments, or condominiums, and such other areas or interests, whether or not within, or pertaining to, areas within the boundaries of the subdivision, as have been or will be made subject to the plan of control proposed by the owner and subdivider, and which are included in the offering. Regulation 2797 allows individual homeowner maintenance of attached dwelling units in limited circumstances but incorrectly appears to restrict the types of dwellings to which it applies. The changes proposed herein in Regulation Section 2797 are intended to clarify the existing regulation by removing references to common interest development types as defined in California Civil Code §1351 and implement, interpret or make specific the applicable laws and regulations cited hereinabove.

Section 11232 of the Business and Professions Code, part of the Vacation Ownership and Time–Share Act of 2004, specifies the maximum filing fees in connection with applications to the Department relating to time–share interests. As a result of various factors, in 1997, Section 10226 of the Business and Professions Code was amended and Section 10226.5 was adopted to require the Department to assess the fees charged and revenues to be raised from those fees to determine if fees should be raised or lowered. Section 2810.5 was adopted in 2005 to stabilize the fees while maintaining compliance with the new and amended statutes. The changes proposed herein in Regulation Section 2810.5 are intended to implement, interpret or make specific the applicable laws and regulations cited hereinabove.

#### SUMMARY OF THE EFFECT OF THE PROPOSED ACTION

##### AMENDMENT OF SECTION 2716.1

Increases fees charged for the various licenses of real estate brokers and salespersons, for the renewal or late renewal of those licenses, and for examinations required to obtain the licenses, from the current 1982 levels to the statutory maximums. This action is required to allow the Department to remain solvent.

##### AMENDMENT OF SECTION 2790.1.5

Increases fees, in connection with applications to the Department relating to subdivisions, from the current

1982 levels to the statutory maximums. This action is required to allow the Department to remain solvent.

##### AMENDMENT OF SECTION 2797

This regulation is being amended to clarify that the type of a common interest development (whether a condominium or a planned development) is not affected by homeowner association maintenance responsibilities or physical construction of a residential dwelling by changing references from “unit(s)” to “dwelling(s)”, substituting “residential” for “condominium” where appropriate, and making specific reference to the controlling statute.

##### AMENDMENT OF SECTION 2810.5

Increases fees, in connection with applications to the Department relating to time–share interests, to the statutory maximums. This action is required to allow the Department to remain solvent.

##### EFFECT ON SMALL BUSINESS

The proposed regulatory changes will not substantially adversely affect small business. A detailed estimate of the costs is included in the 399 included as a part of this package as well as in Exhibit 1 to the Initial Statement of Reasons.

##### DISCLOSURES REGARDING THE PROPOSED ACTION

1. Plain English drafting: The Commissioner has confirmed that these regulations have been drafted in plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).
2. Mandate on local agencies and school districts: None.
3. Cost or savings to any state agency: None.
4. Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500–17630: None.
5. Other non–discretionary cost or savings imposed upon local agencies: None.
6. Cost or savings in federal funding to the state: None.
7. The Department is not aware of any substantial cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

8. The Commissioner has made an initial determination that the adoption, amendment or repeal of these regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
9. Impact on jobs and business expansion, elimination or creation: The Commissioner has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs within the State of California nor will it significantly affect the creation of new businesses, the elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.
10. Significant effect on housing costs: None.

The name of the person who can respond to questions concerning the substance of the proposed regulatory action is:

David B. Seals, Real Estate Counsel  
 Department of Real Estate  
 2201 Broadway  
 P.O. Box 187000  
 Sacramento, CA 95818-7000  
 Telephone: (916) 227-0791

Please direct requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to:

David B. Seals, Real Estate Counsel  
 Department of Real Estate  
 2201 Broadway  
 P.O. Box 187000  
 Sacramento, CA 95818-7000  
 Telephone: (916) 227-0791

**CONSIDERATION OF ALTERNATIVES**

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

The Commissioner invites interested persons to present statements or arguments with respect to alternatives to the proposed regulatory action during the written comment period.

**CONTACT PERSON**

Inquiries concerning the proposed action may be directed to:

David B. Seals, Real Estate Counsel  
 Department of Real Estate  
 2201 Broadway  
 P.O. Box 187000  
 Sacramento, CA 95818-7000  
 Telephone: (916) 227-0791

The backup contact person is:

John VanDriel, Assistant Chief Counsel  
 Department of Real Estate  
 2201 Broadway  
 P.O. Box 187000  
 Sacramento, CA 95818-7000  
 Telephone: (916) 227-0791

**AVAILABILITY OF STATEMENT OF REASONS,  
 TEXT OF PROPOSED REGULATIONS  
 AND INTERNET SITE**

The Commissioner will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at his office, at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The final statement of reasons once it is prepared pursuant to Section 11346.9 of the Government Code will also be a part of the rulemaking file and available for inspection and copying as indicated above. Portions of the rulemaking file and information regarding the Department are available through our website ([www.dre.ca.gov](http://www.dre.ca.gov)). The express terms of the proposed action written in plain English are available from the agency contact person named in this notice. Copies may be obtained by contacting David B. Seals at the address and phone number listed above.

**AVAILABILITY OF CHANGED  
 OR MODIFIED TEXT**

The Real Estate Commissioner may, on his own motion or at the recommendation of any interested person made by written or oral comment, modify the Proposed Regulation and adopt the Regulation Change as modified if the change is determined to be one that the public could have reasonably anticipated from this Notice, the Informative Digest, and the Initial Statement of Reasons.

If the Commissioner decides to modify the Proposed Regulation change, the Department will make copies of the full text of the regulation, as originally proposed with the proposed modifications clearly indicated, available for not less than 15 days prior to adopting the modified regulation. Copies of the modified regulation will be mailed to all persons who have made written or oral comments concerning the Proposed Regulation and all persons who have requested notification of availability of the modifications.

Requests for modified regulations or other communications concerning the Proposed Regulation change should be addressed to the Department's contact person, David B. Seals, at the address and/or telephone number above.

**COMPLIANCE WITH GOVERNMENT CODE  
§11346.4(a)(1) THROUGH (4)**

The Department of Real Estate (the Department) has complied with Government Code §11346.4(a)(1) through (4) and Section 86, Title 10 of the California Code of Regulations, by mailing or delivering a copy of this Notice of Proposed Changes in the Regulations of the Real Estate Commissioner and of the Proposed Regulations with changes indicated in ~~strikeout~~ and underline to the Department's list of interested persons including:

1. Every person who has filed a Request for Notice of Regulatory Action with the Department.
2. The Director of the Department. (The Real Estate Commissioner and the Secretary of the Business, Transportation and Housing Agency).
3. A substantial number of real estate brokers. They are predominantly small businesses, some of which may be, or have been in the past, affected by our Proposed Regulation change. The Department has no way of knowing which are small businesses.
4. The California Association of Realtors, a real estate licensee trade organization and the California Building Industry Association, a homebuilders trade organization.
5. A substantial number of land developers. Not small businesses by definition, but some of which may be, or have been in the past, affected by our Proposed Regulations.

**TITLE 14. FISH AND GAME  
COMMISSION**

**Notice of Proposed Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the au-

thority vested by sections 2070 and 2075.5 of the Fish and Game Code and to implement, interpret or make specific sections 1755, 2055, 2062, 2067, 2070, 2072.7, 2075.5 and 2077 of said Code, proposes to amend Section 670.5, Title 14, California Code of Regulations, relating to Animals of California Declared to be Endangered or Threatened.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

The California Endangered Species Act (CESA)(Fish & G. Code §§ 2050 et seq.) prohibits the take of threatened or endangered species (i.e. actions which would cause mortality) without authorization from the Department of Fish and Game (DFG). (Fish & G. Code § 2080.) DFG's authorizations help manage species by requiring avoidance, mitigation, and other measures for their protection. (Fish & G. Code §§ 2081, 2835.) The existing regulation (Title 14, CCR, Section 670.5) provides that delta smelt are listed as threatened. CESA defines a "threatened species" as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that, although not presently threatened with extinction is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by CESA. (Fish & G. Code § 2067.) The proposed regulation would provide that delta smelt are listed as endangered. CESA defines an "endangered species" as a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes. (Fish & G. Code § 2062.) If implemented, the proposed regulation would accurately reflect that the delta smelt population in California has declined significantly since its listing as threatened and the species' abundance is now extremely low.

