



California Regulatory Notice Register

REGISTER 2010, NO. 40-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

OCTOBER 1, 2010

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

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002–931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$205.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. “Periodicals Postage Paid in Saint Paul, MN.” **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Barclays, a subsidiary of West, a Thomson Reuters Business, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. CALIFORNIA PUBLIC
EMPLOYEES' RETIREMENT SYSTEM**

**NOTICE OF PROPOSED
REGULATORY ACTIONS**

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the Board proposes to amend sections 599.500, subdivision (n), 599.501, subdivisions (f) and (g), and add section 599.500, subdivisions (o), and (p) to the California Code of Regulations, Title 2, entitled "Definitions, Coverage, Enrollment, Conversion, Minimum Standards, Alternative Benefit Plans, Contributions, Contingency Reserve Fund, Contracting Agency Participation and Medicare Part B." Various subdivisions have also been "renumbered" as a result of the additions, with no substantive alterations.

II. WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory action. The written comments period closes at 5:00 p.m. on November 15, 2010. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via Fax at (916) 795-4607; e-mail at veronica_mora@calpers.ca.gov or mailed to the following address:

Veronica Mora, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942702
Sacramento, California 94229-2702
Phone: (916) 795-0713

III. PUBLIC HEARING

Pursuant to Government Code (GC) section 11346.8, a public hearing on this matter has not been scheduled. However, if an interested person or his or her duly authorized representative submits in writing to the CalPERS Regulations Coordinator a request for a public hearing no later than 14 days prior to the close of the written comment period, November 1, 2010, a public hearing shall be scheduled before the CalPERS Health Benefits Committee. Notice of the time, date, and place of the hearing will be provided to every person who has filed a request for notice with CalPERS.

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

The Board has general authority to take regulatory action under GC section 20121. The Board has specific authority to amend section 599.500, subdivision (n), and section 599.501, subdivisions (f) and (g) along with the authority to propose anew section 599.500, subdivisions (p) and (o). Reference citation: California Government Code, section 22775.

**VI. INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

The CalPERS provides health care to State and contracting agency employees, annuitants, and eligible family members under the Public Employees' Medical and Hospital Care Act in GC section 22750 et seq. Pursuant to State law and regulation, CalPERS currently provides dependent health care coverage to eligible children who are unmarried up to age 23 and disabled children, regardless of age. By virtue of the Act and interim final regulations, these coverage limitations are inconsistent with current federal law. To align State law to the Act, the Board recommended the Legislature amend GC section 22775 to remove provisions that require that a child be unmarried to be considered eligible for health care coverage as a "family member." These provisions are included in Senate Bill 1139 (Correa 2010) which is currently enrolled, but has not yet been sent to the Governor. The GC section 22775 also provides the Board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to children, which is accomplished by the CCR, Title 2, sections 599.500 and 599.501. Pursuant to the Act, Cal-

PERS must begin offering dependent health care coverage to eligible children up to age 26 in the plan year beginning January 1, 2011. The CCR sections 599.500 and 599.501 must be amended to comply with these requirements.

The GC section 22775, definition of “Family Member” authorizes the Board by regulation, to prescribe conditions and limitations pertaining to children. The proposed regulations would amend sections 599.500, subdivision (n), 599.501, subdivisions (f) and (g), and add proposed new section 599.500, subdivisions (o), and (p). The amendments and new subdivisions would clarify existing regulations by separating out conditions or limitations pertaining to the eligibility of “children.”

Proposed amendments to section 599.500, subdivision (n) provides definitions to the term child; proposed amendments to section 599.500 subdivisions (f) and (g) clarify guidelines and requirements to provide health care coverage to children; proposed new section 599.500 subdivisions (o) and (p) provide additional definitions to family member, child, and disabled child.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to the California Public Employees’ Retirement Law.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

- A. **MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS:** While the proposed regulatory action imposes requirements on local agencies and school districts that contract with CalPERS to provide health benefits, any mandate is imposed by federal law. Reference citation: Patient Protection and Affordable Care Act, Pub. L. 111–148, Interim Final Regulations at 26 CFR 54 and 602, 29 CFR 2590, 45 CFR 144, 146, and 147.
- B. **COST OR SAVINGS TO ANY STATE AGENCY:** The proposed regulatory action will impact costs to State Agencies.
- C. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT:** The proposed regulatory action will impact costs for local agencies and school districts that contract with CalPERS to provide health benefits.

- D. **NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES:** The proposed regulatory action does not impose nondiscretionary costs or savings on local agencies that contract with CalPERS to provide health benefits.
- E. **COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE:** The proposed regulatory action may impact federal funding to the State.
- F. **ADVERSE ECONOMIC IMPACT:** CalPERS has made an initial determination that the proposed regulatory actions will not have a significant statewide adverse economic impact directly affecting businesses including the ability of business in California to compete with business in other states.
- G. **COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:** The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- H. **IMPACT ON JOBS AND BUSINESS WITHIN CALIFORNIA:** The proposed regulatory action will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- I. **EFFECT ON HOUSING COSTS:** The proposed regulatory action has no significant effect on housing costs.
- J. **COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH GC SECTIONS 17500 THROUGH 17630:** None.

IX. CONSIDERATION OF ALTERNATIVES

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

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Pat Sherard, HBB Legislative Coordinator
 California Public Employees' Retirement System
 P.O. Box 720724
 Sacramento, California 94229-0724
 Telephone: (916) 795-0885
 Fax; (916) 795-4680
 E-Mail: pat_sherard@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Veronica Mora, Regulations Coordinator, at the address shown in Section II.

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Veronica Mora, Regulations Coordinator, at the address shown in Section II.

For immediate access, the regulatory material regarding this action can be accessed at CalPERS' website at www.calpers.ca.gov.

XII.

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed text of the regulations after the public comment period closes.

If the Board modifies its regulatory action, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends, or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period**. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person **beginning October 1, 2010, and ending at 5:00 p.m. on November 15, 2010**. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407 and 10610 of the Food and Agricultural Code, and to implement, interpret or make specific sections 9166, 9167, 9562 and 10610 of said Code, the Department proposes changes to Article 12 of Chapter 2, Division 2, of Title 3 of the California Code of Regulations, as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Food and Agricultural Code section 10610 authorizes the Department to adopt regulations to control and eradicate cattle diseases, including bovine trichomonosis, through limitations on movement, diagnostic testing, vaccinations, or other appropriate methods of treatment and control. Sections 9562 and 9570 authorize the State Veterinarian to order the quarantine of diseased animals and restrict movement of infected animals or animal products to minimize the risk of an illness that could kill or seriously damage other animals or humans.

In compliance with sections 9562 and 10610 the Department has in place existing Bovine Trichomonosis Control Program regulations under Article 12 of Chapter 2, Division 2, of Title 3 of the California Code of Regulations.

This proposal amends sections 820 (Definitions), 820.3 (Requirements for Entry of Bulls into California), adds new section 820.55 (Trichomonosis Tests), and amends sections 820.6 (Reporting of Positive Test Results) and 820.7 (Trichomonosis Infected Cattle) of Article 12 (Bovine Trichomonosis Control Program). Specifically, this proposal updates the testing protocols to additionally accept the real time quantitative Polymerase Chain Reaction (qPCR) testing procedure for the detection of bovine trichomonosis. The amendments come at the request of the Department's Cattle Health Advisory Task Force pursuant to section 10610 of the Food and Agricultural Code, made at their meeting held February 10, 2010.

Incorporation by Reference

The Department is incorporating by reference the bovine trichomonosis handling protocol dated July 9, 2010. The protocol may be obtained by contacting the Department, or by contacting the California Animal Health and Food Safety laboratory, West Health Sciences Drive, Davis, California 95617-1770, or by accessing their Internet website at cahfs.ucdavis.edu.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

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

This proposal amends existing requirements for the control of bovine trichomonosis by allowing producers and veterinarians the use of an additional test used for the detection of trichomonosis. Because the requirements for California businesses and individuals are based on the voluntary use of qPCR testing, the Department has determined that no adverse impact exists with this proposal. The following compliance requirements are projected to result from the proposed action:

Paperwork: This proposal contains paperwork requirements consisting of laboratory testing for trichomonosis in cattle. Any person conducting trichomonosis testing for the detection of bovine trichomonosis may incur costs. Trichomonosis testing requirements are intended to control and possibly prevent a disease of cattle that will benefit California's cattle industry, promote healthy animals, and make the industry's products marketable both nationally and internationally.

Record Keeping: This proposal does not contain any additional record keeping requirements.

Reporting: This proposal does not contain any additional reporting requirements.

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

Cost Impacts on Private Persons or Entities: The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Department are:

Paperwork: This proposal contains paperwork requirements consisting of laboratory testing for trichomonosis in cattle. Any person conducting trichomonosis testing for the detection of bovine trichomonosis may incur laboratory costs.

Record Keeping: This proposal does not contain any record keeping requirements.

Reporting: This proposal does not contain any additional reporting requirements.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

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

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments orally or in writing relevant to the above deter-

minations at the hearing (if a hearing is requested) or during the written public comment period.

INITIAL STATEMENT OF REASONS

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

TEXT OF PROPOSAL

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

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

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

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

CONTACT PERSONS

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

Anita J. Edmondson, BVM&S, MPVM, MRCVS
Department of Food and Agriculture
Animal Health and Food Safety Services
1220 N Street, Room A-114
Sacramento, CA 95814
Telephone: (916) 651-9135
Fax No.: (916) 653-4249
E-mail: aedmondson@cdfa.ca.gov

The backup contact person is:

Thami Rodgers, Associate Analyst
Department of Food and Agriculture
Animal Health and Food Safety Services
1220 N Street, Room A-114
Sacramento, CA 95814
Telephone: (916) 698-3276
Fax: (916) 653-4249
E-mail: trodgers@cdfa.ca.gov

Website Access:

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

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Field Fumigant Use Requirements
DPR Regulation No. 10-004

NOTICE OF PROPOSED REGULATORY ACTION

AND

NOTICE OF PUBLIC HEARING ON A PROPOSED OZONE STATE IMPLEMENTATION PLAN AMENDMENT REGARDING PESTICIDE EMISSIONS IN THE SACRAMENTO METRO, SAN JOAQUIN VALLEY, SOUTH COAST, SOUTHEAST DESERT, AND VENTURA NONATTAINMENT AREAS

The Department of Pesticide Regulation (DPR) proposes to amend sections 6445.5, 6448.1, 6449.1, 6450.1, 6452.2, 6452.3, 6452.4, 6536, and 6626 of Title 3, California Code of Regulations. This proposed action would add and revise existing field fumigation methods in the Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura ozone nonattainment areas (NAAs) when using 1,3-Dichloropropene, chloropicrin, metam-sodium, or potassium N-methyldithiocarbamate (metam-potassium); amend triggers for fumigant limits in NAAs and the allowance system used to enforce the fumigant limits; and clean-up sections pertaining to licensing and pesticide use reporting requirements related to volatile organic compounds (VOCs).

DPR will conduct a public hearing to accept comments on these amendments that may become part of the ozone state implementation plan (SIP). The federal Clean Air Act requires each state to submit a SIP for achieving and maintaining federal ambient air quality standards for ozone. California's SIP contains an ele-

ment to reduce pesticidal sources of VOCs. These proposed regulations amend and add to regulations that were previously submitted to the U.S. Environmental Protection Agency (U.S. EPA) to support a pending SIP amendment. Opportunity to comment and the hearing on the proposed regulations as part of the SIP amendment are being provided in conjunction with this rule-making.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on November 17, 2010. Comments regarding this proposed action may also be transmitted via e-mail <dpr10004@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

A public hearing has been scheduled for the time and place stated below to receive oral comments regarding the proposed regulatory changes.¹

DATE: November 16, 2010

TIME: 6:00 p.m.

PLACE: Kern Agricultural Pavilion
3300 E. Belle Terrace
Bakersfield, California 93307

A DPR representative will preside at the hearing. Persons who wish to speak will be asked to register before the hearing. The registration of speakers will be conducted at the location of the hearing from 5:00 to 6:00 p.m. Generally, registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded the opportunity to do so after the registered persons have been heard. If the number of registered persons in attendance warrants, the hearing officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard. Oral comments presented at a hearing carry no more weight than written comments.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

State and federal law mandates that DPR protect human health and the environment by regulating pesticide

sales and use and by fostering reduced-risk pest management.

Before planting, farmers use fumigants to control disease, weeds, and pests in the soil. Fumigants are also used to control pests in structures and harvested commodities. Measured in pounds, fumigants represent approximately 20 percent of all agricultural pesticides used in California. Because fumigants are usually applied at a rate of several hundred pounds an acre and are very volatile, fumigants account for an even higher proportion of VOCs emitted by pesticides. In some areas of the state, up to three-quarters or more of the pesticide VOCs are from fumigants. VOCs can contribute to the formation of ground-level ozone, which is harmful to human health and vegetation when present at high enough concentrations. The federal Clean Air Act requires each state to submit a SIP for achieving and maintaining federal ambient air quality standards for ozone. An ozone NAA is a geographical region in California that does not meet either federal or state ambient air quality standards. U.S. EPA designates NAAs in Title 40, Code of Federal Regulations section 81.305. In 1994, California's Air Resources Board and DPR developed a plan to reduce pesticidal sources of VOCs in five NAAs—Sacramento Metro, San Joaquin Valley, South Coast, Southeast Desert, and Ventura—as part of the California SIP to meet the one-hour ozone standard.

In January 2008, DPR adopted regulations to achieve a 20 percent reduction of pesticide VOC emissions from 1991 levels in the five NAAs. Those regulations, in part, focus exclusively on fumigant emissions to achieve reductions through controls on application methods and the benchmarks that trigger a cap and allowance system to force reductions if needed.

On July 18, 2008, U.S. EPA revised California's SIP to allow an additional 1.3 tons per day (tpd) of VOCs from pesticides in Ventura in 2008. (73 Federal Register 41277, 41278.) That SIP revision requires a portion of the additional 1.3 tons of emission allowed in 2008 to be reduced each year thereafter until the total 20 percent reduction is reached in Ventura until 2012. In September 2008, DPR amended the regulations to make it consistent with the phase-in of 1.3 tpd in Ventura approved by U.S. EPA.

In 2009, ARP submitted a revised SIP to U.S. EPA for the San Joaquin Valley that included a pesticide VOC emissions limit of 18.1 average tpd, reflecting the 12 percent reduction from 1990 levels required by the SIP. The proposed SIP revision also includes a commitment to implement restrictions that reduce VOC emissions from non-fumigant pesticides by 2014. That submission has not yet been approved by U.S. EPA.

The proposed regulatory action pertains to the following seven fumigant active ingredients. Common brand names and/or alternative chemical names are giv-

¹ If you have special accommodation or language needs, please notify DPR. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

en in parentheses as an aid to identification—methyl bromide, 1,3-Dichloropropene (Telone, Inline), chioropicrin, metam-sodium (Vapam, Sectagon), Potassium N-methyldithiocarbamate (also known as metam-potassium [K-Pam]), dazomet (Basamid), and sodium tetrathiocarbonate (Enzone).

DPR proposes to amend sections 6448.1, 6449.1, and 6450.1 to add and revise existing field fumigation methods that may be used in the five ozone NAAs during the May 1 through October 31 time period. The addition of new methods, as well as amending existing methods, would result in no greater emission than any of the fumigant methods currently allowed.

DPR proposes to amend section 6452.2 to revise the trigger for fumigant limits from 80 percent of the benchmark to five percent of the benchmarks (equivalent to 95 percent) or exceeds the benchmarks, and provide flexibility to implement the fumigant limit even if the trigger level is not reached. Also, DPR proposes to provide the county agricultural commissioners and Director two additional options for enforcing fumigant limits.

DPR proposes to amend sections 6445.5, 6452.4, 6536, and 6626 to “clean-up” sections pertaining to the Annual VOC Emissions Inventory Report, and licensing and pesticide use reporting requirements related to VOCs.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action. These proposed revisions potentially give flexibility in achieving the fumigant limit with fewer resources for county agricultural commissioners.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no increased costs to any state agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

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

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

CONSIDERATION OF ALTERNATIVES

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

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456, 11502, 12976, 13145, 14005, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11501, 11708, 11733, 14001, 14006, 14011.5, 14102, and 14151.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Policy
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted above:

Randy Segawa, Environmental Program Manager
Environmental Monitoring Branch
(916) 324-4137

This Notice of Proposed Action, the Initial Statement of Reasons, the proposed text of the regulation, the proposed amendment to the ozone state implementation plan regarding pesticide emissions in the San Joaquin Valley NAA, and staff report are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the proposed text can be made available in an alternate form as a disability-related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.5(a)(19) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

TITLE 4. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

TITLE 4. BUSINESS REGULATIONS

NOTICE OF PROPOSED RULEMAKING

The California Pollution Control Financing Authority (CPCFA and the "Authority"), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code, proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Authority proposes to amend Sections 8070, 8072, 8073, and 8074 of Title 4 of the California Code of Regulations concerning the administration of the California Capital Access Program for Small Businesses (the "Program" and CalCAP). These Amended Regulations are necessary to implement, interpret, and make specific Article 4 of the California Pollution Control Financing Authority Act (the "Act").

AUTHORITY AND REFERENCE

Authority: Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regula-

tions relating to the California Capital Access Loan Program (CalCAP) established by the Act.

Reference: Sections 44559–44559.9 of the Health and Safety Code. These amended regulations implement, interpret, and make specific Sections of the Act by amending Sections 8070, 8072, 8073, and 8074 of Title 4, Division 11, Article 7 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes the California Capital Access Loan Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2)

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender’s Loss Reserve Account. (Health and Safety Code, § 44559.3) The Authority matches the fees paid by the lender to the Loss Reserve Account at 100 percent or 150 percent. (Health and Safety Code, § 44559.4(d)) The funds held in the lender’s Loss Reserve Account are the sole property of the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5)

The proposed amendments streamline the required loan documentation, limit timeframes that pre-qualifications and loans are valid, limit excessive claims, and conform the regulations to the statute. These amendments are the result of periodic evaluation of the regulations and issues encountered during specific loan transactions. The proposed amendments and objectives for each section are as follows:

Section 8070(s). The current definition of “Qualified Loan” prohibits loan proceeds to be used to fund facilities and businesses that could cause the interest on any of CPCFA’s bonds to become subject to federal law. From time to time the Executive Director and the Board have added to this list to exclude other facilities and businesses. The proposed regulation will expand the list of prohibited facilities and businesses to include aircraft, spas that provide massage services, bars, and adult entertainment (including strip clubs, adult bookstores, and businesses whose principal business is the sale of pornography)—each of which are similar to facilities and businesses that already exist in the list of prohibited uses. This amendment will provide a clearer description of the types of

facilities and businesses that are eligible for CalCAP.