**NOTICE IS ALSO GIVEN** that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hyatt Regency Monterey Resort, 1 Old Golf Course Road, Monterey, California, on March 6, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before February 20, 2009, at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on March 3, 2009. All comments must be received no later than March 6, 2009, at the hearing in Monterey, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout–underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to John Carlson, Jr., or Sheri Tiemann at the preceding address or phone number. **Chuck Armor, Department of Fish and Game, phone (707) 944–5518, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

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

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

Impact of Regulatory Action

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

While the statutes of the California Endangered Species Act (CESA) do not specifically prohibit the consideration of economic impact in determining if listing is warranted, the Attorney General’s Office has consistently advised the

Commission that it should not consider economic impact in making a finding on listing. This is founded in the concept that CESA was drafted in the image of the federal Endangered Species Act. The federal act specifically prohibits consideration of economic impact during the listing process.

CESA is basically a two–stage process. During the first stage, the Commission must make a finding on whether or not the petitioned action is warranted. By statute, once the Commission has made a finding that the petitioned action is warranted, it must initiate a rulemaking process to make a corresponding regulatory change. To accomplish this second stage, the Commission follows the statutes of the Administrative Procedure Act (APA).

The provisions of the APA, specifically sections 11346.3 and 11346.5 of the Government Code, require an analysis of the economic impact of the proposed regulatory action. While Section 11346.3 requires an analysis of economic impact on businesses and private persons, it also contains a subdivision (a) which provides that agencies shall satisfy economic assessment requirements only to the extent that the requirements do not conflict with other state laws. In this regard, the provisions of CESA leading to a finding are in apparent conflict with Section 11346.3, which is activated by the rulemaking component of CESA.

Since the finding portion of CESA is silent to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 does not exclude the requirement for economic impact analysis. While the Commission does not believe this is the case, an abbreviated analysis of the likely economic impact of the proposed regulation change on businesses and private individuals is provided. The intent of this analysis is to provide disclosure, the basic premise of the APA process. The Commission believes that this analysis fully meets the intent and language of both statutory programs.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

- (c) Cost Impacts on a Representative Private Person or Business:

Designation of threatened or endangered status, per se, would not necessarily result in any significant cost to private persons or entities undertaking activities subject to CEQA. CEQA presently requires private applicants undertaking projects subject to CEQA to consider *de facto* endangered (or threatened) and rare species to be subject to the same protections under CEQA as though they are already listed by the Commission in Section 670.2 or 670.5 of Title 14, CCR (CEQA Guidelines Section 15380).

Any added costs should be more than offset by savings that would be realized through the information consultation process available to private applicants under CESA. The process would allow conflicts to be resolved at an early stage in project planning and development, thereby avoiding conflicts later in the CEQA review process, which would be more costly and difficult to resolve.

Moreover, here the species is already listed as threatened. The proposed regulation would change the listing to endangered. However, it is not the listing category which affects the scope of mitigation measures which may be required, it is the project-specific environmental analysis and best available scientific information at the time of the action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

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

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying

out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

**TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION**

**NOTICE OF PROPOSED REGULATIONS**

**California Code of Regulations  
Title 15, Crime Prevention and Corrections  
Department of Corrections and Rehabilitation**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3054, 3054.1, 3054.3, 3054.4, 3054.5, 3054.6, and 3054.7 in the California Code of Regulations (CCR), Title 15 to update current regulatory text and definitions primarily related to the California Department of Corrections and Rehabilitation Religious Diet Program.

**PUBLIC HEARING**

- Date and Time: **March 10, 2008 — 9:00 a.m. to 10:00 a.m.**
- Place: Office of Training & Professional Development  
Timber Peak Conference Room (Room 106)  
10000 Goethe Road  
Sacramento, CA 95827
- Purpose: To receive comments about this action.

**PUBLIC COMMENT PERIOD**

The public comment period will close, **March 10, 2008, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 341-7366; or e-mail at [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov) before the close of the comment period.

**CONTACT PERSON**

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief  
Regulation and Policy Management Branch  
Department of Corrections and Rehabilitation  
P.O. Box 942883, Sacramento, CA 94283-0001  
Telephone (916) 341-7390**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**D. Hawkins  
Regulation and Policy Management Branch  
Telephone (916) 322-8447**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Kimberlyn Young  
Division of Adult Institutions  
Telephone (916) 323-2812**

**LOCAL MANDATES**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

**FISCAL IMPACT STATEMENT**

- Cost to any local agency or school district that is required to be reimbursed: *None*
- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

**EFFECT ON HOUSING COSTS**

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

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

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

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**EFFECT ON SMALL BUSINESSES**

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

**ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION**

The Department has determined that the proposed regulation will have no affect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

**CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

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

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

**AVAILABILITY OF THE FINAL  
STATEMENT OF REASONS**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES TO  
PROPOSED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Director. Commencing July 1, 2005, the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

- This action amends sections 3054, 3054.1, 3054.3, 3054.4, 3054.5, 3054.6 and 3054.7 of the California Code of Regulations (CCR), Title 15, Division 3, for the purpose of updating current regulatory text primarily related to Religious Diet Program.
- This action would amend the existing regulations to make provisions for a new halal meat alternate program, as a third religious dietary option for inmates. The halal meat alternate program would be available in all CDCR adult institutions statewide. Participation in the program would be open to Muslim inmates and other inmates with a religious need to consume halal meat, as determined by a Muslim Chaplain.
- Additionally, this action would amend the existing regulations for vegetarian diets. The action would modify the regulations to clarify that, along with its being available to inmates with a religious need, the vegetarian diet option shall also be available to inmates who seek that option based on a personal or ethical need. A personal or ethical need does not need to be religious in nature. The name of this dietary option would accordingly be shortened from "religious vegetarian diet" to "vegetarian diet."
- This entire action is necessary to accommodate the dietary needs of Muslim inmates and other inmates. The purpose of this action is to avoid future costly litigation and unnecessary expenses to the taxpayers of the State of California.
- Finally, this action would nominally change the rate to be charged, from \$.85 to \$1.00, for meals that are served to non-inmates and for the reimbursement of state purchased food. That rate change would help to offset increased departmental costs for food services.
- The reference to CDCR Form 3030 (Religious Diet Request), CDCR Form 3030-A (Religious Diet Program Agreement), and CDCR 3030-D (Religious Diet Cancellation Request) have been changed due to revisions to the forms, with a revision date of November 2008 (11/08). These forms now include language concerning the halal meat alternative program. These forms are part of the proposed regulatory package and have been made available for review.

**GENERAL PUBLIC INTEREST**

**FISH AND GAME COMMISSION**

**NOTICE OF FINDINGS**

California Brown Pelican  
(*Pelecanus occidentalis californicus*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2075.5 of the Fish and Game Code, the California Fish and Game Commission, at its November 14, 2008, meeting in Huntington Beach, made a finding that the petitioned action to remove the California brown pelican (*Pelecanus occidentalis californicus*) from the list of endangered species is warranted.

The basis for the delisting relied most heavily on the following: 1) The breeding population size of the brown pelican in the Channel Islands has increased from 1969 to the present, after the banning of DDT, and now exceeds the five-year mean 3,000 pair standard noted in the recovery plan (current Channel Islands population size for 2006 is roughly 8,500 breeding pairs); 2) Brown pelicans have gradually expanded their nesting sites in the Channel Islands to former breeding sites, and numbers on Santa Barbara Island have increased substantially since 2001; 3) Productivity has increased to 0.7 and now meets or exceeds the five-year mean 0.7 standard noted in the recovery plan for downlisting; 4) Relative to the five-year mean standard for fledged young in the recovery plan, brown pelicans at West Anacapa Island have achieved the 2,700 fledgling standard for delisting 9 times from 1997–2005; 5) In spite of known threats (*i.e.*, oil spills, human disturbance, starvation events, domoic acid poisoning, fish hook/line mortality), the breeding population of brown pelicans in California has increased substantially; and 6) Nesting sites are under generally-protective National Park Service ownership or management. If delisted, the brown pelican will remain a fully protected species under Fish and Game Code Section 3511(b)(2).

It is anticipated that the Commission will ratify the findings at a hearing to be held at the East End Complex Auditorium, 1500 Capitol Avenue, Sacramento, Cali-

fornia, on February 6, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard.

The notice of proposed regulatory action to amend Section 670.5, Title 14, CCR, was published in the California Regulatory Notice Register on December 19, 2008.

**FISH AND GAME COMMISSION**

**NOTICE OF FINDINGS**

Delta Smelt  
(*Hypomesus transpacificus*)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2075.5 of the Fish and Game Code, the California Fish and Game Commission, at its August 7, 2008, meeting in Carpinteria, made a finding that the petitioned action to uplist the delta smelt (*Hypomesus transpacificus*) from threatened to endangered is warranted.

This change is necessary to alert the public, including those seeking take authorizations, that the delta smelt population in California has declined significantly since its listing as threatened and the species' abundance is now extremely low.

NOTICE IS ALSO GIVEN that the Commission proposes to amend Section 670.5, Title 14, California Code of Regulations, to add the delta smelt to the list of endangered species.

NOTICE IS FURTHER GIVEN that, any person interested may present statements orally or in writing, relevant to this action at a hearing to be held at the Hyatt Regency Monterey Resort, 1 Old Golf Course Road, Monterey, California, on March 6, 2009, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before February 20, 2009, to the Fish and Game Commission office at 1416 Ninth Street, Box 944209, Sacramento, CA 94244–2090, or by fax at (916) 653–5040, or by e-mail to [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov). Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on March 3, 2009. All comments must be received no later than March 6, 2009, at the hearing in Monterey, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

**ACCEPTANCE OF PETITION  
TO REVIEW ALLEGED  
UNDERGROUND REGULATIONS**

**OFFICE OF ADMINISTRATIVE LAW**

**ACCEPTANCE OF PETITION TO REVIEW  
ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the  
California Code of Regulations)**

**DEPARTMENT OF CORRECTIONS AND  
REHABILITATION**

**Agency being challenged:**

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel  
Office of Administrative Law  
300 Capitol Mall, Ste. 1250  
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Bradley VanDyke, K-17445  
95-117 Solano State Prison  
P.O. BOX 4000  
Vacaville, CA 95696

Agency contact:

Timothy Lockwood, Chief of Regulations & Policy  
Management Branch  
Department of Corrections and Rehabilitation  
P.O. BOX 942883  
Sacramento, CA 94283-0001

Please note the following timelines:

Publication of Petition in Notice Register: January 16, 2009  
Deadline for Public Comments: February 17, 2009  
Deadline for Agency Response: March 2, 2009  
Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response  
Deadline for OAL Decision: May 18, 2009

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.

#1

Date 10/2/08

ADMINISTRATIVE LAW, OFFICE OF  
 SUSAN LAPELEY, DIRECTOR,  
 300 CAPITAL MALL, STE. 1250  
 SACRAMENTO, CA. 95814

RECEIVED  
 OCT 09 2008  
 STATE  
 ADMIN

Re: Underground Rule, Regulation  
 DETERMINATION.

To Director SUSAN LAPELEY:

I am a inmate at Solano State Prison. Because i believe that prison officials at Solano State Prison has implemented a underground policy/ regulation which requires formal A.P.A rule making proceedings, i request as a interested party that the O.A.L examine the policy and make a determination as to whether the Solano State Prison P.I.A hiring policy that, authorizes P.I.A supervisors to hire level-2 inmates to work in level-3 P.I.A Facilitys (Book Bindery and Metal Fab.); along-side level-3 inmates in a integrated work environment as a C.D.C.R Departmental Regulation.

On Feb.16,2008 inmate Spade Filed a Group Appeal contesting the legality of the policy that authorizes P.I.A supervisors to hire level-2 inmates to work in level-3 P.I.A Facilitys along-side level-3 inmates.

2

P.I.A Administrator Terry Moore and Warden Bisto in response to inmate Spade Inmate Group Appeal stated that the level-3 P.I.A hiring policy that authorizes supervisors to hire level-2 inmates to work in level-3 P.I.A facilities along-side level-3 inmates is a policy they implemented for business reasons.

Petitioner has enclosed for O.A.L examination a complete copy of the Inmate Group Appeal filed by inmate Spade challenging the legality of the level-3 P.I.A Hiring Policy as a Underground Rule that circumvents the Administrative Procedures Act, in addition, to violating numerous Custody and Security regulatory provisions of the C.C.R Title 15, and the Departmental Operations Manual (DOM).

It is petitioners belief that the P.I.A Hiring policy could not be legally implemented without first amending and or abolishing certain Custody Classification Statutes of the C.C.R Title 15, and the Departmental Operational Manual which clearly prohibits the integration of the two custody levels of inmates.

It is also my belief that Solano State Prison P.I.A hiring policy exposes level-2 inmates to a substantial risk of harm by virtue integrating level-2 inmates in a P.I.A industrial

#3

work place with level-3 inmates who are classified by the CDCR as being more dangerous and more prone to exhibit alleviated levels of violence.

Petitioner states that such a P.I.A hiring policy on its face is clearly contrary to penological interest and only serves to undermine public confidence that the CDCR is not performing their fiduciary responsibility in protecting inmates from harm.

For the reason stated herein, petitioner request that the C.A.L. examine the attaching 602 Inmate Appeal and make a determination as to whether the P.I.A Hiring policy is in fact a Regulation pursuant to the Administrators Procedures Act.

Respectfully Submitted

Bradley Van Dyke  
# K-17445, 5-117

**SUSPENSION OF  
ACTION REGARDING  
UNDERGROUND REGULATIONS**

**OFFICE OF ADMINISTRATIVE LAW**

**SUSPENSION OF ACTION REGARDING  
UNDERGROUND REGULATIONS**

**(Pursuant to Title 1, section 280, of the  
California Code of Regulations)**

On November 17, 2008, The Office of Administrative Law (OAL) received a petition challenging Special Order No. 228 issued by the Department of Mental Health as an alleged underground regulation. Special Order No 228 dealt with Research Proposal Review Policy.

On December 15, 2008, The Department of Mental Health certified to the OAL that Special Order no. 228 had been rescinded; therefore, pursuant to Title 1, section 280 of the California Code of Regulations, OAL must suspend all action on this petition.

**DEPARTMENT OF MENTAL HEALTH**

1600 Ninth Street  
Sacramento, CA 95814

**CERTIFICATION PURSUANT TO 1 CCR 280**

I, Cynthia A. Radavsky, Deputy Director of Long Term Care Services, California Department of Mental Health (Department), hereby certify:

1. The Department received a copy of a petition filed with the California Office of Administrative Law by Mr. Michael St. Martin on or about October 23, 2008. A copy of the petition is attached hereto as Exhibit A.
2. The Department will not issue, use, enforce, or attempt to enforce the alleged underground regulation, the Department Special Order No. 228.
3. A copy of the certification was sent to the petitioner by certified mail, and a copy of the receipt is attached hereto as Exhibit B.