Section 8072(c). This proposed change will allow finance companies that are not subject to federal regulations to comply with the standards applicable to them.

Section 8072(e). This proposed change will allow finance companies that are not subject to federal regulations to comply with the standards applicable to them.

Section 8072(f). This proposed change establishes a limit on the time a pre-qualification for a loan is valid to no more than six (6) months. CalCAP Regulations require loans of \$500,000 or more to be pre-qualified. This process allows staff to verify that the total amount loaned to one particular borrower does not exceed \$1.5 million in a three-year period. However, the existing regulation does not address the length of time a pre-qualification is valid. Expired pre-qualified loans may be resubmitted for approval. Establishing a time limit will streamline our records retention.

Section 8072(i). This proposed amendment eliminates the requirement for lenders to provide the Authority with notification of extensions or renewal of any loan which does not increase the loan amount. Lenders will no longer need to provide the Authority with notice when loan terms are extended or if the loan amount has been reduced. Instead lenders will be required to expand the information they currently provide in periodic reports, which will allow CalCAP staff to better monitor each lender’s loan portfolio.

Section 8072(i). The proposed amendment formally allows previously enrolled CalCAP loans to be combined and provides guidance on how to notify the Authority of that transaction.

Proposed Section 8072(k). This proposed section limits the term a loan can be enrolled in the CalCAP program to ten (10) years. Limiting the length of time a loan can be enrolled in CalCAP does not prevent lenders from issuing loans with a term longer than ten (10) years. There is currently no limit on the time a loan can be enrolled and covered in the Program. Several large long-term real estate loans are currently enrolled in CalCAP that have the potential to greatly reduce the lender’s loan loss reserve account. Instituting this limit will prevent excessive loss to CalCAP’s overall financial health.

Section 8073(d). This proposed change conforms the CalCAP Regulations to the Authority’s Statute as set forth by the CA Health and Safety Code

Section 44559.3(d). The current Regulation restricts the Executive Director to withdraw 50 percent of the interest; however, recent Statute changes allow the Authority to withdraw all interest or other income as set forth in CA Health and Safety Code Section 44559.3(d).

Proposed Section 8074(d). This proposed amendment limits the amount of principal and accrued interest reimbursable in a claim to the enrolled amount of the qualified loan or loans. Reasonable out-of-pocket expenses, as determined by the Executive Director, can still be claimed. Instituting this limit will prevent excessive loss to CalCAP's overall financial health.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Capital Access Regulations.

Mandate on local agencies or school districts: None

Cost or savings to any state agency: None

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

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

Cost or savings in federal funding to the state: None

Significant effect on housing costs: None

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the amended CalCAP 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.

Assessment regarding effect on jobs/businesses: The amended CalCAP Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

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

Small Business: The amended CalCAP Regulations will not have an adverse impact on small business in California. The proposed regulation will not significantly affect small businesses because they do not impose additional costs on small businesses.

CONSIDERATION OF ALTERNATIVES

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

The Authority invites interested persons to present statements with respect to alternatives to the amended CalCAP Regulations during the written comment period.

AGENCY CONTACT PERSON

Written comments, inquiries and any questions regarding the substance of the amended CalCAP Regulations shall be submitted or directed to:

Kamika McGill, Treasury Program Officer
California Pollution Control Financing Authority
915 Capitol Mall, Room 452
Sacramento, California 95814
Telephone: (916) 654-2492
Fax: (916) 657-4821
Email: kmcgill@treasurer.ca.gov

Or:

Patricia Tanous, Treasury Program Manager
California Pollution Control Financing Authority
915 Capitol Mall, Room 454A
Sacramento, California 95814
Telephone: (916) 654-8521
Fax: (916) 657-4821
Email: ptanous@treasurer.ca.gov

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the amended CalCAP Regulations to the Authority. The written comment period on the amended CalCAP Regulations ends at **5:00 p.m on November 15, 2010**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantive changes are made to the amended CalCAP Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified amended CalCAP Regulations for fifteen (15) calendar days after the date on which such amended CalCAP Regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

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

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the amended CalCAP Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfafa/>.

PUBLIC HEARING

A public hearing regarding the amended CalCAP Regulations has been scheduled for **November 16, 2010 at 10:00 a.m. (PST) at 915 Capitol Mall, Room 470, Sacramento, CA 95814.**

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

After the written comment period ends and following the public hearing, the Authority may adopt the amended CalCAP Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that 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 fifteen (15) calendar days before the Authority adopts the proposed amended CalCAP Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT
OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website at <http://www.treasurer.ca.gov/cpcfafa/>.

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

AMENDMENTS TO THE CALIFORNIA CODE OF
REGULATIONS, TITLE 5 REGARDING
IMPLEMENTATION OF THE PARENT
EMPOWERMENT PROVISIONS OF THE OPEN
ENROLLMENT ACT

[Notice Published October 1, 2010]

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

PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing at 1:30 p.m. on November 17, 2010, at 1430 N Street, Room 1801, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

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

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

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to regcomments@cda.ca.gov. Comments must be received by the Regulations Coordinator prior to 5:00 p.m. on November 17, 2010. All written comments received by CDE staff during the public comment period are subject to viewing under the Public Records Act.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

Reference: Sections 53, 47605, 53201, 53202, 53300, 53301 and 53302, Education Code; Sections 11346.1 and 11349.6, Government Code; and 20 U.S.C. Sections 6301, 6311 and 6316.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The SBE proposes to adopt Article 1 of Subchapter 1 of Chapter 5.2.5 of Division 1 of California Code of Regulations, Title 5, to implement the Parent Empowerment provisions which were signed into law on January 7, 2010 and made effective on April 12, 2010.

The Parent Empowerment provisions, as set forth in Education Code sections 53300-53303, inclusive, (SBX5 4 (Romero)) provide a parent of pupils who are or will be enrolled in a school that is not identified as a "persistently lowest-achieving school" pursuant to Education Code (Ed. Code) section 53201, but is subject to corrective action pursuant to paragraph (7) of Section 1116(b) of the federal Elementary and Secondary Education Act (20 U.S.C. Section 6301 et seq.), continues to fail to make adequate yearly progress, and has an API score of less than 800, the option to petition the local educational agency (LEA) to implement a particular reform in the school.

The options for reform include, and are limited to, the four interventions identified in paragraphs (1) to (4), inclusive, of Ed. Code section 53202(a) and the federally mandated alternative governance arrangement pursuant to section 1116(b)(8)(B)(v) of the federal Elementary and Secondary Education Act. The LEA must implement the reform option requested in the petition or, if it cannot, must implement another reform option.

The proposed regulations seek to implement the provisions in the Parent Empowerment statutes by, among other things, specifying how signatures may be counted by an LEA to determine a petition's sufficiency, detailing the minimum contents that must be contained in a petition, introducing timelines to ensure an efficient and timely petition process and establishing other conditions for action by petitioners, LEAs, the State Superintendent of Public Instruction and the SBE. The proposed regulations also incorporate specific descriptions of the five reform intervention models as contained both in Volume 74 of Number 221 of the Federal Register, as referenced in Ed. Code section 53202(a), and section 1116(b)(8)(B)(v) of the federal Elementary and Secondary Act, so that all of the information necessary to choose and implement a particular intervention model is contained in one place for the benefit of petitioners and the LEA.

DISCLOSURES REGARDING THE PROPOSED REGULATION

The SBE has made the following initial determinations:

Mandate on local agencies or school districts: Unknown

Cost or savings to state agencies: None

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: Unknown

Other non-discretionary cost or savings imposed on local educational agencies: Unknown

Cost or savings in federal funding to the state: None

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

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

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within Califor-

nia; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed regulations would not have a significant adverse economic impact on any business because they relate only to schools and school districts and not to small business practices.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

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

Jeff Breshears, Education Programs Consultant
 District and School Improvement Division
 California Department of Education
 1430 N Street, Room 6208
 Sacramento, CA 95814
 Telephone: 916-319-0946

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916-319-0860.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and down-

loaded from the CDE's Web site at <http://www.cde.ca.gov/re/lr/rr>.

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

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

You may obtain a copy of the final statement of reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Jeff Breshears, District and School Improvement Division, 1430 N Street, Sacramento, CA, 95814; telephone, 916-319-0946. It is recommended that assistance be requested at least two weeks prior to the hearing.

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 5 REGARDING THE CAHSEE — IMPLEMENTATION OF ALTERNATIVE MEANS

[Notice published October 1, 2010]

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

PUBLIC HEARING

California Department of Education (CDE) staff, on behalf of the SBE, will hold a public hearing at 9:00 a.m. on November 17, 2010, at 1430 N Street, Room 1801, Sacramento, California. The room is wheelchair accessible. At the hearing, any person may present

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

WRITTEN COMMENT PERIOD

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

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

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to regcomments@cde.ca.gov. Comments must be received by the Regulations Coordinator prior to 5:00 p.m. on November 17, 2010. All written comments received by CDE staff during the public comment period are subject to viewing under the Public Records Act.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AUTHORITY AND REFERENCE

Authority: Section 60852.2, Education Code.
Reference: Section 60852.2, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Studies have shown that there are students with disabilities (SWDs) who have an individualized education

program (IEP) or Section 504 plan, which states that the student is scheduled to receive a high school diploma, and has satisfied, or will satisfy, all state and local requirements for high school graduation on or after July 1, 2009, and who have taken the California High School Exit Examination (CAHSEE) at least twice since grade ten and at least once in grade twelve but have not passed one or both portions of the CAHSEE; though the actual number of these students is still undetermined.¹ The SBE has been charged to consider an analysis of alternative means by which eligible SWDs may demonstrate the same level of academic achievement in the content standards in English–language arts or mathematics, or both, required for passage of the CAHSEE.

The SBE has determined that alternative means to the CAHSEE for eligible SWDs are feasible, but has not specified the nature of the alternative means. The SBE did request additional information and analysis of a proposed alternative means to be considered in order to begin a process for implementation. The proposed amendments to California Code of Regulations, title 5, adding section 1216.1, would extend the date from January 1, 2011, until July 1, 2012, to provide for the necessary appropriate implementation of alternative means and would make clear that the exemption continues.

DISCLOSURES REGARDING THE PROPOSED REGULATION

The SBE has made the following initial determinations:

Mandate on local agencies or school districts: None

Cost or savings to state agencies: None

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

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

Cost or savings in federal funding to the state: None

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

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

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within Califor-

¹ For a description of the studies referenced, see page 5 of the Finding of Emergency, “Technical, Theoretical, and/or Empirical Studies, Reports, or Documents.”

nia; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed amendments to the regulations do not affect small businesses because the regulations apply only to school districts and not to business practices.

OTHER REQUIRED SHOWINGS — GOV.
CODE SECTION 11346.2(b)(2)–(4)

Studies, Reports, or Documents Relied Upon — Gov. Code Section 11346.2(b)(2)

The SBE relied on various information in reaching its conclusion that alternative means are feasible, and that eligible SWDs could demonstrate the same level of academic achievement in the content standards in ELA and mathematics, or both, required for passage of the CAHSEE. The following information was considered:

- The 2007 California Department of Education report, *Considered Courses of Action for the California High School Exit Examination (CAHSEE) for Students with Disabilities Who Have Met All Other Graduation Requirements*, was included in a presentation on the background of alternative means provided to the SBE at its May 2010 meeting. The May 2010 item, specifically Attachment 4 relating to the AB 2040 Panel, can be found at the SBE Agenda—May 2010 Web page at <http://www.cde.ca.gov/be/ag/ag/yr10/agenda201005.asp>.
- The 2008 Human Resources Research Organization (HumRRO) report examining what schools were doing to support special populations as they attempted to meet the CAHSEE requirement, *California High School Exit Examination (CAHSEE) Special Populations Study*. This report may be found on the CDE CAHSEE Independent Evaluation Web page at <http://www.cde.ca.gov/ta/tg/hs/evaluations.asp>.
- *The California High School Exit Examination: Assembly Bill 2040 Panel Findings and Recommendations Regarding Options for Alternative Means for Eligible Students with Disabilities* was presented to the SBE at its November 2009 meeting. The November 2009 item can be found at the SBE Agenda—November 2009 Web page at <http://www.cde.ca.gov/be/ag/ag/yr09/documents/nov09item22.doc>.
- The 2010 American Institutes for Research analysis performed pursuant to the Kidd (Chapman) settlement agreement on SWDs who had taken the CAHSEE with modifications and/or

accommodations specified in their respective IEPs or Section 504 plans, and who had not passed the CAHSEE, but who had satisfied, or would satisfy, all other requirements for high school graduation, *Independent Evaluation Study of Certain Students Who Used Modifications and/or Accommodations on the California High School Exit Examination (CAHSEE) Final Report*. This report may be found on the CDE CAHSEE Independent Evaluation Web page at <http://www.cde.ca.gov/ta/tg/hs/evaluations.asp>.

- HumRRO’s 2010 analysis of the panel’s recommended alternative means, *Exploration of Alternative Means for Students with Disabilities to Meet the CAHSEE Requirement*. The results of this analysis were provided to the SBE in the form of a PowerPoint presentation at its July 2010 meeting. The July 2010 item can be found on the SBE Agenda—July 2010 Web page at <http://www.cde.ca.gov/be/ag/ag/main201007.asp>.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

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

Deborah Probst, Education Programs Consultant
Assessment, Accountability and Awards Division
CAHSEE/PFT Office
California Department of Education
1430 N Street, Room 4202
Sacramento, CA 95814
Telephone: 916–319–0362
E-mail: dprobst@cde.ca.gov

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916–319–0860.

INITIAL STATEMENT OF REASONS
AND INFORMATION

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

TEXT OF PROPOSED REGULATION AND
CORRESPONDING DOCUMENTS

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

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

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

You may obtain a copy of the final statement of reasons, once it has been finalized, by making a written request to the Regulations Coordinator.

REASONABLE ACCOMMODATION FOR ANY
INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973*, the *Americans with Disabilities Act of 1990*, and the *Unruh Civil Rights Act*, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Deborah Probst, Education Programs Consultant, Assessment, Accountability and Awards Division, 1430 N Street, Sacramento, CA, 95814; telephone, 916-319-0362. It is recommended that assistance be requested at least two weeks prior to the hearing.

**TITLE 8. OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

NOTICE OF PUBLIC MEETING/PUBLIC
HEARING/BUSINESS MEETING OF THE
OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD AND NOTICE OF
PROPOSED CHANGES TO TITLE 8 OF THE
CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has

set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **November 18, 2010**, at 10:00 a.m.
in the Council Chambers of the
Costa Mesa City Hall,
77 Fair Drive, Costa Mesa,
California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING: On **November 18, 2010**, following the Public Meeting, in the Council Chambers of the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS

MEETING: On **November 18, 2010**, following the Public Hearing, in the Council Chambers of the Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

At the Business Meeting, the Board will conduct its monthly business.

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation re-

quests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, General Industry Safety Orders, as indicated below, at its Public Hearing on **November 18, 2010**.

1. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7,
Article 7
Section 3328
Machinery and Equipment
2. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7,
Article 25
Section 3657
Elevating Employees with Lift Trucks

Descriptions of the proposed changes are as follows:

1. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7,
Article 7
Section 3328
Machinery and Equipment

INFORMATIVE DIGEST OF PROPOSED
ACTION/POLICY STATEMENT OVERVIEW

This staff-initiated rulemaking proposal is the result of Occupational Safety and Health Appeals Board (OSHAB) Decisions After Reconsideration (DAR) in the Matter of E.L. Yeager Construction Company, Inc., Docket No. 01-R5D3-3261 dated November 2, 2007, and the OSHAB Decision and Order in the Matter of Jensen Precast, Inc., Dockets 07-R3D3-1928 through 1931, dated May 28, 2008. In Yeager, the employer marginally secured a 26,000 pound weigh hopper against inadvertent movement. The hopper broke loose from its support structure and fell on a skip loader operator causing fatal injuries. The Division of Occupa-

tion Safety and Health (Division) cited the employer for failing to secure the weigh hopper adequately. According to the Division, the hopper should have been provided with a secondary restraint system. The OSHAB DAR states that Section 3328(e) does not require machinery and equipment to be both designed and secured to minimize listed hazards. Similarly, in Jensen Precast, the OSHAB noted the disjunctive nature of the safety orders wording (designed or secured).

This rulemaking proposes to clarify the wording of Section 3328(e) by eliminating the disjunctive nature of the wording and requiring that machinery and equipment components are both designed and secured or covered or both to minimize the hazards that the safety order addresses. Requiring machinery and equipment components to be designed and secured or covered or both to withstand operational loads and stresses will reduce hazards and eliminate confusion regarding the intent of the standard.

Section 3328. Machinery and Equipment.

Subsection (e).

Existing Section 3328 establishes requirements for machinery and equipment to be designed, operated and maintained to ensure employee safety. Existing subsection (e) requires that machinery and equipment components be designed, secured, or covered to minimize hazards caused by breakage, release of mechanical energy, or loosening and falling. This language needs to be modified to address adequately the hazards discussed in the above-discussed OSHAB matters.

Amendments are proposed to require that machinery and equipment components be designed and secured or covered (or both) to minimize hazards unless the employer can demonstrate that doing so would be inconsistent with the manufacturer's recommendations or would impair employee safety. This proposal promotes safety by clarifying to employers and enforcement personnel the circumstances under which machinery and equipment components must be both designed and secured to minimize employee exposure.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

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

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed regulation does not impose unique requirements on local governments. All state, local and

private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendment to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

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

2. **TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Division 1, Chapter 4, Subchapter 7,
Article 25

Section 3657

Elevating Employees with Lift Trucks

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This rulemaking proposal was initiated in response to a Division of Occupational Safety and Health (Division) Form 9 request for change in existing safety order. Existing Section 3657 addresses the hazard of elevating employees using conventional forklift trucks with vertical masts on level surfaces in industrial facilities such as warehouses and manufacturing plants. The existing standard does not adequately address the increased use of variable reach (boom type) rough-terrain forklift trucks for elevating employees on construction sites. A variable reach boom presents a significant tip-over hazard if the lift truck is not on level terrain or the load is too heavy or too far outside of the center of gravity of the lift truck. Also, sudden movement of the boom can cause an employee to fall from the work platform. To address this hazard, existing standards governing boom-type aerial devices, which are similar to boom-type forklifts, require the use of fall protection.

This proposed rulemaking action contains numerous nonsubstantive, editorial, reformatting, and grammatical revisions. These nonsubstantive revisions are not all discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these nonsubstantive revisions, the following actions are proposed:

Subsection (a), Scope and application.

Existing subsection (a) would be renumbered as subsection (b). Proposed subsection (a) would identify those subsections of the standard that apply to all types of lift trucks and those subsections that apply only to variable reach lift trucks. The effect of this provision is to instruct the reader on the application of each provision of the standard with respect to variable reach lift trucks and other types of lift trucks.

To alert the reader to additional requirements in other standards that pertain to the use of lift trucks, the proposal would reference three General Industry Safety Orders (GISO) standards.

Subsection (b).

The existing text of renumbered subsection (b) prohibits elevating employees unless the conditions in the following subsections (1) through (6) are met. Subsections (1) through (5) pertain to the work platform, and subsection (6) pertains to the lift truck itself. The proposal would retain the numbering of the first five subsections but would renumber subsection (6) as subsection (c). Proposed subsection (b) would be amended for clarity and to limit its scope of application to work platforms. The effect of these editorial changes is to maintain the logical organization of this standard. The text of existing subsection (b) would be incorporated into the exemption from proposed subsection (b)(3), and existing subsection (b) would be deleted. (See the discussion under subsection (b)(3) for the effect of this amendment.)

Subsection (b)(1).

The existing text specifies dimensions in inches and meters. For consistency and simplicity, the proposal would convert the specified dimensions to feet. Also, the term “employee” would be replaced with “personnel” because more than one employee may work on the work platform. These editorial changes would have no regulatory effect.

Subsection (b)(2).

The existing text requires that the platform be secured to the forks or mast. The amended text would clarify that the platform does not need to be secured to the forks or mast if it is attached to the boom. The effect of this amendment is to exempt lift trucks equipped with platforms that attach directly to the boom from the require-

ment to secure the platform. Where platforms do not attach directly to the boom, the proposal would specify that the base of the platform must be secured to the forks or to the base of the fork carriage. The effect of this amendment is to ensure the platform is secured in a manner that prevents the platform from tipping, slipping or failing.

Subsection (b)(3).

The existing text requires that the platform meet the guardrail and toeboard requirements of Section 3210. The proposal would add an exemption to the existing requirement. The exemption is derived from the text of existing subsection (b). The effect of this amendment is to clarify that the employer is exempt from the requirement for guardrails if the employer complies with the conditions of the exemption.

Subsection (c).

Existing subsection (a)(6) would be renumbered as subsection (c), and the existing text would be amended to replace the term “employee” with “personnel,” delete unnecessary language and correct a misspelling. These editorial changes have no regulatory effect.

Subsections (d) and (e).

Existing subsections (c) and (d) would be renumbered as (d) and (e) respectively. The effect of this amendment is to maintain the sequential numbering of the subsections.

Subsections (f) and (g).

Existing subsections (e) and (f) would be renumbered as (f) and (g) respectively. The effect of this amendment is to maintain the sequential numbering of the subsections. The proposal would replace the term “elevatable” with “that elevate” or “elevating,” and would add the term “upper controls” in parentheses after the phrase “controls that elevate with the lifting carriage or forks.” The effect of these editorial changes is to improve clarity by using common terms.

Subsections (h) and (i).

Existing subsections (g) and (h) would be renumbered as (h) and (i) respectively. The effect of this amendment is to maintain the sequential numbering of the subsections. Proposed subsection (h) would replace the “or” following “cranes” with “and.” The effect of this amendment is to require that all moving or motorized equipment, including bridge cranes, which could overrun or otherwise injure the elevated worker, is shut down or locked out. Also, the term “Employees” would be replaced with “Personnel” because one or more employees may work on the work platform.

Subsection (j).

Existing subsection (i) would be renumbered as (j). The effect of this amendment is to maintain the sequential numbering of the subsections. The existing text provides that before lifting personnel the lift truck operator

shall be instructed to follow the rules listed in the following subsections (1) through (9). The proposal would delete the subsection title and replace the requirement to instruct the operator on the listed operating rules with a requirement that the operator comply with the provisions listed in subsections (j)(1) through (j)(7). The effect of this amendment is to make compliance with the operating rules mandatory.

Subsection (j)(1).

The existing text provides that a securely attached platform be used. For clarity, the proposal would add the word “work” before the word “platform.” This editorial change would have no regulatory effect.

Subsection (j)(3).

The existing text provides that the mast be vertical and not tilted forward or rearward. Because variable reach lift trucks are equipped with booms instead of masts, the proposal would add text to clarify that this provision only applies if the lift truck is equipped with a mast. This amendment would improve clarity.

Subsection (j)(4).

The existing text provides that the truck be placed in neutral and the parking brake set. The proposal would add text to clarify that this provision only applies when the lift truck is stationary. The purpose of this amendment is to avoid conflict with proposed subsections (j)(7) and (k)(5)(C) which allow minor movement of the lift truck. The effect of this amendment is to require that lift trucks be placed in neutral with the parking brake set except when making minor movement of the lift truck as permitted in subsections (j)(7) and (k)(5)(C).

Subsection (j)(5).

The existing text says to lift and lower smoothly and with caution. For clarity, the proposal would add the word “personnel” after “lower.” This change would have no regulatory effect.

Subsection (j)(6).

The existing text says to watch for overhead obstructions. The proposal would provide that the operator make sure the path of the work platform travel is clear of hazards such as projections, overhead obstructions, and electrical wires. The effect of this amendment is to clarify that it is the lift truck operator’s responsibility to ensure that there are no physical or electrical hazards in the path of the work platform.

Subsections (j)(7) and (j)(8).

Existing subsection (i)(7) instructs the operator to keep hands and feet clear of controls other than those in use. The proposal would delete this provision. The effect of this amendment is to provide employers relief from a vague provision. For instance, the provision is vague as to when a control is “in use.” Existing subsec-

tion (i)(8) would be renumbered as (j)(7). The existing provision prohibits travel with personnel on the work platform other than to make minor movements for final positioning of the platform. The proposal would add an exception to this provision to permit minor movement of a variable reach rough-terrain lift truck used for construction operations when positioning the platform along a straight line where the path of movement is free from excavations, holes, obstructions and debris. The effect of the new exception is to allow employees on work platforms to perform construction activities such as nailing or installing materials on the side of a residential building without having to get on and off the work, so long as the requirements of the exception are met.

Subsection (i)(9).

The existing provision says never to sit, climb or stand on the platform guardrails or use planks, ladders or other devices to gain elevation. The proposal would delete this subsection. The effect of this amendment is to avoid duplication with proposed subsection (i) which is substantively the same.

New Subsection (k).

New subsection (k) would provide that where a variable reach lift truck is used to elevate personnel, the operation shall comply with the conditions listed under subsection (k), in addition to the requirements of subsections (a) through (j). The effect of this amendment is to provide additional requirements, which apply when variable reach lift trucks are used to elevate personnel, to address hazards such as lift truck tip-over and employee fall hazards, which are not adequately addressed by subsections (a) through (j).

New Subsection (k)(1).

New subsection (k)(1) would provide that if a load chart is provided for elevating personnel, then the work platform shall be loaded and positioned within the limitations on the load chart. The effect of this amendment is to prevent the lift truck from tipping due to the work platform load or position.

New Subsection (k)(2).

New subsection (k)(2) would provide that if there is no load chart provided for elevating personnel, then the combined weight of the work platform, load, and personnel shall not exceed one third of the rated capacity of the rough-terrain lift truck at the load center position as indicated on the load chart for regular loads. The effect of this amendment is to provide an extra margin of safety to ensure that the lift truck does not tip over as a result of the work platform being loaded or positioned beyond the designed safe lifting capacity of the lift truck.

New Subsection (k)(3).

New subsection (k)(3) would provide that: 1) the rough-terrain lift truck be placed on firm footing; 2) when used, outriggers or stabilizers be placed on a solid

surface; and, 3) if necessary, pads or cribbing be used to provide a firm footing. The effect of this provision is to prevent a lift truck from tipping over when the boom is extended.

New Subsection (k)(4).

New subsection (k)(4) would provide that each person on a work platform supported by a variable reach rough-terrain lift truck use a personal fall restraint system or positioning device system as defined in GISO Section 3207 and that system be used in accordance with the requirements of Section 1670 of the Construction Safety Orders (CSO). The effect of this amendment is to prevent injury to employees on the work platform who are exposed to a fall hazard due to the lift truck boom shifting abruptly or unexpectedly. The provision would restrict the allowable types of fall protection systems to either a personal fall restraint system or a positioning device. The effect of this restriction is to limit the free fall distance from the work platform to two feet by prohibiting the use of fall arrest systems with longer allowable free fall distances which present a greater risk of injury to employees. The effect of the reference to the definitions in Section 3207 is to provide consistency and clarity. The effect of the reference to Section 1670 of the CSO is to include the provisions of that standard which pertain to the design, approval, inspection, anchoring, rigging, and use of personal fall restraint systems and positioning devices.

New Subsection (k)(4)(A).

New subsection (k)(4)(A) would provide that a lanyard be attached to each person's harness or safety belt and to an anchorage provided on the work platform. The effect of this provision is to ensure that each person on the elevated work platform is wearing a harness or safety belt that is attached to the anchorage point on the work platform.

New Subsection (k)(4)(B).

New subsection (k)(4)(B) provides that anchorages shall be capable of supporting the greater of 3000 pounds or twice the intended load, and each person's lanyard shall be attached to an approved anchorage point. The effect of this provision is to ensure that an anchorage point is capable of supporting the load placed on the anchorage when an employee using a positioning device free falls two feet. Also, the effect of this provision is to prevent more than one employee from attaching to a single lanyard.

New Subsection (k)(4)(C).

New subsection (k)(4)(C) provides that where a positioning device system is used, the combination of anchorage location and lanyard length shall be arranged so that a worker cannot fall more than two feet from the work platform. The effect of this provision is to be con-

sistent with the requirements of Section 1670 and to prevent fall arresting forces from injuring an employee or exceeding the capacity of the anchorage or fall protection system.

New Subsection (k)(4)(D).

New subsection (k)(4)(D) provides that where personal fall restraint systems are used, the combination of anchorage location and lanyard length shall be arranged to allow the movement of employees only as far as the sides of the work platform. The effect of this provision is to be consistent with the requirements of Section 1670 and to prevent fall arresting forces from injuring an employee or exceeding the capacity of the anchorage or fall protection system.

New Subsection (k)(5).

New subsection (k)(5) provides that when elevating personnel with a variable reach rough-terrain lift truck, the operation shall comply with the provisions listed in subsections (k)(5)(A) through (k)(5)(D). The effect of this provision is to address hazards associated with variable reach rough-terrain lift trucks that are not present when using other types of lift trucks and are not addressed in subsection (j).

New Subsection (k)(5)(A).

New subsection (k)(5)(A) provides that the platform shall be maintained at level throughout the personnel lifting operation. The provision will, in effect, require that the angle between the boom and the platform be adjusted as the boom is raised or lowered so that the work platform remains level as the boom angle changes. The effect of the provision is to minimize the hazard of falling for persons on the platform.

New Subsection (k)(5)(B).

New subsection (k)(5)(B) provides that elevated personnel be alerted before moving the platform and that the platform then be moved smoothly and with caution. The effect of this provision is to prevent a sudden boom movement which could result in personnel being injured by falls or other accidents.

New Subsection (k)(5)(C).

New subsection (k)(5)(C) and its exception would prohibit traveling with personnel on the work platform except for the minor movement of a variable-reach lift truck used for construction operations when positioning the platform along a straight line where the path of movement is free from excavations, holes, obstructions and debris. The effect of the prohibition on traveling with personnel on the work platform is to prevent the lift truck from tipping while traveling with an elevated load and to prevent injury to personnel on the work platform from sudden movement of the platform. The effect of the exception is to allow employees on work platforms to perform construction activities, such as nailing or installing materials on the side of a residential building,

where the travel is reasonably expected to be safe, so long as the requirements of the exception are met.

New Subsection (k)(5)(D).

New subsection (k)(5)(D) would provide that, when operating on a side slope, the lift truck be leveled before elevating personnel. The effect of this provision is to prevent the center of gravity of the lift truck and load from shifting towards the downhill side of the lift truck and causing the lift truck to tip over.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

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

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All employers — state, local and private — will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

REASONABLE ALTERNATIVES CONSIDERED

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

A copy of the proposed changes in STRIKEOUT/ UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274–5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than November 12, 2010. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on November 18, 2010, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Mike Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 10. DEPARTMENT OF INSURANCE

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

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

**Removal of Restrictions on Mortality
Adjustment Factors**

Date: September 20, 2010 Regulation File: REG-2010-00007

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to amend California Code of Regulations ("CCR") Title 10, Chapter 5, Subchapter 3, Article 12.3 ("Valuation of Life Insurance Policies") Section 2542.4, titled "General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves" as described below after considering comments from the public.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to the proposed amendments to Section 2542.4, as follows:

Date and time: Tuesday, November 16, 2010 at 10:00 a.m.

**Location: Department of Insurance
Administrative Hearing Bureau
Library
45 Fremont Street, 22nd Floor
San Francisco CA 94105**

The hearing will continue on the date noted above until all testimony has been submitted or until 5:00 p.m., whichever is earlier.

**PRESENTATION OF WRITTEN COMMENTS;
CONTACT PERSONS**

All persons are invited to submit written comments on the proposed amendments to Section 2542.4 during the public comment period. The public comment period will end at **5:00 p.m. on November 16, 2010**. Please direct all written comments to the following contact person:

Nancy Hom, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4144

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Stesha Hodges, Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4428

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the insurance Commissioner, addressed to the contact person at her address listed above, **no later than 5:00 p.m. on November 16, 2010**. Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: homn@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Nancy Hom and sent to the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) or the hearing in order to make special arrangements, if necessary.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes to adopt amendments to Title 10, Chapter 5, Subchapter 3, Article 12.3, Section 2542.4 pursuant to the rulemaking authority vested in him by Insurance Code Section 10489.94 of the Standard Valuation Law. The Commissioner's decision on the proposed amendments to Section 2542.4 will implement, interpret, and make specific the provisions of Insurance Code Section 10489.94.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

Insurance Code Section 900 requires that every insurer doing business in California file an annual statement with the Department of Insurance each year. Insurance Code Section 10489.15 requires that certain financial information be included in the annual statements filed by life insurers, including information on the sufficien-

cy of the insurer's reserves to cover future obligations such as claims.

Existing CCR Section 2542.4, titled "General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves," contains requirements that life insurers must comply with in calculating reserves for life insurance. Existing Section 2542.4 allows companies to adjust the deficiency reserves by using mortality adjustment factors (known as "X factors") which are based on company experience. The X factors are used in determining the deficiency reserve amount required by the regulation. Section 2542.4 contains two restrictions on the X factors: (1) X shall not be less than 20%, and (2) X shall not decrease in successive years. Section 2542.4 is based on and derived from National Association of Insurance Commissioners ("NAIC") Model No. 830, Section 5, also titled "General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves."

In September 2009, when existing CCR Section 2542.4 was already in effect, the NAIC revised Section 5 of Model No. 830 by removing the X factor restrictions described above. The NAIC removed the restrictions so that insurers could adjust the valuation mortality used in the calculation of deficiency reserves to make the reserves correspond more closely with the expected mortality for a particular book of business. In other words, the revisions allow insurers to reserve more precisely and accurately and to lower their deficiency reserves when warranted.

The reduction in deficiency reserves due to the removal of restrictions on X factors could result in the reserves not being sufficient. To ensure that reserves are not inadequate, the revisions to Section 5 of NAIC Model No. 830 require an appointed actuary to make a statement each year as to the adequacy of reserves to pay benefits and expenses.

The Commissioner proposes to amend Section 2542.4 by adopting the NAIC's revisions as amendments to Section 2542.4. There are three reasons for doing so.

First, the amendments are necessary to achieve the same purpose as the NAIC's revisions: to allow insurers to adjust the valuation mortality used in the calculation of deficiency reserves so that the reserves will correspond more closely with expected mortality, without under reserving. This will enable insurers to reduce their deficiency reserves when the reduction is justified by supporting data, so that they can reserve more precisely and accurately. To the extent this allows insurers to lower their reserves, it reduces their costs. To the extent this cost reduction is passed along to insurance consumers the cost to consumers is reduced as well.

Second, because the amendments track the revisions made to the NAIC Model, they promote uniformity of

standards among different states. At present, over forty states have adopted some version of NAIC Model No. 830. Both insurers and consumers can benefit if reserving standards become more uniform across various states. Insurers can do business more efficiently and their administrative costs are reduced, a cost reduction that can be passed on to consumers. The proposed regulations serve this purpose by ensuring that California's regulatory requirements are as consistent with those of other states as is possible under California law.

Third, Insurance Code Section 10489.94 states that it is the intent of the Legislature that the Commissioner adopt regulations containing the provisions of NAIC Model No. 830. The proposed amendments implement, interpret and make specific the provisions of this statute by amending Section 2542.4 so that it conforms with NAIC Model No. 830 as revised.

In short, the policies underlying the proposed action are to allow life insurance reserves to be accurate without becoming inadequate, to save money for insurers and consumers, to promote uniformity of standards among various states, and to effectuate the intent of the California Legislature as set forth in Insurance Code Section 10489.94.

EFFECT OF PROPOSED ACTION

The proposed amendments to Section 2542.4 follow the revisions made by the NAIC to Section 5 of Model No. 830 by removing the X factor restrictions described above. The restrictions are being removed so that insurers can adjust the valuation mortality used in the calculation of deficiency reserves to make the reserves correspond more closely with the expected mortality for a particular book of business. In other words, the revisions allow insurers to reserve more precisely and accurately and to lower their deficiency reserves when warranted.