/s/  
Cynthia A. Radavsky  
Deputy Director  
Long Term Care Services  
California Department of Mental Health

Dated 12-22-08

EXHIBIT A

*Michael St. Martin*

*Phone (559) 935-0493  
or 9354-0638*

*CO-000414-3, RRU-10*

*P.O. Box 5003 Email: michaelst.martin@hotmail.com  
Coalinga, CA 93210*

Date: October 14, 2008

To: Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
Attention: Chapter 2 Compliance Unit

Dear Sirs:

Please find enclosed for filing with the Office of Administrative Law the following Petition and attached exhibits alleging the Department of Mental Health is using an underground regulation:

- (1) **PETITION TO THE OFFICE OF ADMINISTRATIVE LAW  
RE: ALLEGED UNDERGROUND REGULATION**
- (2) The alleged underground regulation: *Special Order No.: 228 "Research Proposal Review Policy"* is attached hereto as EXHIBIT A.

Thank you  
Sincerely,

/s/  
Michael St. Martin

RECEIVED  
OCT 16 2008  
STATE OF CALIFORNIA  
OFFICE OF  
ADMINISTRATIVE LAW

**PETITION TO THE OFFICE OF  
ADMINISTRATIVE LAW**

RE: **ALLEGED UNDERGROUND REGULATION**  
**Department of Mental Health**  
*Special Order No.: 228 "Research Proposal Review Policy"*  
FROM: MICHAEL GEORGE ST. MARTIN,  
Petitioner

DATE: October 14, 2008

**This is a computer generated petition based on the optional OAL form supplying the information required by Title 1, California Code of Regulations,**

§280, for a petition challenging an alleged underground regulation.

**1. Identifying Information: Petitioner**

Your Name: **MICHAEL GEORGE ST.MARTIN**  
**CO-000414-3, RRU-10**

Your Address: **P.O. Box 5003, Coalinga, CA 93210**

Your Telephone Number: **(559) 935-0493 or (559) 935-0638**

Your E-Mail (if you have one): **michaelst.martin@hotmail.com**

**2. State Agency or Department being challenged:**

**California Department of Mental Health (“DMH”)**

**3. Provide a complete description of the purported underground regulation. Attach a written copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible.**

**Description of alleged Underground Regulation**

Petitioner alleges the ENTIRE California Department of Mental Health (“DMH”) Operation Manual is an Underground Regulation, as there is no evidence that any portion of the DMH Operation Manual has been promulgated pursuant to the Administrative Procedures Act.

By this action, Petitioner specifically alleges the section of the DMH Operation Manual known as *Special Order No.: 228 “Research Proposal Review Policy”* is an underground regulation, as there is no evidence that this Special Order has been promulgated pursuant to the Administrative Procedures Act.

Department of Mental Health Special Orders are written Orders which are issued by the Deputy Director, Long Term Care Services, Department of Mental Health. Special Orders are mandatory and direct each State Hospital within the Department of Mental Health system to take specific actions. Because these mandated specific actions are required of all State Hospitals, they affect all persons in California detained at State Hospitals operated by the Department of Mental Health.

*Special Order No.: 228* sets the standards for research conducted by or within the California Department of Mental Health on both present and former per-

sons detained or evaluated by the Department of Mental Health, its employees, agents, and/or contractors.

*Special Order No.: 228* requires the use of a particular format, it sets timeline standards, discusses funding requirements, and consultations.

A true and correct copy of  
*Special Order No.: 228*  
 is attached hereto as EXHIBIT A.

**4. Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation.**

*Special Order No.: 228* is applied to research conducted at State Hospitals, by its employees, agents, and/or contractors, and affects all persons, no matter what their classification, who are both present and former persons detained or evaluated by the Department of Mental Health. Its existence and use are not in controversy.

As a result of *Special Order No.: 228*, each State Hospital has a Research Administrative Directive., along with various related policies and procedures. For example, Coalinga State Hospital (“CSH”) *Administrative Directive Number 414, AD-414; Research, Administrative Directive Number 154, AD-154, Public Relations; and Administrative Directive Number 438, AD-438, Clinical Outcome Evaluation System*, are cross referenced in other documents to *Special Order No.: 228*.

It should be noted that Coalinga State Hospital (“CSH”) *Administrative Directive Number 414, AD-414, Research; Administrative Directive Number 154, AD-154, Public Relations; and Administrative Directive Number 438, AD-438, Clinical Outcome Evaluation System*, are each the subject of separate petitions being filed with the OAL.

Petitioner alleges that the DMH can not justify or legitimize the use of one *Special Order* or *Administrative Directive* which has not been legally promulgated pursuant to the Administrative Procedures Act by cross referencing or citing as its authority some other Rule, Regulation, Manual, Instructions, Administrative Directive, or Special Order, which itself is also an underground regulation which has not been legally promulgated pursuant to the Administrative Procedures Act.

The DMH has taken the firm position that none of its Manuals, Instructions, Administrative Directives, or Special Orders are regulations subject to the provisions of the APA.

Petitioner alleges that *Special Order No.: 228* is a regulation within the meaning of the APA.

5. State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code that no express statutory exemption to the requirements of the APA is applicable.

**SPECIAL ORDER NO.: 228  
IS A REGULATION WITHIN THE MEANING  
OF THE APA**

Prior to implementation, or revision thereof, the Department was required to adopt *Special Order No.: 228*, or any revision thereof, but failed to do so, and thus, pursuant to the law the current version now being utilized is invalid and an “Underground Regulation.”

Though the Director may prescribe rules and regulations such as *Special Order No.: 228*, they must be promulgated and filed per Chapter 3.5 of art. 1 of Division 3 of Title 2 of the Administrative Procedures Act, government Code, section 11340 et seq. There is no evidence that DMH has ever promulgated any version of *Special Order No.: 228*.

*Special Order No.: 228* is a regulation. Chapter 3.5, article 5, of the Administrative Procedure Act, Govt. Code sections 11346 et seq., governs adoption, amendment and repeal of regulations by administrative agencies known as rulemaking. Govt. Code section 11342.600 provides that:

“[A regulation is] 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.”

*Syngenta. Crop Protection, Inc. V. Helliker* (2d Dist. 2006) 138 Cal.App. 4<sup>th</sup> 1135, 1175–77, 42 Cal.Rptr.3d 191, 221–222, quotes *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th 557, 59 Cal.Rptr.2d 186, which explains:

“[The APA] establishes ‘minimum procedural requirements’ for rulemaking. ([Govt. C.] § 11346(a).) The agency must provide notice of the proposed action (*Id.* §§ 11346.4, 11346.5), the complete text of the proposal (§ 11346.2(a)), and an initial statement of reasons for the proposal (§ 11346.2(b)), and a final statement of reasons (§ 11346.9(a)). The agency must provide a public hearing if an interested person timely requests a hearing (§ 11346.8(a)), provide an opportunity for interested persons to submit written comments if

no hearing is held (*ibid.*), and respond in writing to comments in the final statement of reasons (§ 11346.9(a)(3)). The agency must submit the entire rulemaking file to the Office of Administrative Law (§§ 11347.3(c), 11342.550), which reviews the regulation for compliance with the law and other criteria and approves or disapproves the regulatory action. (§§ 11349.1, 11349.3 . . .” (14 Cal. 4th 557, 59 Cal.Rptr.2d 186.)

“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 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 this chapter.” (Govt. Code § 11340.5(a).)

“A substantial failure to comply with chapter 3.5 of the APA renders the regulation invalid. § 11350(a); *Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4<sup>th</sup> at 576, 59 Cal.Rptr.2d 186.”

“A regulation subject to the APA thus 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.’ ( [Former] Govt. Code § 11342(g) [now § 11342.601].) Of course, interpretations that arise in the course of case-specific adjudication are not regulations, though they may be persuasive as precedents in similar subsequent cases . . . Similarly, agencies may provide private parties with advice letters, which are not subject to the rulemaking provisions of the APA. ([Former] Govt. Code § 11343(a)(3), 11346.1(a) [now § 11340.9(I)].) Thus, if an agency prepares a policy manual that is no more than a summary, without commentary, of the agency’s prior decisions in specific cases and its prior advice letters, the agency is not adopting regulations . . . A policy manual of this kind would of course be no more binding on the agency in subsequent agency proceedings or on the courts when reviewing agency proceedings than are the decisions and advice letters that it summarizes.”(Emphasis added.) (*Tidewater*

Marine Western, Inc. v. Bradshaw, supra, 14 Cal. 4<sup>th</sup> at 571, 59 Cal.Rptr.2d 186.)”