The reduction in deficiency reserves due to the removal of restrictions on X factors could result in the reserves not being sufficient. To ensure that reserves are not inadequate, the revisions to Section 2542.4 require an appointed actuary to make a statement each year as to the adequacy of reserves to pay benefits and expenses, just as the NAIC Model No. 830 does.

The letter and number designations of some subsections of Section 2542.4, and references to some subsection numbers, have been changed and amended to accommodate the changes made by adopting amendments from the NAIC Model.

The proposed amendments to Section 2542.4 will promote uniformity of standards with those of other states by ensuring that California's regulatory requirements are as consistent with those of other states as is

possible under California law. It will also effectuate the provisions of Insurance Code Section 10489.94, which states that it is the intent of the Legislature that the Commissioner adopt regulations which contain the provisions of NAIC Model No. 830.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed amendments to Section 2542.4 do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

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

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

The Commissioner has made an initial determination that the amendment of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurance companies. Although the Commissioner expects that the amendments will reduce costs overall because the amendments remove restrictions on the use of mortality adjustment factors, thereby allowing insurers to lower their reserves, insurers may incur some administrative costs as a result of modifying the way they calculate reserves.

The Commissioner has considered performance standards, but the Commissioner has identified no performance standards which would be as effective as the proposed amendments to Section 2542.4 in removing the mortality adjustment factor restrictions from Section 2542.4.

The Commissioner has not considered other proposed alternatives that would lessen any adverse economic impact on business and invites you to submit pro-

posals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses;
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) The use of performance standards rather than prescriptive standards;
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner has determined that for insurance companies subject to the proposed amendments there is likely to be some cost impact, although it will most likely be minimal. The cost impact would be the cost of modifying the manner in which the insurer makes its deficiency reserve calculation. As noted above, the overall effect of the amendments is expected to be a reduction in an insurer's reserves, and therefore a reduction in its overall costs.

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

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact that the amendments to Section 2542.4 may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed amendments will have an impact on any of the above, but he invites you to comment on this issue.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulation, as amended, apply to businesses.

IMPACT ON HOUSING COSTS

The proposed amendments to Section 2542.4 will have no significant effect on housing costs.

ALTERNATIVES

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

IMPACT ON SMALL BUSINESS

The Commissioner has made an initial determination that the adoption of the proposed amendments to Section 2542.4 will not affect small businesses. Insurers are not small businesses under Government Code Section 11342.610(b)(2). However, the Department invites public comments on the question of economic impact on small businesses.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to Section 2542.4, as amended.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed action, the Initial Statement of Reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of the proposed amendments to Section 2542.4 and this Notice, including the Informative Di-

gest, which contains the general substance of the proposed amendments to the regulation, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the righthand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'PROPOSED REGULATIONS' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the "Removal of Restrictions on Mortality Adjustment Factors" link, and click it. Links to the documents associated with the proposed amended regulation will then be displayed.

To search, enter "REG-2010-00007" (the Department's regulation file number for the amended regulation) in the search field. Alternatively, search by keyword ("mortality adjustment factors" for example). Then, click on the 'Submit' button to display links to the rulemaking documents online.

MODIFIED LANGUAGE

If the amended regulation adopted by the Department differs from that which was originally made available but is sufficiently related to the action proposed, it will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of the amended regulation prior to adoption from the contact person listed above.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations as described below in

the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code Section 11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

Public Comments Due by November 15, 2010, at 5:00 p.m.

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-5271, or by letter to:

Commission on POST
Attention: Rulemaking
1601 Alhambra Boulevard
Sacramento, CA 95816-7081

Authority and Reference

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

At present, POST recognizes specific non-certified training courses presented out-of-state and by out-of-state training providers in California for the purposes of satisfying the Continuing Professional Training (CPT) requirement. These specified courses are identified on the POST Non-Certified Training Notification form, POST-2-213, and in Procedure D-2-3.

This proposal would amend Commission Procedure D-2-3 and POST Form 2-213 to permit successful completion of additional non-POST-certified courses solely to satisfy the Continuing Professional Training (CPT) requirement. These courses would remain non-reimbursable by POST and limited solely to satisfying CPT requirements. Regulations 1005 and 1060 would be amended to reflect the proposed revision dates. Each attendee who successfully completes any of the courses would receive credit towards meeting the CPT requirement in addition to completing important job-related training.

The proposed amendments add language to include specified training courses to the Alternative Method of Satisfying CPT requirements. There are also non-substantive changes to reflect correct presenter and course information and for clarity, consistency, and correct

grammar. Form 2–213 has been revised to include all of the approved information and grammatical changes.

Various non–POST–certified training courses available to California peace officers over the past three decades have addressed highly critical and specialized training needs. They have advanced the professionalism of law enforcement, improved officer safety, and provided contemporary insight and solutions to the challenges and issues confronting law enforcement today.

Documentation of training is crucial for law enforcement personnel. The proposed amendments give POST the ability to document the successful completion of these training courses in a central database, recognizes the quality training programs that have been presented, and provides an administrative process by which to submit documentation and receive credit towards the CPT requirements.

Adoption of Proposed Regulations

Following the public comment period, the Commission may adopt the proposal substantially as set forth without further notice, or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

Estimate of Economic Impact

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

Non–Discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Costs to any Local Agency or School District for which Government Code Sections 17500–17630 Requires Reimbursement: None

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on

Peace Officer Standards and Training has found that the proposed amendments will not affect California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement which does not impact California businesses, including small businesses.

Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

Assessment

The adoption of the proposed amendments of regulations will neither create nor eliminate jobs in the state of California, nor result in the elimination of existing businesses or create or expand businesses in the state of California.

Consideration of Alternatives

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise 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 as and less burdensome to affected private persons than the proposed action.

Contact Persons

Please direct inquiries about this proposed regulatory action to Ken Whitman, Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA 95816–7083, by email at Ken.Whitman@post.ca.gov, or by telephone at (916) 227–5561. Patti Kaida is the contact person for questions on the regulatory process. Patti is available by email at Patti.Kaida@post.ca.gov, by telephone at (916) 227–4847, or by FAX at (916) 227–5271.

Text of Proposal

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

Availability and Location of the Rulemaking File and the Final Statement of Reasons

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

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

**TITLE 13. CALIFORNIA AIR
RESOURCES BOARD**

**NOTICE OF PUBLIC HEARING TO
CONSIDER THE PROPOSED AMENDMENT
OF THE AIRBORNE TOXIC CONTROL
MEASURE FOR IN-USE DIESEL-FUELED
TRANSPORT REFRIGERATION UNITS (TRU)
AND TRU GENERATOR SETS, AND
FACILITIES WHERE TRUs OPERATE**

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider the adoption of amendments to the regulation affecting transport refrigeration units (TRU) and TRU generator sets (TRU gen set) (collectively, TRUs and TRU gen sets shall be referred to as TRUs).¹ As explained in greater detail below, the proposed amendments would change the in-use performance standards for model year (MY) 2003 and certain 2004 TRU engines. The Board will also be considering amendments that would clarify the requirements for “flexibility” engines used in TRUs by original equipment manufacturers under the Transitional Program for Equipment Manufacturers and would require TRU original equipment manufacturers to report certain TRU production data.

DATE: November 18, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection
Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item may be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., on Thursday, November 18, 2010, and may continue at 8:30 a.m., Friday, November 19, 2010. This item may not be considered until Friday, November 19, 2010. Please consult the agenda for the meeting, which will be available at least ten days before November 18, 2010, to determine the day on which this item will be considered.

¹ Title 13, CCR section 2477 is known as the Transport Refrigeration Unit Airborne Toxic Control Measure and establishes in-use performance standards, recordkeeping, and facility reporting requirements for TRUs and TRU generator sets.

INFORMATIVE DIGEST OF PROPOSED ACTION
AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to California Code of Regulations (CCR), title 13, Division 3, Chapter 9, Article 8, section 2477.

Background: Over 90 percent of Californians breathe unhealthful air at times. To improve air quality and human health, ARB establishes requirements to reduce emissions from new and in-use on-road and off-road vehicles, engines, and other sources.

In 1998, the Board identified particulate matter emissions from diesel-fueled engines as a toxic air contaminant. Two years later, in September 2000, the Board adopted the Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles (Plan). The Plan established a goal of reducing emissions and the resultant health risk from virtually all diesel-fueled engines and vehicles within the State of California by the year 2020. The Plan included a goal of reducing diesel PM by 85 percent in 2020 from the baseline emissions in 2000. The Plan also identified various control measures for achieving the goals. These measures included new, more stringent standards for all new diesel-fueled engines and vehicles, the replacement of older in-use engines with new, cleaner engines, the use of diesel emission control strategies on in-use engines, and the use of low-sulfur and alternative diesel fuels.

TRU diesel engines currently emit approximately 1.6 tons per day of diesel PM. Staff believes that there are situations where the estimated 70-year potential cancer risk resulting from exposure to diesel PM emissions from TRUs is in excess of a 100 in a million. This is because of the high cancer-causing potential of diesel PM and the potential for large numbers of TRUs to operate at one location, such as distribution centers located near residential areas.

On May 16, 2002, the Board approved the *Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines* (title 13 CCR, sections 2700–2710). This rule establishes procedures for the verification of diesel emission control strategies by ARB that can be applied on various diesel-fueled engines and vehicles to significantly reduce diesel PM emissions. It is important to reduce diesel PM emissions from TRUs. Health and Safety Code sections 39666 and 39667 requires the ARB to adopt regulations to achieve the maximum possible reduction in public exposure to TACs through the application of best available control technology (BACT), or a more effective control method, in consideration of cost, risk, environmental impacts, and other specified factors.

ARB adopted the TRU Airborne Toxic Control Measure (ATCM) in 2004. The TRU ATCM is part of ARB's ongoing effort to reduce PM emissions from diesel-fueled engines and vehicles and improve air quality. The TRU ATCM established in-use performance standards for TRUs and TRU gen sets that were to be phased in commencing on December 31, 2008. In March 2005, staff requested the U.S. Environmental Protection Agency (U.S. EPA) to grant authorization to ARB to adopt and enforce the TRU ATCM pursuant to Clean Air Act (CAA) section 209(e)(2). U.S. EPA granted California authorization on January 16, 2009. Because U.S. EPA's authorization was granted after the first compliance date, ARB delayed the enforcement of the TRU ATCM's in-use performance standards until January 2010.

ARB staff has prepared an Initial Statement of Reasons (ISOR) for the proposed amendments to the *Airborne Toxic Control Measure for In-Use Diesel-Fueled TRUs and TRU Gen Sets, and Facilities where TRUs Operate*.

Description of the Proposed Regulatory Action:

ARB staff is proposing to amend the TRU ATCM that the Board approved for adoption on February 26, 2004, and became effective December 10, 2004. The primary purpose of the proposed amendments is to change the in-use performance standard for MY 2003 TRU engines in the 25 hp and greater category and MY 2003 and MY 2004 engines in the less than 25 hp category from the ultra-low-emission TRU (ULETRU) in-use performance standard to allow TRU owners to comply by either meeting the ULETRU standard or, as an option, the less stringent low-emission TRU (LETRU) in-use standard. The initial compliance deadlines for MYs 2003 and 2004 TRU engines are December 31, 2010 and December 31, 2011, respectively. The proposed amendments would also require that all MY 2003 and MY 2004 engines meet the ULETRU standard seven years after the initial compliance date (in 2017 or 2018).

Requirements for "flexibility" engines used in TRUs by original equipment manufacturers under the federal Transitional Program for Equipment Manufacturers and California's equipment manufacturer flexibility program (title 13 CCR, section 2423(d)) would also be clarified to provide seven years of operational life to flexibility engines installed before the effective date of these amendments. Flexibility engines installed after that would have a shorter operational life under the amendments. In addition, the amendments would impose new reporting requirements on TRU original equipment manufacturers. A more detailed description of the proposed amendments is presented below.

Applicability

The proposed amendments would affect owners of TRUs and TRU gen sets that operate in California that are equipped with MY 2003 engines, regardless of horsepower category, and MY 2004 engines in the less than 25 hp category. This would include all TRU and TRU gen set owners, whether based in California or out-of-state, that transport perishable goods using refrigerated trucks, trailers, shipping containers, and railcars within the State. Most TRUs are owned or operated by corporations, businesses, and individuals. There are a few local municipalities, school districts, and correctional institutions that operate TRUs that may be affected. These amendments would affect the owners of TRUs and TRU gen sets equipped with "flexibility engines" and would also extend the applicability for new reporting requirements to TRU and TRU gen set original equipment manufacturers that directly or indirectly sell or offer for sale TRUs and TRU gen sets to the California market. There are currently only three affected TRU and TRU gen set manufacturers.

In-Use Emission Standard Amendment

The amendments would change the in-use standards for MY 2003 TRU and TRU gen set engines in the 25 hp and greater power category from the ULETRU in-use standard to allow either the ULETRU standard or, as an option, the less stringent LETRU in-use standard. This change would provide owners with more compliance flexibility and is needed because ULETRU compliance options presently are limited and relatively costly compared to LETRU compliance costs. The compliance date for meeting one of these standards would remain December 31, 2010. Seven years later, by the end of 2017, the MY 2003 engines that are still remaining in service would be required to meet ULETRU if the owner chose to meet the LETRU standard in 2010.

The amendments would also change the in-use standard for MY 2003 and MY 2004 engines in the less than 25 hp category from the ULETRU in-use standard to allow either the ULETRU standard or, as an option, the LETRU in-use standard. The compliance dates would remain December 31, 2010, for MY 2003 engines and December 31, 2011, for MY 2004 engines, when the owner must choose to meet one of these standards. Seven years later, by the end of 2017, the MY 2003 engines that still remain in service would be required to meet the ULETRU standard if the owner chose to meet the LETRU standard in 2010. By the end of 2018, the MY 2004 engines that still remain in service would also be required to meet the ULETRU standard if the owner chose to meet the LETRU standard in 2011.

Flexibility Engines — "Effective Model Year"

The staff is also proposing to amend the requirements for "flexibility" engines that are used in TRUs by origi-

nal equipment manufacturers under the federal Transitional Program for Equipment Manufacturers and California's equipment manufacturer flexibility program². The amendments would clarify that flexibility engines installed before the effective date of the amendments would be provided a full seven years of operational life from the year of the engine's manufacture before having to meet the more stringent ULETRU in-use performance standard. Flexibility engines installed after that date would have a reduced operational life given that compliance would be based on the last year that the flexibility engine's tier standard was in effect. As permitted under federal and State regulations, TRU and TRU gen set original equipment manufacturers (TRU OEMs) have installed "flexibility engines" that meet an emissions standard tier that is no longer in effect for new engines at the time that the equipment is manufactured.³

To date, TRU OEMs and engine manufacturers have not followed a consistent practice in identifying the model year of flexibility engines. While some manufacturers have identified the model year of these engines to be the year of manufacturer of the engine, others have identified the model year as being the last year that the emission standard tier of the flexibility engine was in effect for new engine certification (under the proposed amendments, this second designation is referred to as "effective model year"). The use of the effective model-year designation has adversely impacted the operational life of TRUs under the TRU ATCM in that TRU owners must meet in-use performance standards seven years after the engine model year. The last year that a prior tier was in effect for new engine certification is typically one to two years before the manufacture date of the flexibility engine, resulting in the loss of up to several years of operational life. In most cases, owners have not been aware of this loss of operational life of the TRU engines that they have purchased.

To address this issue, staff is proposing that flexibility engines meeting a prior tier new engine standard would be allowed to use the actual engine manufacture year to determine in-use compliance requirements. For example, a Tier 1 engine installed in a TRU after the Tier 2 new engine emission standards became effective for new engines would be allowed to use the engine manufacture year to determine in-use compliance requirements. This would ensure that all TRUs with flexi-

bility engines that are purchased before the effective date of these amendments receive a full seven years of operational life.

The amendments would further provide that flexibility engines installed in TRUs after the effective date of the amendments would be required to use the "effective model year" of the flexibility engine to determine future ULETRU compliance dates. As stated, the effective model year of the flexibility engine would be the last year that the flexibility engine's tier standard was in effect for new engine compliance. Compliance with the in-use standards would then be required by the end of the seventh year after the effective model year of the flexibility engine. Using the effective model year for future flexibility engine use would discourage their use since operational life is affected. It would also result in dirtier, earlier tier flexibility engines being phased out sooner thereby ensuring that the emission reductions intended under the original TRU ATCM will be achieved as intended.

TRU OEMs would also be required to disclose to the end user at point of sale that the unit has a flexibility engine and that there is a loss of operational life associated with the use of flexibility engines. They must also provide the end user with the date that the engine must meet the ULETRU in-use standard.

TRU Manufacturer Reporting

Staff is proposing to amend the TRU ATCM to require that TRU OEMS report production information, including information on flexibility engines installed in TRUs. This reporting will ensure that manufacturers provide the data necessary for the proposed flexibility engine amendments, allow ARB to consider improvements to the TRU registration process, and more accurately estimate emissions inventories. TRU OEMs would be required to periodically report data on each TRU and installed engine produced in future model years. TRU OEMs would also be required to submit reports on TRU sales from previous years.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations comparable to the TRU ATCM for in-use TRUs. Under federal Clean Air Act (CAA) section 213, U.S. EPA is without authority to adopt in-use standards for off-road (non-road) engines.⁴

Section 209(e)(1) of the CAA conclusively preempts states, including California, from adopting requirements for new off-road engines less than 175 hp that are used in farm or construction equipment. Under section 209(e)(2), California may adopt and enforce emission

² Flexibility engines are new engines that are allowed under these programs to be certified to a lower emission standard than is otherwise in effect for new engines at the time of manufacture.

³ This is allowed for a limited number of engines under the federal Transitional Program for Equipment Manufacturers and California's equipment manufacturer flexibility program (13 CCR, section 2423(d)) for several years after an emissions standard changes to a more stringent tier.

⁴ The California term "off-road" and the federal term "nonroad" refer to the same sources and are used interchangeably.

standards and other requirements for off-road engines and equipment not conclusively preempted by section 209(e)(1), so long as California applies for and receives authorization from the Administrator of U.S. EPA. TRU engines are not used in farm and construction equipment and are thus not preempted. California requested and received authorization from U.S. EPA for the initially adopted TRU ATCM in January 2009.⁵

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal. The report is entitled, *Proposed Amendment of the Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units and TRU Generator Sets, and Facilities Where TRUs Operate*.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strike-out format to allow comparison with the existing TRU ATCM, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on September 29, 2010.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB's website for this rulemaking at: <http://www.arb.ca.gov/regact/2010/tru2010/tru2010.htm>.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons, Richard Boyd, Manager of the Process Evaluation Section, Emission Assessment Branch, Stationary Source Division, at (916) 322-8285, or Rod Hill, Staff Air Pollution Specialist, Stationary Source Division, at (916) 327-5636.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on ARB's website for this rulemaking at www.arb.ca.gov/regact/2010/tru2010/tru2010.htm.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

Costs or Savings to Businesses and Private Individuals

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. The amendments would result in compliance cost savings due to changing the in-use standard from ULETRU to either ULETRU or LETRU because the Level 2 Verified Diesel Emissions Control Strategies (VDECS) required to meet LETRU costs about \$2,000 less than the Level 3 VDECS required to meet ULETRU. The total compliance cost savings related to the in-use standard option would be about \$2.1 million in 2010 and 2011, assuming about 30 percent of the affected units will comply by retrofitting (30 percent of the MY 2002 engines complied by retrofitting, so staff assumed this trend would continue for MY 2003 and 2004 engines). However, to the extent that MY 2003 and MY 2004 engines comply by meeting the LETRU standard in 2010 and are still operating in 2017 and 2018, respectively, they would need to meet ULETRU standard in that year. This would potentially reduce compliance cost savings to a net savings of about \$300,000 in 2010 dollars. The proposed amendments do not affect the cost of repowering a unit with a cleaner engine to maintain compliance, which was the compliance option chosen for 65 percent of the 2002 units, nor the cost of using Alternative Technologies (such as hybrid electric), which was chosen as the compliance option by five percent of the TRU owners.

There are no end-user compliance costs related to the amendment addressing the past use of flexibility engines. The TRU OEMs, however, would incur costs related to flexibility engine reporting in 2010. Staff estimates these one-time costs would be about \$19,000, total in 2010 dollars.

The cost of compliance with the TRU OEM reporting amendment for current year and prior year production would be about \$25,000 for the initial one-time reports due soon after the amendments take effect and about \$8,000 per year for periodic update reports. Staff antici-

⁵ 74 Fed. Reg. 3030 (January 16, 2009).

pates that the cost of preparing and submitting these will be reduced significantly as opportunities to automate this work are phased in.

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses because staff anticipates there will be cost savings if TRU and TRU gen set owners choose the retrofit compliance option. Compliance cost would not be affected if owners choose the repower option.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the reporting requirements of the regulation which apply to businesses are necessary for the health, safety, and welfare of the people of the State of California.

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

Costs or Savings to Local and State Government Agencies

Pursuant to Government Code section 11346.5(a)(5), the Executive Officer has determined that the proposed regulatory action would not create any costs to or mandates on any local agency or school district that is reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500).

Pursuant to Government Code sections 11346.5(a)(6), the Executive Officer has further determined, based on estimates prepared in accordance with instruction adopted by the Department of Finance, that the proposed regulatory action would not create addi-

tional costs to any State agency or to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500), create other non-discretionary costs on local agencies, and affect costs or savings in federal funding to the State.

Several local agencies, school districts, and State agencies own TRUs, so the compliance cost savings discussed above may apply to these agencies if they own MY 2003 TRU engines in the 25 hp and greater power category or MY 2004 TRU engines in the less than 25 hp category.

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on October 4, 2010. To be considered by the Board, written comments, not physically submitted at the meeting, must be submitted on or after October 4, 2010, and received **no later than 12:00 noon on November 17, 2010**, and must be addressed to the following:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California
95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), written and oral comments, attachments, and associated contact information (e.g., your mailing address, phone number, email address, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

The Board requests, but does not require, that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39600, 39601, 39618, 39658, 39659, 39666, 39667, 39674,

39675, 42400, 42400.14, 42400.2, 42400.3.5, 42402, 42402.2, 42410, 43013, 43018. This action is proposed to implement, interpret, and make specific sections 39618, 39650, 39658, 39659, 39666, 39667, 39674, 39675, 42400, 42400.1, 42400.2, 42400.3.5, 42402, 42402.2, 42410, 40717.9, 43013, and 43018.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340).

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e., Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.

- Documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

TITLE 14. OFFICE OF SPILL PREVENTION AND RESPONSE

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Game, proposes to amend Sections 790, 815.01, 816.01, 816.02, 816.03, 816.05, 817.02, 817.03, 818.02, 818.03, 825.05, 826.01, 826.02, 826.03, 826.05, and 827.02, in Subdivision 4 of Title 14 of the California Code of Regulations (CCR). These sections pertain to the Definition and Oil Spill Contingency Plan requirements.

PUBLIC HEARING

Pursuant to Government Code Section 11346.8(a), **no public hearing has been scheduled** on the proposed action. However, a hearing will be held if OSPR receives a written request for a public hearing from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period. If a hearing is requested, it will be held in Sacramento. **Copies of the written comments submitted will be made available upon request.**

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. All written comments must be received by OSPR at this office no later than **5:00 p.m. on November 16, 2010**, in order to be considered. Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Game
 Office of Spill Prevention and Response
 P.O. Box 944209
 Sacramento, California 94244-2090
 Attention: Joy D. Lavin-Jones
 Fax: (916) 324-5662
 E-mail: jlavinj@ospr.dfg.ca.gov

PERMANENT ADOPTION OF REGULATIONS

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

AUTHORITY AND REFERENCE

Government Code Section 8670.28 grants the Administrator of OSPR the authority to adopt regulations for oil spill contingency plans. These regulations implement, interpret and make specific Government Code Sections 8670.28 through 8670.31.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Chapter 1248, Statutes of 1990) (Act), created a comprehensive state oil spill program for California’s marine waters. Among its many provisions, it required the adoption of regulations requiring oil spill contingency plans and establishing financial responsibility requirements for tank vessels, nontank vessels, and marine facilities.

Following the enactment of the above-cited legislation, and the establishment of the Office of Spill Prevention and Response (OSPR), regulations governing oil spill contingency plans and financial responsibility were adopted. These sections establish clear and consistent guidelines to those parties either affected by their adoption or charged with their enforcement. These regulations were necessary to implement, interpret and make specific Government Code Sections 8670.28 through 8670.31.

These plans are to be used in the response effort that would be necessary in the event of a discharge of oil into

the marine waters of the state. The Act authorizes the Administrator to require that all necessary prevention measures are taken and that sufficient response capability is available. Additionally, the Administrator is required to establish regulations and guidelines that provide for the best achievable protection of the coastal and marine resources, and ensure that all areas of the coast are protected by prevention, response, containment and cleanup equipment and operations.

This proposal would amend the regulations as follows:

- New language which adds a late filing fee for late plan submittals/renewals;
- Identification and revocation of obsolete plans;
- Requirements for electronic submittals of plan;
- Removal of the requirement for a post-spill review;
- Changes to make the tank vessel/nontank vessel plan requirements more consistent, as appropriate;
- Clarifications and corrections.

SMALL BUSINESS IMPACT STATEMENT

OSPR has determined that the proposed regulations may affect small businesses.

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 8574.10 AND 8670.55

In accordance with Government Code Section 8574.10, these regulations have been submitted to the Review Subcommittee of the State Interagency Oil Spill Committee for review and comment; and in accordance with Government Code Section 8670.55, these regulations have been submitted to the Oil Spill Technical Advisory Committee for review and comment.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

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

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

Cost impacts on representative private persons or businesses:

These amendments clarify current practices. If a business decides to utilize the services of an Indepen-

dent Drill Monitor, there will be additional costs to private persons or directly affected businesses.

Significant effect on housing costs: NONE.

BUSINESS IMPACT

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

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

OSPR has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF DOCUMENTS AND OSPR CONTACT PERSON

OSPR has prepared a Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, Initial Statement of Reasons, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from the:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the World Wide Web at the following address:

http://www.dfg.ca.gov/ospr/Law/regs_under_review.asp

Questions regarding the proposed regulations, requests for documents, or any questions concerning the substance of this regulatory action may be directed to Joy Lavin-Jones ((916) 327-0910), or Chris Klumpp ((916) 322-1195).

TITLE 16. CALIFORNIA BOARD OF ACCOUNTANCY

NOTICE IS HEREBY GIVEN that the California Board of Accountancy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 2000 Evergreen Street, Suite 250, Sacramento, CA 95815, at 4:00 p.m. on November 16, 2010. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the California Board of Accountancy at its office not later than 5:00 p.m. on November 15, 2010 or must be received by the California Board of Accountancy at the hearing. The California Board of Accountancy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 5010, 5076 and 5076.1 of the Business and Professions Code, and to implement, interpret or make specific Sections 5076 and 5076.1 of said Code, the California Board of Accountancy is considering changes to Division 1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 5076(g)(1) of the Business and Professions Code requires the California Board of Accountancy (Board) to establish in regulation the time period that a Board-recognized peer review program provider has to file a copy of any substandard peer review reports issued to California licensed firms. This time period is not to exceed 60 days from the time the report is accepted by the Board-recognized peer review program provider. It

further states that these reports may be filed electronically with the Board.

1. Amend Section 48.3 Title 16 of the California Code of Regulations.

This proposal would require Board-recognized peer review program providers to file copies of any substandard peer review reports issued to California licensed firms within 60 days of the report being accepted. It allows for the reports to be filed in writing or electronically.

This proposal also makes other clarifying, non-substantive changes.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact:

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

AND

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

Impact on Jobs/New Businesses:

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

Cost Impact on Representative Private Person or Business:

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Board are insignificant.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations may affect small businesses.

CONSIDERATION OF ALTERNATIVES

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

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Board of Accountancy at 2000 Evergreen Street, Suite 250, Sacramento, California 95815.

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

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

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

CONTACT PERSON

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

Name: Matthew Stanley
 Address: California Board of Accountancy
 2000 Evergreen Street, Suite 250
 Sacramento, CA 95815
 Telephone No.: 916-561-1792
 Fax No.: 916-263-3678
 E-Mail Address: regulations@cba.ca.gov

The backup contact person is:

Name: Dan Rich
Address: California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815
Telephone No.: 916-561-1713
Fax No.: 916-263-3678
E-Mail Address: regulations@cba.ca.gov

Web site Access: Materials regarding this proposal can be found at http://www.dca.ca.gov/cba/laws_and_rules/pubpart.shtml.

TITLE 17. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER ADOPTION OF PROPOSED AMENDMENTS TO THE CALIFORNIA CONSUMER PRODUCTS REGULATIONS

The Air Resources Board (Board or ARB) will conduct a public hearing at the time and place noted below to consider adoption of amendments to the Regulation for Reducing Emissions from Consumer Products, and Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products."

DATE: November 18, 2010

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item may be considered at a two day meeting of the Board, which will commence at 9:00 a.m., November 18, 2010, and may continue at 8:30 a.m., November 19, 2010. This item may not be considered until November 19, 2010. Please consult the agenda for the meeting, which will be available at least 10 days before November 18, 2010, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

Sections Affected: Proposed amendments to sections 94508, 94509, 94510, 94512, and 94515, title 17, California Code of Regulations and proposed amend-

ments to Method 310, which is incorporated by reference in section 94515, title 17, CCR, to amend section 2.0 and add new subsections 3.3.8 and 4.2.3.

Background:

Section 41712 of the California Health and Safety Code requires ARB to adopt regulations to achieve the maximum feasible reduction in VOC emissions from consumer products. As part of the regulatory process, ARB must determine that adequate data exist for it to adopt the regulations. ARB must also determine that the regulations are technologically and commercially feasible, and necessary to carry out the Board's responsibilities under Division 26 of the Health and Safety Code. In addition, Health and Safety Code section 41712(c) provides that no regulation shall be adopted which requires the elimination of a product form. The Health and Safety Code further stipulates in section 41712(e) that public health agencies be consulted, and their recommendations be considered, prior to adopting regulations for health benefit products. Section 41712 is primarily directed at attaining the State and federal ozone standards.

Pursuant to Health and Safety Code section 41712, ARB has adopted the Regulation for Reducing Emissions from Consumer Products (the "Consumer Products Regulation;" title 17, CCR, sections 94507-94517).

On September 25, 2007, ARB adopted the State Strategy for California's 2007 State Implementation Plan (2007 SIP). The 2007 SIP serves as California's overall plan to provide the emission reductions necessary to meet the federal ozone standard of 0.08 parts per million averaged over eight hours. As part of the 2007 SIP, ARB has committed to achieve an additional 30 to 40 tons per day of VOC emission reductions statewide from consumer products by January 1, 2014. In 2008 and 2009, the Board approved amendments to the Consumer Products Regulation to set new or lower VOC limits. These limits will result in 19.2 tons per day of VOC emission reductions once fully effective. Achieving additional VOC emission reductions from consumer products is an important element of the 2007 SIP and is necessary to attain State and federal air quality standards. This proposed rulemaking is the third increment toward meeting the 2007 SIP commitment. If the Board approves the amendments proposed in this rulemaking, total reductions toward the commitment would be about 26 tons per day.

Method 310 was adopted on September 25, 1997, and has been subsequently amended. Method 310 is used for compliance purposes to determine the VOC content of a consumer product and the presence of any compounds prohibited by ARB regulations.

Description of Proposed Regulatory Action

The proposed regulatory action would amend the existing Consumer Products Regulation by adding and modifying product category definitions and by establishing new or lower VOC limits for a number of consumer product categories. The proposed VOC limits would result in VOC emission reductions of about 6.9 tons per day once fully effective.

Staff is proposing minor modifications to a number of existing definitions to clarify the types of products included or excluded in specific categories. Several new definitions are also proposed to describe additional product categories. A description of other proposals follows.

Staff is proposing to modify the definition of Artist's Solvent/Thinner to specify that an Artist's Solvent/Thinner is a product packaged in a container of 34 ounces or less. At present, Artist's Solvents/Thinners are defined as products packaged in containers equal to or less than 32 ounces. This change is being proposed because staff has determined that some Artist's Solvents/Thinners are commonly packaged in metric units, (*i.e.* a liter, which is 33.8 ounces), rather than English units (*i.e.* a quart, which is 32 ounces).

Staff is proposing to modify the definition of Oven Cleaner to include grill cleaning products. As proposed, the newly added Oven or Grill Cleaner products would be given until December 31, 2012, to comply to allow the necessary time to reformulate. Staff is also proposing to increase the limit for nonaerosol Oven or Grill Cleaner products from 1 percent to 4 percent VOC by weight to accommodate use of noncaustic technologies. To expedite providing this alternative, the proposed limit revision would become effective on the date the amendments become legally effective. This change will result in a small emission increase of about 0.1 tons per day. However, emission reductions from the other categories included in this proposal will offset this small shortfall.

Staff is proposing to include spot remover products used on dry clean only fabrics into the currently regulated "Spot Remover" category. These are primarily products used at dry cleaning operations. To accommodate the necessary time for these products to reformulate, staff is also proposing to delay the effective date of the VOC limit for "Spot Remover" products from December 31, 2010, to December 31, 2012. The proposed change would result in delaying about a 0.25 ton per day VOC emission reduction for two years. The existing prohibition on use of methylene chloride, perchloroethylene, and trichloroethylene for "Spot Remover" products would also apply to the newly added products effective December 31, 2012.

Mitigation measures under the California Environmental Quality Act (CEQA) are also proposed for some categories. For the categories "Metal Polish or Cleanser," "Silicone-based Multi-purpose Lubricant," and "Special Purpose Lubricant" staff is proposing to prohibit the use of the toxic air contaminants methylene chloride, perchloroethylene, and trichloroethylene. These prohibitions are proposed to ensure that use of these toxic air contaminants does not occur as products are reformulated to meet the proposed VOC limits. The proposed prohibitions are contained in section 94509(m).

A second CEQA mitigation measure would prohibit the use of alkylphenol ethoxylate surfactants in "General Purpose Cleaner" (nonaerosol), "General Purpose Degreaser" (nonaerosol), "Glass Cleaner" (nonaerosol), "Heavy-duty Hand Cleaner or Soap" (nonaerosol) products, and "Oven or Grill Cleaner" products. These prohibitions are proposed to ensure that use of these compounds, which are known to be toxic to aquatic species, does not occur as products are reformulated to meet the proposed VOC limits. The proposed prohibitions are contained in section 94509(m).

A third proposed CEQA mitigation measure would prohibit use of compounds with global warming potential values of 150 or greater in "Flying Bug Insecticide," "Furniture Maintenance Product," "Metal Polish or Cleanser," "Special-purpose Lubricant," "Spot Remover," and "Wasp or Hornet Insecticide" products. These prohibitions are proposed to ensure that use of compounds with global warming potential (GWP) values greater than or equal to 150 does not occur as products are reformulated to the meet proposed VOC limits. The proposed prohibitions are contained in section 94509(n).

Currently, several subsections within section 94509 contain provisions prohibiting the use of several chlorinated toxic air contaminants. Staff is proposing to consolidate all of these requirements into two tables that would be contained in a single subsection. One table would include all of the categories where use of methylene chloride, perchloroethylene, and trichloroethylene is prohibited. A second table would include the categories where use of para-dichlorobenzene is prohibited. The modified subsection would also consolidate the provisions that specify sell-through dates and exemptions for impurities (except no exemption for impurities is provided for para-dichlorobenzene). The modifications are proposed to simplify the regulation and make it easier to find the requirements for all categories where these compounds are prohibited. The proposed consolidation of toxic air contaminant prohibitions would be contained in section 94509(m).

At present, several subsections in section 94509 contain prohibitions on the use of compounds that have GWP values of 150 or greater. Staff is proposing to consolidate these provisions into a single subsection. The modified subsection would also consolidate the provisions that specify sell-through dates and exemptions for impurities. The modifications are proposed to simplify the regulation and make it easier to find the limitations on use of compounds with higher GWP values. The proposed consolidation of GWP limits would be contained in section 94509(n).

Staff is proposing to amend the Most Restrictive Limit provision contained in section 94512(a) to clarify the regulation's applicability when two defined categories exclude each other within their definitions. As proposed, when a definition for a specific category excludes another specific category and *vice versa*, the product is subject to the VOC limit for whichever category is lower.