*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4<sup>th</sup> 324, 333–334, 42 Cal.Rptr.3d 47, 53–54, confirms the Syngenta/Tidewater analysis, especially that a regulation must be intended to apply generally, and that it must implement, interpret or make specific the law administered by the agency, or govern the agency’s procedure.

**Special Order No.: 228** is a regulation. It is applied to all persons, no matter what their classification, who are both present and former persons detained or evaluated by the Department of Mental Health. Its use is mandatory. Thus the mandate of **Special Order No.: 228** implements, enforces or otherwise makes specific various provisions of the Welfare and Institutions Code, and other laws, that deal with research on persons with mental illness.

**NO EXCEPTION EXCLUDES SPECIAL ORDER NO.: 228 FROM THE APA PROCEDURES.**

Clearly inapplicable are the provisions of Govt. Code § 11340.9 excluding:

“(d) A regulation that relates only to the internal management of the state agency. . . .”

“(f) A regulation that embodies the only legally tenable interpretation of a provision of law. . . .”

“(I) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.”

*Armistead v. State Personnel Bd.* (1978) 22 Cal.3d 198, 204–205, 149 Cal.Rptr. 1, 4 quoting from the First Report of the Senate Interim Committee on Administrative Regulations to the 1955 Legislature, documents the necessity for strict adherence to the APA. The court found this necessary so as to prevent state agencies from avoiding obedience to the APA by denominating rules as “ ‘policies,’ ‘interpretations,’ ‘instructions,’ ‘guides,’ ‘standards,’ or the like,” and by containing them “in internal organs of the agency such as manuals, memoranda, bulletins, or [directing them] to the public in the form of circulars or bulletins.”

*Armistead* underlined that “[R]ules that interpret and implement other rules have no legal effect unless they have been promulgated in substantial compliance with the APA” (emphasis added), thus provision of state personnel transactions manual governing withdrawal of resignation by state employee merited no weight as agency interpretation where such provision had not been duly promulgated and published.

The Special Order in question here fits the above description perfectly. It is referred to as “Special Order,”

and is replete with mandatory words such as “shall” and “will” in regard to actions to be taken. It contains mandatory language thus making it much more than simple policies, interpretations, instructions, guides, standards, or the like. Instead, it is a forbidden underground regulation which has not been adopted pursuant to the Administrative Procedures Act.

The authority for issuing **Special Order No.: 228** is stated in that document as, “By order of the Deputy Director, Long Term Care Services.”

Petitioner alleges that no authority exists in statutory law, or in the Constitutions of California or the United States, which would grant the Deputy Director, Long Term Care Services, of the Department of Mental Health the autocratic authority to issue, utilize, enforce, or attempt to enforce any rule or regulation by denominating it a **Special Order**, unless it has first been promulgated pursuant to the Administrative Procedures Act.

**Special Orders** apply statewide to all DMH facilities. These **Special Orders** mandate what each facility **must** mandate in its own version of an **Administrative Directive**. Having each DMH facility issue its own mandated version of a **Special Order** under the label of an **Administrative Directive** is just the sort of “avoiding obedience to the APA” that is discussed in *Armistead v. State Personnel Bd.*

**SPECIAL ORDER NO.: 228 APPLIES GENERALLY TO RESEARCH ON ALL PERSONS WHO ARE BOTH PRESENT AND FORMER PERSONS DETAINED OR EVALUATED BY THE DEPARTMENT OF MENTAL HEALTH.**

*Modesto City Schools v. Education Audits Appeal Panel*, (3d Dist. 2004) 123 Cal.App. 4<sup>th</sup> 1365, 1381, 20 Cal.Rptr.3d 831, 842, holds that to be deemed an underground regulation, which would be invalid because it was not adopted in substantial compliance with the procedures of the APA, the agency must intend it to apply generally rather than in a specific case, and the agency must adopt it to implement, interpret, or make specific the law enforced by the agency.

“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. . . . (*Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4<sup>th</sup> at 571, 59 Cal.Rptr.2d 186.)” (*Morning Star Co. V. State Bd. Of Equalization* (2006), 38 Cal. 4<sup>th</sup> 324, 333, 42 Cal.Rptr.3d 47, 55).

*Kings Rehabilitation Center, Inc. V. Premo*, (3<sup>rd</sup> Dist. 1999) 69 Cal.App. 4<sup>th</sup> 215, 217, 81 Cal.Rptr.2d 406, notes:

“The APA is partly designed to eliminate the use of ‘underground’ regulations; rules which only the government knows about. If a policy or procedure falls within the definition of a regulation within the meaning of the APA, the promulgating agency must comply with the procedures for formalizing such regulations, which include public notice and approval by the Office of Administrative Law (OAL). Failure to comply with the APA nullifies the rule. (Govt. Code § 11350(a); *Armistead v. State Personnel Bd.* (1978) 22 Cal.3d 198, 204, 149 Cal.Rptr. 1, 4”) (Emphasis added.)

*Special Order No.: 228* is neither intended nor utilized to make specific determinations but is utilized generally when determining the type and extent of research that may be performed on all present and former persons detained or evaluated by the Department of Mental Health, and thus affects the treatment received by all persons detained by the department of Mental Health. Therefore, *Special Order No.: 228* is a regulation that must be promulgated as a regulation but otherwise is a null and void underground regulation.

**6. Provide information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.**

*Special Order No.: 228* is at odds with the due process rights, conveyed by the California and United States Constitutions, to all persons detained by the DMH because it mandates actions that affect their liberty interests but has never been legally promulgated.

*Special Order No.: 228*, and its progeny must be subject to public oversight to avoid the perception of secret draconian research being performed on California’s mentally ill.

The state authorized enforcement by state employees of the numerous statutory and constitutional violations contained in each and every un-promulgated, underground,” Manual, Instructions, Administrative Directive, or Special Order has resulted in a great deal of litigation at great expense to the taxpayers of California. The OAL, pursuant to its regulatory duties, is in a position to bring these underground regulations into the oversight process, and has a duty to the taxpayers to do so.

Public comment and OAL oversight is needed in order to halt the “bureaucratic tyranny” warned of in *Tidewater* and *Morning Star*.

*Morningstar* reiterates, “[2] These requirements promote the APA’s goals of bureaucratic responsiveness and public engagement in agency rulemaking. ‘One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation [citation], as well as notice of the law’s requirements so that they can conform their conduct accord-

ingly [citation]. The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]’ [132 P.3 d 255] (*Tidewater, supra*, 14 Cal.4<sup>th</sup> at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)” (*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4<sup>th</sup> 324, 333, 42 Cal.Rptr.3d 47, 53.)

**7. (Optional) Please attach any additional relevant information that will assist OAL in evaluating your petition.**

Notwithstanding numerous requests, grievances, complaints to the DMH, and even petitions submitted to the OAL, the Department of Mental Health has steadfastly refused and failed to follow the law as set forth in the Administrative Procedures Act and promulgate its guidelines, criteria, bulletins, manuals, instructions, orders, standards of general application, or other rules.

This type of obdurate opposition to correcting illegal and unconstitutional content in its Administrative Directives perfectly illustrates why the Legislature established the procedures set forth in the Administrative Procedures Act. This clearly demonstrates the absolute need for oversight and public input to halt the type of bureaucratic tyranny exhibited by the Department of Mental Health by issuing, using, enforcing, or attempting to enforce this type of underground regulation.