Along with the proposals to consolidate toxics prohibitions and GWP limits, other proposed modifications include deleting several subsections and renumbering remaining subsections.

We are also proposing to amend Test Method 310 to incorporate additional testing procedures and standard test methods to analyze consumer products for compliance. These modifications are proposed to specify the procedures to be used to analyze for the aromatic compound content in "Paint Thinner" and "Multi-purpose Solvent" products and the VOC content of "Fabric Softener-Single Use Dryer Product."

COMPARABLE FEDERAL REGULATIONS

The U.S. Environmental Protection Agency (U.S. EPA) has promulgated a national consumer products rule under section 183(e) of the federal Clean Air Act (40 CFR Part 59, subpart C, sections 59.201 *et seq.*). The rule specifies VOC limits for a number of consumer product categories and is similar in format to ARB's Consumer Products Regulation.

Although the national regulation is similar in many aspects to the California regulation, it is less effective in reducing VOC emissions from consumer products. The U.S. EPA's rule does not include a number of product categories that are currently regulated under the ARB regulation. For the categories that are regulated under both rules, many of ARB's limits are more stringent than the U.S. EPA's limits. Because California has unique air quality problems, we work to reduce VOC emissions from all categories, including consumer products, to the maximum extent feasible to attain the federal and State ambient air quality standards for ozone.

The U.S. EPA's rule also differs in that it applies nationwide to consumer product manufacturers, importers and distributors (but not retailers), while the ARB regulation applies to any person (including retailers) who "sells, supplies, offers for sale, or manufactures consumer products for use in the State of California." Finally, the U.S. EPA's rule has an unlimited "sell-through" period for noncomplying products manufactured before the effective date of the limits, whereas California law limits the sell-through period to three years.

U.S. EPA's consumer products rule does not prohibit the use of certain toxic air contaminants and there is no comparable federal regulation related to reducing greenhouse gas emissions in consumer products.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes the rationale for the proposed amendments and a summary of the potential environmental and economic impacts of the proposal. The report is entitled: "Proposed Amendments to the California Regulation for Reducing Emissions from Consumer Products and Test Method 310: Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products."

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitor and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990, on September 29, 2010.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons identified below, or may be accessed on ARB's website listed below.

Inquiries concerning the substance of the proposed regulatory action may be directed to Ms. Carla Takemoto, Manager, Technical Evaluation Section, Stationary Source Division, at (916) 324-8028; or Mr. Nicholas Berger, Air Pollution Specialist, at (916) 327-1516.

Further, the agency representative and designated back-up contact persons to whom non-substantive inquiries concerning the proposed administrative action may be directed are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011 or Ms. Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which in-

cludes all information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB website for this rulemaking at <http://www.arb.ca.gov/regact/2010/cp2010/cp2010.htm>.

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the ARB Executive Officer concerning the cost or savings necessarily incurred by public agencies and private persons and business in reasonable compliance with the proposed regulatory action are presented below.

The Executive Officer has determined that the proposed regulatory action will not create costs or savings as defined in Government Code section 11346.5(a)(5) and 11346.5(a)(6) to any State agency or in federal funding to the State, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to Part 7 (commencing with section 17500), Division 4, title 2 of the Government Code, or other nondiscretionary cost or savings to State or local agencies.

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons and businesses. The Executive Officer has initially determined that there will be a potential cost impact on private persons or businesses directly affected as a result of the proposed regulatory action. As explained in the ISOR, the proposed amendments may have a significant adverse economic impact on some individual businesses but the overall statewide impacts are not expected to be significant.

The Executive Officer has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

In accordance with Government Code section 11346.3, the Executive Officer has initially determined that the proposed amendments should have minimal impacts on the creation or elimination of jobs within the State of California, minimal impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and minimal impacts on the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed amendments can be found in the ISOR.

The Board's Executive Officer has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses.

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

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and comments may be submitted by postal mail or by electronic submittal before the meeting. The public comment period for this regulatory action will begin on **October 4, 2010**. To be considered by the Board, written submissions not physically submitted at the meeting must be submitted on or after October 4, 2010, and received no later than **12:00 noon, November 17, 2010**, and addressed to the following:

Postal mail: Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g. your address, phone, email, etc.) become part of the public record and can be available via Google, Yahoo, and other search engines.

The Board requests but does not require that 20 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to the ARB in sections 38501, 38510, 38560, 38562, 38580, 39600, 39601, 41511, and 41712 of the Health and Safety Code. This action is proposed to implement, interpret, or make specific sections 38501, 38510, 38560, 38562, 38580, 39600, 39601, 41511, and 41712 of the Health and Safety Code.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action; in such event the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990.

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format (i.e., Braille, large print, etc.) or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 10 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas due necesitan este

servicio pueden marcar el 711 para el Servicio de Re-transmisión de Mensajes de California.

**TITLE 19. OFFICE OF THE STATE
FIRE MARSHAL**

NOTICE OF PROPOSED RULEMAKING

**OFFICE OF THE STATE FIRE MARSHAL
California Code of Regulations Title -19**

The State Fire Marshal proposes to adopt the proposed regulations described below after considering all comments, objections or recommendations regarding the proposed action.

WRITTEN COMMENT PERIOD

The State Fire Marshal will accept written comments regarding this regulatory action from October 1, 2010 until 5:00 p.m. on November 15, 2010. Please address your comments to:

OFFICE OF THE STATE FIRE MARSHAL
P.O. Box 944246
Sacramento, CA 94244-2460
Attention: Diane Arend
Or by e-mail to
diane.arend@fire.ca.gov

Or you may fax your comments to:

Attention: Diane Arend
(916) 445-8459

PUBLIC HEARING

The State Fire Marshal has not scheduled a public hearing on this proposed action, however, a public hearing will be held if a written request is received from any interested party or their authorized representative no later than 15 days before the end of the 45-day comment period.

AUTHORITY & REFERENCE

The State Fire Marshal is proposing this regulatory action pursuant to Health and Safety Code Section: 13143 and 17921 with reference to 13143 and 17921 Health and Safety Code.

**INFORMATIVE DIGEST — POLICY
STATEMENT OVERVIEW**

The State Fire Marshal proposes to amend various sections of California Code of Regulations (CCR), Title

19, Division 1, Sections 1.05–2060 as follows: Chapter 1, General Fire and Panic Safety Standards; Chapter 1.5, Construction Materials and Equipment Listings; Chapter 2, Tents Awnings and Other Fabric Enclosures; Chapter 3, Fire Extinguishers; Chapter 4, Fire Alarm Systems and Devices; Chapter 5, Automatic Fire Extinguishing Systems; Chapter 8, Flame–Retardant Chemicals, Fabrics and Application Concerns; and Chapter 14, Hazardous Liquid Pipeline Safety. Amendments consist of editorial corrections, clean–up, updating of occupancy groups, references and standards and revisions to test standards for large and small waste containers.

Current Law requires the State Fire Marshal adopt regulations for the purpose of establishing minimum standards for the prevention of fire and for the protection of life and property against fire, explosion and panic.

The currently adopted State Fire Marshal regulations contain requirements which are referenced within other parts of adopted Building Standards Codes, California Code of Regulations, Title 24. By amending the outdated references, terms, occupancy groups and standards in Title 19, the State Fire Marshal will eliminate the confusion caused by having inconsistent information appear in various sections and parts of the code.

The SFM established a workgroup through the California Fire Chiefs, Fire Prevention Officers consisting of local fire, industry and regulatory personnel, to review the proposed regulations and make recommendations regarding revising these regulations.

Proposed Title 19 Modified Sections

Title 19, Sections 1.05–2060 are being proposed to be amended to update references to various adopted standards, referenced codes and terms, and occupancy groups and cite those adopted Codes and standards as identified in California Code of Regulations, Title 24. In addition, the SFM is proposing revisions to address current test standards for large and small waste containers and exceptions to the test standards. Reference is made to nationally adopted standards contained in CCR, Title 24, Part 9, California Fire Code to keep references current, uniform and consistent for industry and local fire officials.

DISCLOSURES REGARDING THE PROPOSED ACTION

The State Fire Marshal has made the following determinations:

1. Mandate on local agencies and school districts: **None**
2. Cost or savings to any other State agency: **None**

3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code, Sections 17500–17630: **None**
4. Other non–discretionary cost or savings imposed upon local agencies: **None**
5. Cost or savings in federal funding to the State: **None**
6. Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other States: **None**
7. Cost impact on private persons or directly affected businesses: The State Fire Marshal is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Adoption of these regulations will not:
 - a) create or eliminate jobs within California;
 - b) create new businesses or eliminate existing businesses within California; or
 - c) affect the expansion of businesses currently doing business within California.
8. Significant effect on housing costs: **None**

SMALL BUSINESS EFFECTS

The State Fire Marshal has made the initial determination that the amendments to these regulations will have no substantial effect to small businesses and the State Fire Marshal has not identified any alternatives that would lessen any adverse impact, if any, on small businesses. There is no effect on small business because small businesses are not involved in development of test standards or testing products.

CONSIDERATION OF ALTERNATIVES

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

The State Fire Marshal invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed regulatory action, or requests for copies of the proposed text of the regula-

tions, the initial statement of reasons, the modified text of the regulations, or other information upon which the rulemaking is based may be directed to:

Diane Arend, Senior Deputy State Fire Marshal
1131 'S' Street
Sacramento, CA 95814
Telephone: (916) 324-9592
Fax: (916) 445-8459
Email: diane.arend@fire.ca.gov

Alternate Contact:

Kevin Reinertson, Acting Division Chief
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 327-4998
E-mail: kevin.reinertson@fire.ca.gov

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

The Office of the State Fire Marshal will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office, shown above. As of this date, this notice is published in the Notice Register the State Fire Marshal rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons for the proposed action. The full text of the regulations, along with the final statement of reasons upon which the changes are based is available from the contact person as shown. Copies may be obtained from the contact person at the address or telephone number listed above.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

Following the 45-day comment period, the State Fire Marshal may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text — with changes indicated — shall be made available to the public for at least 15 days before the State Fire Marshal adopts (amends or repeals) the regulations as revised. Requests for copies of any modified regulations should be sent to the contact person at the address indicated above. The State Fire Marshal will accept written comments on the modified regulations for 15 days after the date on which they are made available.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

**AVAILABILITY OF THE FINAL STATEMENT
OF REASONS**

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

**AVAILABILITY OF DOCUMENTS ON
THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of proposed regulations, highlighted in underline and strikeout, can be accessed through our web-site at <http://osfm.fire.ca.gov> or http://osfm.fire.ca.gov/codedevelopment/codedevelopment_title19development.php.

**TITLE 24. BUILDING STANDARDS
COMMISSION**

**NOTICE OF FILING
OF PROPOSED EMERGENCY BUILDING
STANDARDS
OF THE
DIVISION OF THE STATE ARCHITECT —
STRUCTURAL SAFETY (DSA-SS)**

**REGARDING THE 2010 CALIFORNIA
ADMINISTRATIVE CODE
CALIFORNIA CODE OF REGULATIONS,
TITLE 24, PART 1 CONCERNING**

**CHAPTER 4 — GROUP 1
SAFETY OF CONSTRUCTION OF
PUBLIC SCHOOLS**

Notice is hereby given that the California Building Standards Commission (CBSC) is proposing to adopt, approve, codify, and publish regulations in California Code of Regulations (CCR), Title 24, Part 1. The Division of the State Architect-Structural Safety, for which CBSC has adoption responsibilities, is proposing building standards related to safety of construction of public schools.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from October 1, 2010, until 5:00 p.m. on November 15, 2010. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Dave Walls, Executive Director

Written Comments may also be faxed to (916) 263-0959 or E-mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)(17), any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, the CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

CBSC proposes to adopt these emergency building standards under the authority granted by Health and Safety Code Sections 18930. The purpose of these building standards is to implement, interpret, and make specific the provisions of Education Code Sections 17280 and 81130 (e.g. the "Field Act"). DSA-SS is proposing this regulatory action based on authority in Education Code Sections 17280-17316 and 81130-81147.

INFORMATIVE DIGEST

Summary of Existing Laws

Education Code Section 17310 authorizes the State Architect to establish administrative building standards for public elementary and secondary schools, and Education Code Section 81142 authorizes the State Architect to establish administrative building standards for community colleges.

Summary of Existing Regulations

Administrative building standards applicable to public schools are contained in Chapter 4 of Part 1, Title 24 (California Building Standards Administrative Code). These administrative building regulations include provisions pertaining to safety of construction of public schools.

With regard to this proposal, existing regulations being amended pertain to the following Articles:

- Article 2—Definitions
- Article 3 — Approval of Drawings and Specifications
- Article 4—Fees
- Article 5— Certification of Construction
- Article 6— Duties Under the Act

Summary of Effect

The effect of this code change proposal would result in permanent, long-term cost savings for school and community college districts and the DSA. This code change proposal would permit DSA to expedite Certification. The adoption of this code change proposal is required because DSA's Certification ensures a building project has been completed in accordance with requirements as to the safety of design and construction of public schools pursuant to Education Code Section 17280-17316 and 81130-81147.

Comparable Federal Statutes or Regulations

There are no comparable federal regulations or statutes.

Policy Statement Overview

The broad objective of the proposed action is to maintain building regulations in conformance with current state law and administrative procedures. Public schools would benefit from streamlined processes by expediting the delivery of construction projects on previously un-certified buildings.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

There are no other matters prescribed by statute applicable to the Division of the State Architect, or to any specific regulation or class of regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Division of the State Architect has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**

- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

INITIAL DETERMINATION OF SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

The Division of the State Architect has no evidence indicating any potential significant adverse impact on business; including the ability of California businesses to compete with business in other states with regard to this proposed action.

An alternative to the proposal is to maintain current process which will not resolve the existing back log of 12,000 uncertified projects and will contribute to accumulation of new additional projects that cannot be certified. Total cost and benefits from this regulation and each alternative considered:

Regulation:	Benefit: \$5.8 million	Cost: \$_____
Alternative 1:	Benefit: \$_____	Cost: \$_____
Alternative 2:	Benefit: \$_____	Cost: \$11.6–17.4 mil

This proposal will limit districts’ expenditures to one re–opening fee (\$5.8 million for 12,000 projects) to ensure certification. Alternative: re–opening project multiple times (each time for a fee) that will not result in certification.

DECLARATION OF EVIDENCE

No facts, evidence, documents, testimony or other evidence has been relied upon to support the initial determination of no effect.

FINDING OF NECESSITY FOR THE PUBLIC’S HEALTH, SAFETY, OR WELFARE

The proposed action does not require a report by any business or agency, so the Division of the State Architect has not made a finding of necessity for public’s health, safety or welfare.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

The Division of the State Architect has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.
The Division of the State Architect has determined that the proposed action has no effect.
- The creation of new businesses or the elimination of existing businesses within the State of California.
The Division of the State Architect has determined that this proposal has no effect.
- The expansion of businesses currently doing business with the State of California.
The Division of the State Architect has determined that the proposed action has no effect.

This proposal streamlines current processes resulting in reduction in costs and resources for DSA and K–14 schools.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

The Division of the State Architect has made an initial determination that this proposal WOULD NOT have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the final statement of reasons once it has been prepared, by making a

written request to the contact person named below or at the California Building Standards Commission website.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

General questions regarding procedural and administrative issues should be addressed to:

Michael Nearman (916) 263-5888
Russell Frank (916) 263-5383
(916) 263-0959 FAX
Michael.Nearman@dgs.ca.gov
Russell.Frank@dgs.ca.gov

PROPOSING STATE AGENCY CONTACT PERSON FOR SUBSTANTIVE AND/OR TECHNICAL QUESTIONS ON THE PROPOSED CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Masha Lutsuk, Operations Deputy
Department of General Service — Division of the State Architect
(916) 324-5799
Masha.Lutsuk@dgs.ca.gov
(916) 324-0207 FAX

TITLE MPP. DEPARTMENT OF SOCIAL SERVICES

ORD #0210-02

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #1 Social Worker Visits

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements, or arguments, orally or in writing relevant to the proposed regulations at a public hearing to be held November 17, 2010, as follows:

November 17, 2010
Office Building # 8
744 P St., Check in at Security Desk
Sacramento, California

The public hearing will convene at 10:00 a.m. and remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing, including sign language, please notify the agency representative identified below at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on November 17, 2010.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons, and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Office of Regulations Development
California Department of Social Services
744 P Street, M.S. 8-4-192
Sacramento, California 95814

TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures (MPP), Division 31 (Child Welfare Services Program), Chapter 31-000

(General Requirements), Section 31–002 (Definitions), Section 31–003 (Definitions – Forms), and Section 31–075 (Case Records); Chapter 31–200 (Assessment and Case Plan), Section 31–206 (Case Plan Documentation); Chapter 31–300 (Service Delivery), Section 31–320 (Social Worker/Probation Officer Contacts with the Child); and Chapter 31–500 (Special Requirements), Section 31–505 (Out-of-County Placements), and Section 31–510 (Interstate Compact on the Placement of Children (ICPC)).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Currently, foster children should be visited at least monthly by a social worker. However, some foster children who are in long term foster care, placed with relatives, guardians, or non-related extended family members can be granted exceptions to monthly visitation due to the stability and longevity of the placement. In addition, children placed with foster family agencies (FFA) are often exempted from monthly visits by a county caseworker due to the frequent visits of the FFA caseworker.

The federal government passed the Child and Family Services Improvement Act of 2006 [Public Law (PL) 109–288], which set forth new guidelines related to monthly visitation by social workers. In passing the Act, it was noted by Congress that there was a strong correlation between frequent caseworker visits with foster children and positive outcomes for these children, such as timely achievement of permanency and other positive indicators of child welfare. PL109–288 required that states visit each and every foster child in placement once a month. If the state is not in 90 percent compliance with this new mandate by 2011, fiscal penalties will be levied.

These regulations include the requirement that foster children be visited monthly with a majority of those visits occurring in the child’s home. The regulations also clarify who is qualified to visit a child and what that visit should include.

COST ESTIMATE

1. Costs or Savings to State Agencies: The additional expenditure of \$5.1 million is budgeted for State Fiscal Year (FY) 2009–10 in May 2010 Revise. State Budget Year (BY) 2010–11 and out year costs each total \$3.6 million.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 – 17630: N/A

3. Nondiscretionary Costs or Savings to Local Agencies: The additional expenditure of \$2.2 million is budgeted for FY 2009–10 in May 2010 Revise. BY 2010–11 and out year costs each total \$1.5 million.
4. Federal Funding to State Agencies: The additional expenditure of \$4.8 million is budgeted for FY 2009–10 in May 2010 Revise. BY 2010–11 and out year costs each total \$4.4 million.