CONCLUSION

The Department of Mental Health is not, and has not been, responsive to the public they serve. Nor has the DMH been responsible to the taxpayers who must pay the bills that result from the failure of the DMH to follow the law and serve the public who pays their salaries. The California Supreme Court directed attention to this problem by stating:

“Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]’ [132 P.3d 255] (*Tidewater, supra*, 14 Cal.4<sup>th</sup> at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)” (*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4<sup>th</sup> 324, 333, 42 Cal.Rptr.3d 47, 53.)

Such bureaucratic tyranny has been a problem throughout the history of this country. Now, it must be stopped once again. The tyrannical bureaucrats in the Department of Mental Health must be directed to follow the law.

The DMH, part of the Executive Branch, lacks Constitutional authority to enact legislation. The Legislature has granted state agencies and departments quasi-legislative powers through the APA providing they follow specific promulgation procedures. However, until and unless the DMH does follow the provisions of the APA to properly promulgate *Special Order No.: 228*, it is an underground regulation which has been implemented in violation of the Separation of Powers Clause, Article III, Section 3, of the California Constitution.

To allow the DMH to continue to utilize a controversial Administrative Directive, such as *Special Order No.: 228*, would be to allow the sort of unfettered power in the Executive Branch that is a step toward a totalitarian concentration of power in the executive; a power to be exercised with inadequate legislative standard, and capable of avoiding judicial review, particularly when done through sleight-of-hand tactics designed to avoid review, has been prohibited from the earliest times. See *Hayburn's Case*, (1792) 2 U.S. (Dall.) 408, 1 L.Ed. 436, and its progeny.

Throughout the negotiation and complaint process prior to filing this petition, the Department of Mental Health has consistently cited "safety and security of the institution" as the justification for implementing the rules and regulations that Petitioner alleges are underground rules.

Petitioner takes the position that the justification for using underground rules and regulations is not relevant to the question presented in this Petition. The questions before the OAL are: (1) Is *Special Order No.: 228* a regulation within the meaning of the Administrative Procedures Act; and, (2) Did the Department of Mental Health promulgate *Special Order No.: 228* pursuant to the Administrative Procedures Act.

Petitioner submits that *Special Order No.: 228* is a regulation within the meaning of the Administrative Procedures Act, and that the Department of Mental Health has not promulgated *Special Order No.: 228* pursuant to the Administrative Procedures Act, and it is therefore an underground regulation that must be declared null and void.

Based on the foregoing, it is clear that there is a need for public participation in the regulatory process which directs the attention of agency policymakers within the Department of Mental Health to the public they serve, and to ensure that those persons or entities whom a regulation will affect have a voice in its creation.

**8. Certifications:**

I certify that I have submitted a copy of this petition and all attachments to:

Stephen W. Mayberg, Ph.D., Director  
California Department of Metal Health  
1600 9<sup>th</sup> St., Suite 151  
Sacramento, CA 95814  
(916) 654-2413 / (916) 654-2309

I certify that all the above information is true and correct to the best of my knowledge.

/s/

MICHAEL GEORGE ST. MARTIN  
PETITIONER

October 14, 2008  
Date

CALIFORNIA DEPARTMENT OF MENTAL  
HEALTH

SPECIAL ORDER

Section 200-299 Administrative

**Special Order No: 228** Effective Date: July 15, 1995  
Replaces DSH-88

Subject: **RESEARCH PROPOSAL REVIEW POLICY**

Special Order: The Department encourages and supports the conduct of research studies involving state hospital patients or staff by qualified investigators. Such research must not unduly interfere with prescribed state programs and functions. The research studies should have identifiable potential benefits such as understanding the nature of mental illness, improving diagnostic techniques, enhancing prevention and treatment programs, or improving the efficiency of the mental health services system. This special order applies to research studies only, as distinct from program evaluation studies. Research aims to develop new knowledge of a basic or applied nature. Program evaluation, on the other hand, aims to monitor the effectiveness with which existing knowledge is applied.

Authority: By order of the Deputy Director, Long Term Care Services.

Purpose: Long Term Care Services, Department of Mental Health, recognizes the need for basic and applied research on mental health problems and services within the state hospital system. The purpose of this policy is to assure that all research conducted within the state hospital system receives thorough yet expeditious prior review and approval. The review process is designed to ensure that research studies conducted at state hospitals satisfy four criteria:

1. The research must minimize any risk of harm to participants.
2. The research must safeguard the confidentiality of participants.
3. The research must not unduly interfere with the mental health services programs of the state hospitals.
4. The research must be of sufficient scientific quality to be likely to result in some identifiable potential benefit.

Method:

1. Format: All proposals for research involving state hospital patients or staff should be prepared according to the format required by and available directly from the State Health and Welfare Agency's Committee for the Protection of Human Subjects (SCPHS). Investigators applying for research grants may be required to prepare more detailed proposals following a different format specified by the funding agency. These detailed proposals are typically submitted as attachments to the basic SCPHS protocol.

Long Term Care Services requires a budget estimate which itemizes the projected expenses and sources of income. Income should include funds expected from outside granting agencies, as well as in kind support from the hospital (personnel time, supplies, equipment, telephone use, travel, etc.).

2. Timelines: Research proposals should first be submitted to the state hospital's local institutional review board (IRB), typically referred to as the research and human subjects committee. This local hospital level IRB should provide a decision regarding approval within 30 days of submission. Following hospital committee approval, the proposal should be forwarded to the Executive Director, who should provide a decision within 7 days. Following Executive Director approval, the proposal (2 copies) should be forwarded to the Deputy Director of Long Term Care Services, via the Chief, Research and Evaluation Section. The Deputy Director should provide a decision within 7 days. After receiving Division level approval, the investigator must submit the proposal to the Agency Committee (SCPHS), which should provide a decision within 60 to 90 days. Investigators are responsible for observing submission deadlines established both by the hospital and the Agency committees. For researchers not seeking outside funding, SCPHS approval concludes the review process.

3. Research Grants: Researchers seeking outside funding may be required to obtain certain additional approvals. It is the investigator's responsibility to fulfill all requirements for grant applications. For instance, federal grant applications typically require approval by the Director of the Department of Mental Health. They also require the Health and Welfare Agency Secretary's review and the completion of various assurances such as those regarding a drug-free workplace, civil rights protection (nondiscrimination, anti-lobbying, etc.), and scientific integrity.

4. Consultation: Researchers are encouraged to consult with Division staff in the Research and Evaluation Section for technical assistance in preparing or submitting proposals. Requests should be directed to the Chief, Research and Evaluation Section, Systems of Care

Signature on File

CLYDEL MURREY, Deputy Director  
Long Term Care Services  
Department of Mental Health

June 27, 1995

Date

**EXHIBIT B**

CALIFORNIA DEPARTMENT OF Mental Health

1600 Ninth Street  
Sacramento, CA 95814

**CERTIFICATION PURSUANT TO 1 CCR 280**

I, Cynthia A. Radavsky, Deputy Director of Long Term Care Services, California Department of Mental Health (Department), hereby certify:

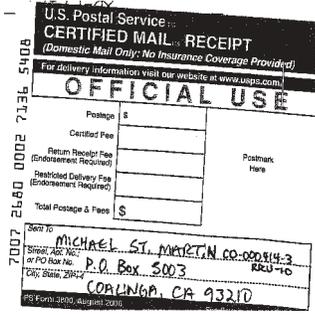
1. The Department received a copy of a petition filed with the California Office of Administrative Law by Mr. Michael St. Martin on or about October 23, 2008. A copy of the petition is attached hereto as Exhibit A.
2. The Department will not issue, use, enforce, or attempt to enforce the alleged underground regulation, the Department Special Order No. 228.
3. A copy of the certification was sent to the petitioner by certified mail, and a copy of the receipt is attached hereto as Exhibit B.

Cynthia A. Radavsky  
Deputy Director  
Long Term Care Services  
California Department of Mental Health

**CODE OF CIVIL PROCEDURE**

<u>Section</u>	<u>Issue Determined</u>	<u>Case</u>
Section 1094.5	Administrative Mandamus	West Washington
Section 1094.8	Timeliness of Filing Petition	West Washington

Dated  
12-22-08



**GOVERNMENT CODE**

<u>Section</u>	<u>Issue Determined</u>	<u>Case</u>
Section 11507.6	Statement of witnesses that will testify	Regency 0219/0220

**CALIFORNIA CODE OF REGULATIONS**

<u>Section</u>	<u>Issue Determined</u>	<u>Case</u>
Title 4, section 2420	Display permit & license requirement	Superior
Title 4, section 2512	Landscape Declassification	Maldonado

All cases are available on Department of Transportation Outdoor Advertising's website at ([www.dot.ca.gov/hq/oda/precedent\\_decisions.html](http://www.dot.ca.gov/hq/oda/precedent_decisions.html)); and are also available by subscription.

**AVAILABILITY OF INDEX OF PRECEDENTIAL DECISIONS**

**DEPARTMENT OF TRANSPORTATION**

**OUTDOOR ADVERTISING PRECEDENTIAL DECISIONS  
(GOVERNMENT CODE § 11425.60)**

INDEX

**BUSINESS AND PROFESSIONS CODE**

<u>Section</u>	<u>Issue Determined</u>	<u>Case</u>
Section 5204	Definition of Bonus Segment	Superior
Section 5208	Reference to Collier-Z'berg Act	Superior
Section 5210	Reference to federal Bonus statute	Superior
Section 5216	Definition of Landscape Freeway	Maldonado
Section 5350	No Permit	West Washington Reliable Finance
Section 5408(a)	Size of Display	West Washington
Section 5485(d)	Penalties	Reliable Finance

**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# 2008-1120-02  
**BOARD OF EQUALIZATION**  
Responsible Person Liability

This non-substantive rulemaking changes Title 18, section 1702.5 to reflect amendments to the applicable statute (Revenue and Taxation Code section 6829). Conforms with statutory change adding "limited partnership," "partnership" and "limited liability partnership" to the list of business types for which responsible persons may incur personal liability. The term "domestic or foreign" is deleted since it was removed from the statute. Also adds a specific statute of limitations for issuing deficiency determinations. SBE capitalizes the use of the term "board." All non-substantive changes.

Title 18  
California Code of Regulations  
AMEND: 1702.5  
Filed 01/02/2009  
Effective  
Agency Contact: Richard Bennion (916) 445-2130

File# 2008-1212-01  
BOARD OF FORESTRY AND FIRE PROTECTION  
Expiration of Performance Based Hazard Reduction Regulations

This change without regulatory effect would remove from CCR, title 14, Southern Forest District regulations, two sections that describe the purpose, plan elements, and standards for an optional method of treating slash to prevent fire and insect hazards to forests, and would remove from the regulation that prescribes the general methods of treating slash, mention of the availability of optional methods based on the performance standard.

Title 14  
California Code of Regulations  
AMEND: 957 REPEAL: 957.11, 957.12  
Filed 12/31/2008  
Agency Contact:  
Christopher Zimny (916) 653-9418

File# 2008-1125-05  
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING  
CPT Anniversary Date

POST requires 24 hours every two years of Continuous Professional Training (CPT) for peace officers and dispatchers. In 2005, POST promulgated regulations defining the two year cycle as beginning with the individual's initial date of appointment. Now they've discovered that this is very difficult for agencies that have to track unique dates for each individual peace officer and dispatcher. The amendment to Title 11 section 1005 aims to fix the problem by setting a statewide CPT anniversary date of January 1, 2009.

Title 11  
California Code of Regulations  
AMEND: 1005(d)  
Filed 12/31/2008  
Effective 01/01/2009  
Agency Contact: Leah Cherry (916) 227-3891

File# 2008-1120-03  
COMMISSION ON TEACHER CREDENTIALING  
Single Subject Teaching Credential Authorization  
This regulatory action allows persons with a Foundational-Level General Science credential to teach specified science courses.

Title 5  
California Code of Regulations  
AMEND: 80004  
Filed 01/05/2009  
Effective 02/04/2009  
Agency Contact:  
Terri H. Fesperman (916) 323-5777

File# 2008-1222-06  
DEPARTMENT OF INSURANCE  
Title Marketing Representative Certificate of Registration Application

This emergency regulatory action implements the provisions of SB 133 (Stats. 2008, Chap. 280) by adopting the regulatory framework for the application for certificate of registration as a title marketing representative.

Title 10  
California Code of Regulations  
ADOPT: 2194.50, 2194.51, 2194.52, 2194.53, 2194.54, 2194.55  
Filed 12/31/2008  
Effective 01/01/2009  
Agency Contact: George Teekell (415) 538-4390

File# 2008-1222-03  
DEPARTMENT OF REHABILITATION  
Conflict of Interest

The Department of Rehabilitation is amending its conflict of interest code found at title 9, section 7400, California Code of Regulations. The amendments were approved for filing by the Fair Political Practices Commission on December 9, 2008.

Title 9  
California Code of Regulations  
AMEND: 7400  
Filed 01/07/2009  
Effective 02/06/2009  
Agency Contact: Joely Walker (916) 558-5825

File# 2008-1202-02  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL  
Updates to Permit by Rule Notification for PHHWF (FORM DTSC 1094B)

These nonsubstantive changes update the address to which a form is submitted, changes the revision date of the form and deletes an obsolete requirement.

Title 22  
 California Code of Regulations  
 AMEND: 66270.60, 67450.30  
 Filed 01/06/2009  
 Agency Contact: Laura Hayashi (916) 322-6409

File# 2008-1218-04  
 OFFICE OF ENVIRONMENTAL HEALTH  
 HAZARD ASSESSMENT  
 Chemicals Known to the State to Cause Cancer or Reproductive Toxicity

The Office of Environmental Health Hazard Assessment is amending its list of chemicals known to the state to cause cancer or reproductive toxicity, found at title 27, section 27001, California Code of Regulations. This filing is exempt from review by the Office of Administrative Law pursuant to Health and Safety Code section 25249.8.

Title 27  
 California Code of Regulations  
 AMEND: 27001  
 Filed 01/05/2009  
 Effective 12/19/2008  
 Agency Contact: Cynthia Oshita (916) 322-2068

File# 2008-1218-05  
 OFFICE OF ENVIRONMENTAL HEALTH  
 HAZARD ASSESSMENT  
 Chemicals required by State or Federal Law to Have Been Tested for Potential to Cause Cancer or Reproductive Toxicity B

The Office of Environmental Health Hazard Assessment is amending its list of chemicals required by the state or federal law to have been tested for potential to cause cancer or reproductive toxicity, but which have not been adequately tested as required. This list is found at title 27, section 27000, California Code of Regulations and is exempt from review by the Office of Administrative Law pursuant to Health and Safety Code section 25249.8.

Title 27  
 California Code of Regulations  
 AMEND: 27000  
 Filed 01/05/2009  
 Effective 01/01/2009  
 Agency Contact: Cynthia Oshita (916) 322-2068

File# 2008-1118-01  
 STATE WATER RESOURCES CONTROL BOARD  
 Water Quality Control Plan for Enclosed Bays and Estuaries, Part 1 — Sediment Quality

This Government Code Section 11353 rulemaking action adds, as Section 3006 of Title 3 of the California

Code of Regulations, a concise summary of the State Water Resources Control Board's plan for Sediment Quality Objectives (SQOs) for enclosed bays and estuaries in California. The concise summary identifies two narrative SQOs: one for benthic communities and one for human health, and also identifies Part 1 of the plan, which describes how the SQOs will be interpreted and how to assess whether they have been achieved.