LOCAL MANDATE STATEMENT

These regulations implement new federal mandates contained in PL 109–288, which require states to provide caseworker visits to children in foster care on a monthly basis. PL 109–288 set a mandatory goal that 90 percent of children in foster care be visited monthly by the year 2011.

At this time, it is unknown what fiscal impact these new and revised federal mandated regulations will have on CDSS, local agencies, or school districts. The CDSS does not anticipate an impact on small business.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting private persons or businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

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

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Welfare and Institutions Code sections 10553, 10554, 10850.4, 16002, 16501, and 16501.1; Family Code section 17552; Assembly Bill 1695, Section 21, Statutes of 2001; and, the Child and Family Services Improvement Act of 2006 [Public Law (PL) 109-288].

Subject regulations implement and make specific Sections 7901, 7911, 7911.1, 7912, and 17552, Family Code; Sections 1502 and 1502(a)(8), Health and Safety Code; Section 11170(b), Penal Code; Sections 319, 361.3, 361.5, and 366.21 (as amended by Assembly Bill 1544, Chapter 793, Statutes of 1997), 366.26(c), Sections 309(d), 319, 361.2, 727, 11402, and 16507.5(b), (as amended by Assembly Bill 1695, Chapter 653, Statutes of 2001), and Sections 358.1(e), 361, 361(b), 361.2(e) and (d), 361.5, 4094, 4094.5, 4094.6, 4094.7, 5585.58, 5600.3, 10553, 11008.15, 11155.5, 16002, 16501, 16501(a), 16501.1(b), (d), (e), and (f)(4), 16504, 16507, and 16516.5, Welfare and Institutions Code; 42 U.S.C. Sections 675, 675(1), and 677; 45 CFR 1356.21(d); and Public Law 109-288.

CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION

Contact Person: Kenneth Jennings (916) 657-2586
Backup: Zaid Dominguez (916) 657-2586

GENERAL PUBLIC INTEREST

**TITLE 2. DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or CEIR has been submitted and the prospective contractors are ineligible to enter into State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.
DBA ASI Telesystems, Inc.
21150 Califa Street
Woodland Hills, CA 91367

Bay Recycling
800 77th Avenue
Oakland, CA 94621

C & C Disposal Service
P.O. Box 234
Rocklin, CA 95677

Choi Engineering Corp.
286 Greenhouse
Marketplace, Suite 329
San Leandro, CA 94579

Fries Landscaping
25421 Clough
Escalon, CA 95320

Marinda Moving, Inc.
8010 Betty Lou Drive
Sacramento, CA 95828

MI-LOR Corporation
P.O. Box 60
Leominster, MA 01453

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

San Diego Physicians & Surgeons Hospital
446 26th Street
San Diego, CA

Southern CA Chemicals
8851 Dice Road
Santa Fe Springs, CA 90670

Tanemura and Antle Co.
1400 Schilling Place
Salinas, CA 93912

Turtle Building Maintenance Co.
8132 Darien Circle
Sacramento, CA 95828

Univ Research Foundation
8422 La Jolla Shore Dr.
La Jolla, CA 92037

Vandergoot Equipment Co.
P.O. Box 925
Middletown, CA 95461

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication September 10, 2010
CESA CONSISTENCY DETERMINATION
REQUEST FOR
PG&E Gas Line 303ILI Repair Project
Contra Costa County and Alameda County
2080-2010-049-03

The Department of Fish and Game (Department) received a notice on September 20, 2010 that Pacific Gas and Electric Company proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). The proposed action would consist of inspection and repair of three anomalies within the 36-inch Line 303 high pressure natural gas using In-Line-Inspection.

The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal biological opinion (File No. 81420-2009-F-0782-1)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on June 1, 2010 which considered the effects of the project on the Federally and State threatened California tiger salamander (*Ambystoma californiense*) and the Federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*). The BO was amended on January 7, 2010 (File No. 81420-2009-F-0782-2) and August 30, 2010 (File No. 81420-2009-F-0782-R001).

Pursuant to California Fish and Game Code Section 2080.1, Pacific Gas and Electric Company is requesting a determination that the BO and ITS are consistent with

CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, Pacific Gas and Electric Company will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE OF A REQUESTED HEARING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) has proposed changes to various sections of Subchapter 2 (commencing with section 1180) of Chapter 4, Division 2, of Title 3 of the California Code of Regulations. The proposal was published in the *California Regulatory Notice Register* on June 4, 2010 [Register 2010, No. 23-Z] but no hearing was scheduled. The Department has received several requests for public hearings; therefore, the hearings will be held in accordance with Government Code section 11346.8 for the following:

Proposal relating to the regulation of rendering establishments, collection centers, dead animal haulers, and transporters of inedible kitchen grease.

Food and Agricultural Code section 407 authorizes the Department to adopt such regulations that are reasonably necessary to carry out the provisions of the Food and Agricultural Code which it is authorized to administer or enforce. Chapter 5 (commencing with section 19200), of Part 3, Division 9, of the Food and Agricultural Code, authorizes the Department to regulate, in part, the rendering industry, which includes, collection centers, dead animal haulers, and transporters of inedible kitchen grease. Rendering establishments and collection centers are exempt from inspection by the United States Department of Agriculture but require inspection in California. Dead animal haulers and transporters of inedible kitchen grease are required to be registered with the Department.

This proposal makes various changes to the regulation of rendering establishments, collection centers, dead animal haulers, and transporters of inedible kitchen grease under Subchapter 2 (commencing with section 1180) of Chapter 4, Division 2, of Title 3 of the California Code of Regulations. This proposal also incorporates by reference specified forms utilized by the Meat and Poultry Inspection Branch of the Department for use by the rendering industry and incorporates by reference specified standards from the 2007 California Building Code.

Hearing Dates, Times, Locations

October 18, 2010
 9:00 a.m. – 4:00 p.m.
 Department of Food and Agriculture
 1220 N Street, 1st Floor Auditorium
 Sacramento, CA 95814

October 21, 2010
 9:00 a.m. – 4:00 p.m.
 Junipero Serra State Office Building
 320 West 4th Street, Carmel Auditorium
 Los Angeles, CA 90013

Public Comments

Comments shall be presented at the hearings on October 18, 2010 or October 21, 2010, between 9:00 a.m. and 4:00 p.m. Any person who submitted a written comment during the 45-day public comment period, which ended July 19, 2010, remains in the Department’s official rulemaking file.

Contact Persons

Inquiries concerning the substance of the proposed regulations are to be addressed to: Douglas Hepper, DVM, Branch Chief, Department of Food and Agriculture, Meat and Poultry Inspection Branch, 1220 N Street, Room A–125, Sacramento, CA 95814, Telephone (916) 654–0504.

The backup contact person is: Nancy Grillo, Regulation/Legislation Coordinator, Department of Food and Agriculture, Animal Health and Food Safety Services, 1220 N Street, Room A–114, Sacramento, CA 95814, Telephone (916) 651–7280.

Website Access

Materials regarding this proposal can be found at <http://www.cdfa.ca.gov/ahfss/regulations.html>.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

Mountain Yellow–Legged Frog
(Rana muscosa and Rana sierrae)

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2074.2 of the Fish and Game Code, the California Fish and Game Commission, at its September 15, 2010 meeting in McClellan, California, accepted for consideration the petition submitted to list the Mountain Yellow–Legged Frog (*Rana muscosa* and *Rana sierrae*) as endangered. Pursuant to subdivision (a)(2) of Section 2074.2 of the Fish and Game Code, the aforementioned species is hereby declared a candidate

species as defined by Section 2068 of the Fish and Game Code.

Within one year of the date of publication of this notice of findings, the Department of Fish and Game shall submit a written report, pursuant to Section 2074.6 of the Fish and Game Code, indicating whether the petitioned action is warranted. Copies of the petition, as well as minutes of the September 15, 2010, Commission meeting, are on file and available for public review from Jon K. Fischer, Acting Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Written comments or data related to the petitioned action should be directed to the Commission at the aforementioned address.

FISH AND GAME COMMISSION

NOTICE OF FINDINGS

Pacific fisher
(Martes pennanti)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), at its June 23, 2010 meeting in Folsom, California, made a finding pursuant to Fish and Game Code section 2075.5, that the petitioned action to add the Pacific fisher (*Martes pennanti*) to the list of threatened or endangered species under the California Endangered Species Act (CESA)(Fish & G. Code, § 2050 et seq.) is not warranted. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1).)

I.

BACKGROUND AND PROCEDURAL HISTORY

On January 23, 2008, the Center for Biological Diversity (Center) petitioned the Commission to list the Pacific fisher as a threatened or endangered species under CESA.¹ (Cal. Reg. Notice Register 2008, No. 8–Z, p. 275; see also Cal. Code Regs., tit. 14, § 670.1, subd. (a); Fish & G. Code, § 2072.3.) The Commission received the petition and, pursuant to Fish and Game Code section 2073, referred the petition to the Department of Fish and Game (Department) for its evaluation and recommendation. (*Id.*, § 2073.) Thereafter, on June 27, 2008, the Department submitted its initial Evaluation of Petition: Request of Center for Biological Diversity to List the Pacific fisher (*Martes pennanti*) as Threatened or Endangered (June 2008) (hereafter, the 2008 Candidacy Evaluation Report) to the Commission at its meeting in Upland, California, recommending that the petition be rejected pursuant to Fish and Game Code

¹ The definitions of endangered and threatened species for purposes of CESA are found in Fish and Game Code sections 2062 and 2067, respectively.

section 2073.5, subdivision (a)(1). (See also Cal. Code Regs., tit. 14, § 670.1, subd. (d).)

On August 7, 2008, at its meeting in Carpinteria, California, the Commission considered the Department's 2008 Candidacy Evaluation Report and related recommendation, public testimony, and other relevant information, and voted to reject the Center's petition to list the Pacific fisher as a threatened or endangered species pursuant to Fish and Game Code section 2074.2, subdivision (a)(1). In so doing, the Commission determined there was not sufficient information to indicate that the petitioned action may be warranted. (Cal. Code Regs., tit. 14, § 670.1, subd. (e)(1); see also Cal. Reg. Notice Register 2009, No. 8–Z, p. 285.)

On February 5, 2009, at its meeting in Sacramento, California, the Commission voted to postpone and delay the adoption of findings ratifying its August 2008 decision, indicating it would reconsider its earlier action at the next Commission meeting. (Cal. Reg. Notice Register 2009, No. 8–Z, p. 285.) On March 4, 2009, at its meeting in Woodland, California, the Commission set aside its August 2008 determination rejecting the Center's petition, designating the Pacific fisher as a candidate species under CESA.² (Fish & G. Code, § 2074.2, subd. (a)(2), Cal. Code Regs., tit. 14, § 670.1, subd. (e)(2).) In reaching its decision, the Commission considered the petition, the Department's 2008 Candidacy Evaluation Report, public comment, and other relevant information, and determined based on substantial evidence in the administrative record of proceedings that the petition included sufficient information to indicate that the petitioned action may be warranted. The Commission adopted findings to the same effect at its meeting in Lodi, California, on April 8, 2009, publishing notice of its determination as required by law on April 24, 2009. (Cal. Reg. Notice Register 2009, No. 17–Z, p. 609; see also Fish & G. Code, §§ 2074.2, subd. (b), 2080, 2085.)

On April 8, 2009, the Commission also took emergency action pursuant to the Fish and Game Code and the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), authorizing take of Pacific fisher as a candidate species under CESA, subject to various terms and conditions. (See Fish & G. Code, §§ 240, 2084, adding Cal. Code Regs., tit. 14, § 749.5; Cal. Reg. Notice Register 2009, No. 19–Z, p. 724.) The Commission extended the emergency take authorization for Pacific fisher on two occasions, effective through April 26, 2010. (*Id.*, 2009, No. 45–Z, p. 1942; Cal. Reg. Notice Register 2010, No. 5–Z, p. 170.) The emergency take authorization repealed by operation of law on April 27, 2010.

Consistent with the Fish and Game Code and controlling regulation, the Department commenced a 12-month status review of Pacific fisher following published notice of its designation as a candidate species under CESA. As part of that effort, the Department solicited data, comments, and other information from interested members of the public, and the scientific and academic community; and the Department submitted a preliminary draft of its status review for independent peer review by a number of individuals acknowledged to be experts on the Pacific fisher, possessing the knowledge and expertise to critique the scientific validity of the report. (Fish & G. Code, §§ 2074.4, 2074.8; Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).) The effort culminated with the Department's final Status Review of the Fisher (*Martes pennanti*) in California (February 2010) (Status Review), which the Department submitted to the Commission at its meeting in Ontario, California, on March 3, 2010. The Department recommended to the Commission based on its Status Review and the best science available to the Department that designating Pacific fisher as a threatened or endangered species under CESA is not warranted. (Fish & G. Code, § 2074.6; Cal. Code Regs., tit. 14, § 670.1, subd. (f).) Following receipt, the Commission made the Department's Status Review available to the public, inviting further review and input. (*Id.*, § 670.1, subd. (g).)

On March 26, 2010, the Commission published notice of its intent to begin final consideration of the Center's petition to designate Pacific fisher as an endangered or threatened species at a meeting in Monterey, California, on April 7, 2010. (Cal. Reg. Notice Register 2010, No. 13–Z, p. 454.) At that meeting, the Commission heard testimony regarding the Center's petition, the Department's Status Review, and an earlier draft of the Status Review that the Department released for peer review beginning on January 23, 2010 (Peer Review Draft). Based on these comments, the Commission continued final action on the petition until its May 5, 2010 meeting in Stockton, California, a meeting where no related action occurred for lack of quorum. That same day, however, the Department provided public notice soliciting additional scientific review and related public input until May 28, 2010, regarding the Department's Status Review and the related peer review effort. The Department briefed the Commission on May 20, 2010, regarding additional scientific and public review, and on May 25, 2010, the Department released the Peer Review Draft to the public, posting the document on the Department's webpage. On June 9, 2010, the Department forwarded to the Commission a memorandum and related table summarizing, evaluating, and responding to the additional scientific input regarding the Status Review and related peer review effort.

² The definition of a "candidate species" for purposes of CESA is found in Fish and Game Code section 2068.

On June 23, 2010, at its meeting in Folsom, California, the Commission considered final action regarding the Center’s petition to designate Pacific fisher as an endangered or threatened species under CESA. (See generally Fish & G. Code, § 2075.5; Cal. Code Regs., tit. 14, § 670.1, subd. (i).) In so doing, the Commission considered the petition, public comment, the Department’s 2008 Candidacy Evaluation Report, the Department’s 2010 Status Review, and other information included in the Commission’s administrative record of proceedings. Following public comment and deliberation, the Commission determined, based on the best available science, that designating Pacific fisher as an endangered or threatened species under CESA is not warranted. (Fish & G. Code, § 2075.5(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).) At the same time, the Commission directed its staff in coordination with the Department to prepare findings of fact consistent with the Commission’s determination for consideration and ratification by the Commission at a future meeting.

II. STATUTORY AND LEGAL FRAMEWORK

The Commission has prepared these findings as part of its final action under CESA regarding the Center’s January 2008 petition to designate Pacific fisher as an endangered or threatened species under CESA. As set forth above, the Commission’s determination that listing Pacific fisher is not warranted marks the end of formal administrative proceedings under CESA prescribed by the Fish and Game Code and controlling regulation. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.) The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.)³

The CESA listing process for Pacific fisher began in the present case with the Center’s submittal of its petition to the Commission in January 2008. (Cal. Reg. Notice Register 2008, No. 8–Z, p. 275.) The regulatory process that ensued is described above in some detail, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114–116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541–1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111–1116.

The “is not warranted” determination at issue here for Pacific fisher stems from Commission obligations established by Fish and Game Code section 2075.5. Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether the petitioned action is warranted or is not warranted. Here with respect to Pacific fisher, the Commission made the finding under section 2075.5(1) that the petitioned action is not warranted.

The Commission was guided in making this determination by various statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA 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, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease. (Fish & G. Code, § 2062.)

Similarly, the Fish and Game Code defines a threatened species under CESA 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 this chapter. (*Id.*, § 2067.)

Likewise, as established by published appellate case law in California, the term “range” for purposes of CESA means the range of the species within California. (*California Forestry Association v. California Fish and Game Commission, supra*, 156 Cal. App.4th at p. 1540, 1549–1551.)

The Commission was also guided in making its determination regarding Pacific fisher by Title 14, section 670.1, subdivision (i)(1)(A), of the California Code of Regulations. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the species’ continued existence is in serious danger or is

³ The Commission, pursuant to this authority, may add, remove, uplist, downlist, or choose not to list any plant or animal species to the list of endangered or threatened species, or designate any such species as a candidate for related action under CESA. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A)–(C) and (2).) In practical terms, any of these actions is commonly referred to as subject to CESA’s “listing” process.

threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Fish and Game Code section 2070 provides similar guidance. This section provides that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (Fish & G. Code, § 2055.) This policy direction does not compel a particular determination by the Commission in the CESA listing context. Yet, the Commission made its determination regarding Pacific fisher mindful of this policy direction, acknowledging that “[l]aws providing for the conservation of natural resources’ such as the CESA ‘are of great remedial and public importance and thus should be construed liberally.’” (*California Forestry Association v. California Fish and Game Commission*, *supra*, 156 Cal. App.4th at pp. 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.)

Finally in considering these factors, CESA and controlling regulation require the Commission to actively seek and consider related input from the public and any interested party. (See, e.g., *Id.*, §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h).) The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a 12-month status review of the candidate species culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science. (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f), (h).)

III.

FACTUAL AND SCIENTIFIC BASES FOR THE COMMISSION’S FINDING

The factual and scientific bases for the Commission’s finding that designating Pacific fisher as an endangered or threatened species under CESA is not warranted are set forth in detail in the Commission’s administrative record of proceedings. Substantial evidence in the administrative record in support of the Commission’s determination includes, but is not limited to, the Department’s 2008 Candidacy Evaluation Report and 2010 Status Review, and other information specifically presented to the Commission and otherwise included in the Commission’s administrative record as it exists up to and including the Commission meeting in Folsom, California, on June 23, 2010, and up to and including the adoption of these findings.