Title 23  
 California Code of Regulations  
 ADOPT: 3006  
 Filed 01/05/2009  
 Effective 01/05/2009  
 Agency Contact: Chris Beegan (916) 341-5577

File# 2008-1125-06  
 STATE WATER RESOURCES CONTROL BOARD  
 Subdivision of Reach 4 of the Santa Clara River Basin Plan Amendment

State Water Resources Control Board proposes adoption of title 23, section 3939.34, to amend the Los Angeles Basin Plan by subdividing Reach 4 of the Santa Clara River into Reach 4A and Reach 4B. Subdividing Reach 4 recognizes hydrogeologic conditions that affect chloride and other water quality parameters to the upper and lower segments of Reach 4, and will allow more localized, site-specific water quality and TMDL studies for upcoming amendments the basin plan. The proposed action does not modify current basin plan water quality objectives.

Title 23  
 California Code of Regulations  
 ADOPT: 3939.34  
 Filed 01/07/2009  
 Agency Contact: Nick Martorano (916) 341-5980

**CCR CHANGES FILED  
 WITH THE SECRETARY OF STATE  
 WITHIN August 6, 2008 TO  
 January 7, 2009**

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**  
 12/30/08 AMEND: 714  
 12/29/08 ADOPT: 2298  
 12/15/08 AMEND: 17463, 17470, 17519

**CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 3-Z**

12/09/08 ADOPT: 25100  
 12/08/08 AMEND: 1700  
 11/03/08 AMEND: 647.1, 647.2, 647.3, 647.20, 647.20.1, 647.21, 647.22, 647.23, 647.24, 647.25, 647.26, 647.30, 647.31, 647.32, 647.33, 647.35, 647.36, 648.1, 648.3, 648.5, 649.20, 649.21  
 10/31/08 AMEND: 18545, 18703.4, 18730, 18940.2, 18942.1, 18943  
 10/31/08 ADOPT: 18402.1 AMEND: 18427  
 10/22/08 ADOPT: 59600  
 10/21/08 ADOPT: 1859.41.1, 1859.42.1 AMEND: 1859.2, 1859.41, 1859.42, 1859.43, 1859.51, 1859.147, Form SAB 50-01, Form SAB 50-03  
 10/20/08 ADOPT: 20120, 20121, 20122, 20123, 20124, 20125, 20126, 20127  
 09/04/08 ADOPT: 18530.45  
 09/04/08 AMEND: 18946.4  
 08/14/08 AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129  
 08/08/08 ADOPT: 21905.5 AMEND: 21903, 21905

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 12/18/08 AMEND: 3417(b)  
 12/18/08 AMEND: 3406(b)  
 12/16/08 AMEND: 1358(b)  
 12/12/08 AMEND: 3434(b)  
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 11/26/08 AMEND: 3406(b)  
 11/20/08 ADOPT: 6400  
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 10/30/08 ADOPT: 1430.142 AMEND: 1430.43 REPEAL: 1430.44.5  
 10/29/08 AMEND: 3435(b)  
 10/28/08 ADOPT: 3408  
 10/22/08 AMEND: 3700(c)  
 10/20/08 AMEND: 3433(b)  
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 10/17/08 AMEND: 3423(b)  
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 10/14/08 AMEND: 3423(b)  
 10/01/08 AMEND: 3434(b)  
 09/24/08 AMEND: 810.1 REPEAL: 810  
 09/23/08 AMEND: 3591.20(a)  
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09/10/08 AMEND: 3434  
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 09/03/08 AMEND: 6452.2  
 09/02/08 AMEND: 3433(b)  
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 11/17/08 AMEND: 1505  
 10/30/08 AMEND: 1606  
 10/16/08 ADOPT: 12047, 12048, 12050, 12348 AMEND: 12002  
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 09/29/08 AMEND: 1843.2  
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 08/25/08 ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101  
 08/21/08 ADOPT: 1634 AMEND: 1420  
 08/12/08 ADOPT: 4180, 4181  
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11/06/08	AMEND: 42723		
10/17/08	ADOPT: 100000, 100001, 100002, 100003, 100004, 100005, 100006, 100007, 100008, 100009, 100010, 100011, 100012, 100013, 100014, 100015		
10/14/08	ADOPT: 42729		
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09/09/08	ADOPT: 19828.3, 19837.2 AMEND: 19816, 19816.1, 19828.2, 19837.1, 19846		
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		01/07/09	AMEND: 7400
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11/17/08	ADOPT: 10210, 10211, 10212, 10213, 10214, 10215, 10216, 10217, 10218, 10222, 10223, 10225, 10227, 10228, 10229, 10230, 10232, 10232.1, 10232.2, 10233, 10236, 10240, 10241, 10243, 10244, 10245, 10246, 10250, 10250.1, 10251, 10253, 10253.1, 10254, 10256, 10260, 10270, 10271, 10272, 10273, 10275, 10280, 10281, 10290, 10291,	12/31/08	ADOPT: 2194.50, 2194.51, 2194.52, 2194.53, 2194.54, 2194.55
		12/02/08	AMEND: 2652.1
		11/12/08	AMEND: 2498.4.9
		11/12/08	AMEND: 2498.4.9
		11/07/08	AMEND: 2498.5
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2699.6711, 2699.6713, 2699.6715,  
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09/11/08 AMEND: 2330.1  
08/15/08 ADOPT: 2844 AMEND: 2840, 2842  
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12/02/08 AMEND: 1005, 1007, 1008  
11/07/08 AMEND: 1005, 1081  
10/27/08 AMEND: 1005, 1007, 1008, 1052  
10/16/08 AMEND: 1081  
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10/02/08 AMEND: 1081  
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12/22/08 AMEND: 553.70  
12/05/08 AMEND: 110.04  
12/01/08 AMEND: 1956.8  
11/24/08 ADOPT: 2027  
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25.19, 25.20, 25.21, 25.22  
10/20/08 ADOPT: 346.00, 346.02, 346.04, 346.06,  
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10/07/08 AMEND: 935  
10/02/08 AMEND: 423.00  
10/02/08 AMEND: 15.00, 15.03  
09/08/08 AMEND: 2449  
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2260(a)(6.9), 2260(a)(7.5), 2260(a)(8.5),  
2260(a)(10.5), 2260(a)(10.7),  
2260(a)(19.7), 2260(a)(19.8),  
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08/13/08 ADOPT: 619.2 AMEND: 615, 615.1,  
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10/20/08 ADOPT: 2299.5, 93118.5

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11/26/08 AMEND: 1257  
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11/07/08 AMEND: 895.1, 919.9, 939.9  
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08/27/08 AMEND: 300  
08/25/08 ADOPT: 27.32 AMEND: 27.20(f),  
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28.55, 28.56, 28.57, 28.58  
08/18/08 AMEND: 749.3  
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10/23/08	ADOPT: 1417 AMEND: 1029, 1206, 1248, 1357, 1358, 1461	01/02/09	AMEND: 1702.5
10/15/08	ADOPT: 3999.6	12/01/08	AMEND: 1602.5
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09/03/08	AMEND: 2253	09/24/08	AMEND: 1574
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10/17/08	ADOPT: 1399.610, 1399.612 AMEND: 1399.502	<b>Title 22</b>	
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10/02/08	AMEND: 3351.2	12/09/08	AMEND: 51521
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08/25/08	AMEND: 1399.480, 1399.481, 1399.482, 1399.483, 1399.484, 1399.485, 1399.486, 1399.487, 1399.488, 1399.489, 1399.489.1	10/29/08	AMEND: 64413.1, 64414, 64431, 64432, 64432.2, 64432.8, 64433.3, 64445.1, 64447.2, 64482
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12/30/08	AMEND: 30195.1	01/07/09	ADOPT: 3939.34
12/26/08	ADOPT: 100501	01/05/09	ADOPT: 3006
12/02/08	ADOPT: 95100, 95101, 95102, 95103, 95104, 95105, 95106, 95107, 95108, 95109, 95110, 95111, 95112, 95113, 95114, 95115, 95125, 95130, 95131, 95132, 95133	12/09/08	ADOPT: 3939.33
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