The Commission finds the substantial evidence highlighted in the preceding paragraph, along with other substantial evidence in the administrative record, supports the Commission’s determination that the continued existence of Pacific fisher in the State of California is not in serious danger or threatened by one or a combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation,
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

The Commission also finds that the same substantial evidence constitutes sufficient scientific information to establish that designating Pacific fisher as an endangered or threatened species under CESA is not warranted. The Commission finds in this respect that the Pacific fisher is not in serious danger of becoming extinct throughout all, or a significant portion, of its range. Similarly, the Commission finds that, although the Pacific fisher is not presently threatened with extinction, it is also unlikely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by CESA.

The following Commission findings highlight in more detail some of the scientific and factual information and other substantial evidence in the administrative record of proceedings that support the Commission’s determination that designating Pacific fisher as an endangered or threatened species under CESA is not warranted:

1. Survey and monitoring information from private timberlands, some in collaboration with the Department, indicates fisher inhabit forests that are not late successional.
2. Over the past twenty or more years, forests on public lands have undergone changes in management and direction, including significant protections for forest habitats beneficial to fisher. On private lands, the State has instituted Forest Practice Rules and ensured compliance with CEQA, both of which benefit fisher habitat values.
3. Trapping and poisoning of fisher and its prey has been made unlawful, thereby eliminating a significant historical mortality factor.
4. Comparative evidence between the historical and modern fisher populations indicates fisher are likely as numerous now, if not more numerous, than during the period 1910–1940. There is no indication of a fisher population decline in the southern Sierra, northern California, or statewide since the 1920s era.
5. There have been studies that included examination of predation, disease, and competition, however none have demonstrated that fisher populations are unduly at risk from these mortality factors. While these factors do affect fisher, there is no evidence that they limit populations.
6. Current fisher populations are not at risk of catastrophic population decline from wildfires. Modeling may demonstrate impacts to fisher populations from large and frequent fires; however current fuels management activities and other forest management prescriptions may reduce fuel loading and effects to fisher. Southern California forest managers in particular are actively selecting for conditions supporting fisher.
7. Management activities underway, such as the translocation effort in the northern Sierra Nevada, demonstrate that active management rather than listing provides adequate protections to fisher.

IV.

ADDITIONAL CONSIDERATIONS INFORMING THE COMMISSION'S FINAL DETERMINATION

The Commission's determination that designating Pacific fisher as an endangered or threatened species under CESA is not warranted is informed by various additional considerations. In general, the Fish and Game Code contemplates a roughly 12-month long CESA listing process before the Commission, including multiple opportunities for public and Department review and input, and peer review specifically whenever

possible. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.) The CESA listing process for Pacific fisher, in contrast, is approaching the 3-year mark. This length of time is not unusual compared to other recent CESA listing actions by the Commission.⁴ What the length of time does underscore in the present case, however, is the depth, breadth, and complexity of the scientific and legal issues that the Commission has considered in making its final determination regarding Pacific fisher. This section highlights some of those issues to more fully document the Commission's final determination in the present case.

From the initial receipt of the Center's petition in January 2008 through adoption of these findings in September 2010, the Commission received numerous comments and other significant public input regarding the status of Pacific fisher from a biological and scientific standpoint, and with respect to the petitioned action under CESA, including the listing process generally. For example, considerable controversy surrounded the Department's 2010 Status Review and its related peer review effort. Similarly, the Commission received many comments focusing on the current and historical status of Pacific fisher throughout all or a significant portion of its range. The Commission also received comments regarding the related status of Pacific fisher under the federal Endangered Species Act (ESA)(16 U.S.C. § 1531 et seq.). (See 69 Fed.Reg. 18770 (April 8, 2004).) Finally, the Commission received various comments and other important information regarding a number of scientific issues related to the status of Pacific fisher in California. The Commission, as highlighted below, was informed by and considered all of these issues, among others, in making its final determination that designating Pacific fisher as an endangered or threatened species under CESA is not warranted. (Fish & G. Code, § 2075.5(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).)

A. The Peer Review Effort Informing the Commission's Final Determination

The Commission received a number of comments during the CESA listing process expressing concern re-

⁴For example, with respect to the California tiger salamander, the species most recently designated as endangered or threatened under CESA, the Commission received the petition on January 30, 2004, and adopted findings that listing is warranted on May 20, 2010. (See Cal. Reg. Notice Register 2004, No. 9-Z, p. 270; Cal. Reg. Notice Register 2010, No. 23-Z, p. 855). Likewise, the CESA listing process for the longfin smelt, and not the related subsequent action under the APA, occurred over the time period from August 14, 2007 to June 25, 2009. (Cal. Reg. Notice Register 2007, No. 36-Z, p. 1512; 2009, No. 24-Z, p. 924. Similarly, the delisting of the Brown pelican, and again not the related subsequent APA process, occurred over the time period from May 26, 2006 to February 5, 2009. (Cal. Reg. Notice Register 2006, No. 24-Z, p. 784; 2008, No. 3-Z, p. 111.)

garding the Department's peer review effort pursuant to Title 14, section 670.1, subdivision (f)(2), of the California Code of Regulations. Various individuals and other interested members of the public expressed concern to the Commission that the Department, for example, failed to seek peer review as required by the controlling regulation or that the Department's related effort fell short of the overall mark under Title 14. Individuals and interested members of the public also highlighted changes between the Department's Peer Review Draft and final 2010 Status Review as submitted to the Commission, criticizing the Department for: (1) failure to recirculate the latter document for additional peer review, (2) changes reflected in the final Status Review following peer review of the earlier draft, and (3) the Department's allegedly according peer-reviewed scientific studies and other relevant information equal weight in the final Status Review. The Commission is aware of and has considered all of these comments in making its final determination regarding Pacific fisher.

In considering the comments discussed above, the Commission acknowledges that some level of criticism directed at the Department's peer review effort may be appropriate. The Commission disagrees, however, that the Department failed to comply with the peer review requirement prescribed by regulation. For purposes of that regulation, peer review is defined as the analysis of a scientific report by persons of the scientific/academic community commonly acknowledged to be experts on the subject under consideration, possessing the knowledge and expertise to critique the scientific validity of the report. The same regulation directs the Department to seek such independent and competent peer review whenever possible during the 12-month status review period prescribed by Fish and Game Code section 2074.6. Likewise, the regulation casts the requirement to seek peer review whenever possible against the backdrop of the Department's broader obligation to solicit data and comments, pursuant to section 2074.4, to inform development of the status review ultimately submitted to the Commission. (Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).)

In the present case, the administrative record of proceedings before the Commission establishes that the Department released the Peer Review Draft to a select group of independent, competent and respected members of the scientific community in February 2010. The administrative record also establishes that those individuals provided related input to the Department, input that is reflected in or otherwise informed the Department's final Status Review as submitted to the Commission in March 2010. The Department, in this respect, sought and obtained analysis of a scientific report during the status review period prescribed by Fish and Game Code section 2074.6, and it appears to the Com-

mission that the related information submitted to the Department informed or was otherwise reflected in the Department's final Status Review submitted to the Commission. The Commission, in this respect, finds that the Department complied with the peer review requirements prescribed by Title 14, section 670.2, subdivision (f)(2). Having made this finding, the Commission also disagrees with the contention that the Department was required, as a matter of law, to seek peer review of the final 2010 Status Review as a result of changes to the earlier Peer Review Draft, or that the Department was required to seek peer review of the final 2010 Status Review either before or after submittal of that analysis to the Commission.

In making these findings, the Commission acknowledges the criticism aired by various members of the public and certain individual peer reviewers regarding the process followed by the Department during development of the Status Review. Members of the public and certain peer reviewers also criticized the Department's Status Review from a substantive standpoint. Even the Commission, following submittal of the Status Review in March 2010, initially expressed concern about the process followed by the Department to conduct required peer review. Yet, while there is certainly room to improve the CESA listing process in its current form, including required peer review, the Commission disagrees that the process followed by the Department to seek peer review in the present case failed to comply with Title 14, section 670.2, subdivision (f)(2). The same is true of criticism leveled against the Department's substantive conclusions in the final Status Review; that is, the existence of substantive disagreement regarding points established by, or the reasonable inferences appropriately drawn from, relevant scientific information, does not itself establish that the Department failed to conduct required peer review.

Importantly, when the Department submitted the final Status Review to the Commission in March 2010, the Commission made the analysis available to the public as required by law. (Cal. Code Regs., tit. 14, § 670.1, subd. (g)(2).) Thereafter, in response to related controversy and at the Commission's urging, the Department subjected the final Status Review to additional public and scientific review for a near month-long period during May 2010, also releasing the earlier Peer Review Draft to the public on May 25, 2010. The Department, in turn, prepared and submitted to the Commission a memorandum dated June 9, 2010, describing and analyzing the scientific information received by the Department in response to the request for additional scientific review. Taken together, in the Commission's opinion, these combined efforts provided the Commission with the robust public discourse and the type of information intended by the peer review provision in Title

14, along with, more importantly, the broader statutory charge that Commission listing determinations under CESA are based on the best scientific information available. (See, e.g., Fish & G. Code, § 2074.6.)

Finally, as part of the controversy surrounding the Department's peer review effort, the Commission received a number of comments critical of how much relative weight or not that the Department gave to certain information discussed in or relevant to the Status Review. The Commission also received various comments contending that certain Department scientists may have disagreed with or expressed criticism of the Department's final recommendation to the Commission regarding the petitioned action. The Commission finds that, in many instances, these comments and the related criticism reflect differences in opinion not necessarily related to the body of scientific evidence and other information regarding the status of Pacific fisher in California, or what can be reasonably inferred from that evidence and information from a biological standpoint. Instead, the comments and criticism reflect differences in opinion regarding whether that body of evidence and information provides sufficient information to indicate that the petitioned action is or is not warranted.

B. The Status of Pacific Fisher Throughout All or a Portion of Its Range and the Existing Northern and Southern Populations

The Commission received a number of comments during the CESA listing process calling for more robust, individualized analysis of the two distinct population of Pacific fisher in northern and southern California. A number of comments asserted that, despite the related information already before the Commission, without this additional population-specific analysis by the Department the Commission could not assess whether Pacific fisher is in serious danger of becoming extinct or, absent listing under CESA, threatened with extinction throughout all or a significant portion of its range. (See generally Fish & G. Code, §§ 2062, 2067.) Finally, some comments indicated that, because there is no evidence of a persistent population of Pacific fisher in the northern and central Sierra Nevada, a recognized portion of the species' historical range, designating Pacific fisher as an endangered or threatened species under CESA is warranted *per se*.

The Commission disagrees that the lack of evidence of a persistent population of Pacific fisher in the northern and central Sierra Nevada for nearly the last century compels a listing "is warranted" determination by the Commission for Pacific fisher. Information before the Commission indicates Pacific fisher in this portion of the species' historical range declined significantly as the result of trapping and related practices in the late 19th and early 20th centuries. Other information before

the Commission indicates that, while there are a number of documented observations of Pacific fisher in this portion of the species' historical range over the last number of decades, there is no evidence of a persistent population within the northern and central Sierra Nevada for the last 80 years at a minimum. This information is an indication that the current status of Pacific fisher in the northern and central Sierra Nevada has likely improved relative to the species' status following the decline in the late 19th and early 20th centuries. Evidence before the Commission also indicates that recent species translocation efforts by the Department in collaboration with the academic and regulated communities, among other things, is also improving the status of Pacific fisher overall, with respect to the southern population, and Pacific fisher in the southern Sierra Nevada. In short, the Commission recognizes there is no current evidence of a persistent population of Pacific fisher in the northern and central Sierra Nevada a portion of the species' historical range in California. Yet, the evidence before the Commission indicates that the status of the two California populations of Pacific fisher within the species' historical range has been and is stable, and likely improving as of late.

Against this backdrop, the Commission recognizes that Pacific fisher declined significantly in the northern and central Sierra Nevada as a result of trapping and related activity in the late 19th and early 20th centuries. Likewise, the Commission recognizes that, while there have been a number of documented observations of the species over the last number of decades, there is no evidence of a current persistent population in this portion of the species' historical range. The Commission disagrees, however, that the lack of evidence of a persistent population of Pacific fisher in the northern and central Sierra Nevada constitutes sufficient scientific information in and of itself to indicate that the petitioned action is warranted for Pacific fisher as a whole, or for the northern and southern populations respectively. The Commission has reached this determination informed by the Department's Status Review and related public comments; and other scientific information, recognizing and understanding the scientific information regarding the lack of a persistent population in the northern and central Sierra Nevada contributes to the species' vulnerability overall, as well as the northern and southern populations, respectively. In the Commission's opinion, however, there is not sufficient scientific information to indicate that the continued existence of Pacific fisher is, or the northern and southern populations are, respectively, in serious danger or threatened by the lack of a persistent population in the northern and central Sierra Nevada, alone or in combination with other threats.

The Commission’s final determination is also based on relevant statutory language. Section 2062 of the Fish and Game Code defines an endangered species, in pertinent part, as a species “in serious danger of becoming extinct through all, or a significant portion, of its range[.]” Section 2067, in turn, defines threatened species as a species “that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future[.]” In the Commission’s opinion, the quoted language, when given its ordinary meaning and construed in context, denotes a present–tense condition of being at risk of a future, undesired event. To say a species “is in danger” in an area where it no longer exists (i.e., in a portion of its historical range) is not consistent with the common ordinary meaning of phrase at issue. In addition to “range” meaning California for purposes of CESA (*California Forestry Association, supra*, 156 Cal.App.4th at pp. 1549–1551), for purposes of the issue at hand, it strikes the Commission that range must mean current occupied range and not historical range. This interpretation is further supported in the Commission’s opinion by the fact that, assessing whether a species is endangered involves consideration of “present or threatened” (i.e., future), rather than past “modification or destruction of its habitat.” (Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).) Taken together, the Commission does not agree that the lack of evidence of a persistent population of Pacific fisher in the northern and central Sierra is a basis per se to conclude that the petition action is warranted.

C. The Status of Pacific Fisher under the Federal Endangered Species Act

On April 8, 2004, the U.S. Fish & Wildlife Service (Service) added the West Coast distinct population segment (DPS) of Pacific fisher, which includes fisher in Washington, Oregon, and California, to the list of candidate species under the federal ESA. (69 Fed.Reg. 18770.) The Service designated Pacific fisher within the West Coast DPS as candidate species after considering all available scientific and commercial information available at the time, and determining that designating fisher in the West Coast DPS as an endangered or threatened species under the federal ESA was warranted, but precluded by higher priority listing actions. (See generally 16 U.S.C. § 1533, subd. (b)(3)(B)(iii).) In so doing, the Service concluded that the overall magnitude of threats to the West Coast DPS is high, but that the immediacy of those threats was non–imminent. (69 Fed.Reg. at p. 18792.) At the same time the Service also assigned the West Coast DPS a Listing Priority Number of 6, an assignment the Service affirmed most recently in the Federal Register on November 9, 2009. (74 Fed.Reg. 57804.)

The Commission received a number of comments during the CESA listing process for Pacific fisher tied to the species’ status under the federal ESA. Principal among those comments is the contention that Pacific fisher’s status under the federal ESA necessarily requires a similar finding by the Commission under CESA. Others questioned whether the Commission has the legal authority to reach a conclusion under CESA with respect to Pacific fisher in California different from the Service’s finding under federal law relative to the West Coast DPS. Finally, one commenter correctly pointed out a Department misstatement early in the CESA listing process that failed to acknowledge the federal candidate status of the West Coast DPS is premised on a Service finding that listing is warranted, but precluded under the federal ESA.

In making its final determination under CESA the Commission carefully considered the Service’s findings and analysis under the federal ESA related to the West Coast DPS. The Commission also carefully considered related public comment and other information and evidence in its own administrative record of proceedings. With respect to the petitioned action under CESA, the Commission is charged by law to review and exercise its independent judgment in determining whether to designate Pacific fisher in California as an endangered or threatened species. The Commission, in this respect, must reach its own conclusion regarding the status of Pacific fisher in California independent of, but informed by, among other things, the Service’s related findings under the federal ESA. The Commission is not obligated to adopt or otherwise compelled to find that the petitioned action is warranted under CESA as a result of the species’ status under the federal ESA. Instead, the Commission must carefully review and consider the scientific and other information as included in the administrative record of proceedings, which it has, and reach its own conclusion as to whether there is sufficient scientific information to indicate that the petitioned action is warranted.

D. Various Scientific Issues Related to the Petitioned Action and Status of Pacific fisher in California

Throughout the petition evaluation and status review process, the Commission received a broad spectrum of scientific information, as well as additional information beyond that, for which there exists vigorous, appropriate, robust discourse that is critical to informing the determination required by the regulatory framework that lies with the Commission. The discussion surrounding this information, which occurred via public comments aired orally at Commission meetings and via comment letters, is an encouraged part of the evaluation process

which helped to inform and influence the Commission's ultimate determination.

One topic about which the Commission received a great deal of discussion was whether managed timberland provides habitat elements supporting all essential Pacific fisher life requirements, such as denning, resting, and rearing young. Some comments asserted that individuals of the species are thriving on managed timberland, proving the sufficiency of this habitat. Comments on the opposite end of the spectrum assert that managed timberland does not resemble that described by scientists as being favorable for fisher, and may be of poor quality for fisher. The totality of the information received by the Commission does not support a finding that the available habitat for Pacific fisher is insufficient to support the species' life requirements.

Another topic about which the Commission received competing information was whether the southern Sierra fisher population's isolation makes it more vulnerable to threats such as fire, disease, predation, and stochastic events. Some comments assert that threats such as logging, roads, disease, predation, small population size, and development can impact the fisher population cumulatively, and therefore represent a significant threat to the population's continued existence. Opposing comments assert that the southern population has endured for many decades despite these extant threats, so its isolation alone is not an indicator of serious danger or immediate threat to the continued existence of the population. As discussed above, the Pacific fisher populations in California have been isolated for decades, if not a century, during which time neither stochastic events nor the enumerated threats have resulted in the extinction of either population. The Commission cannot conclude based on the information before it that the relative isolation of the two distinct California fisher populations poses an imminent threat to the species' or either populations' continued existence, including in combination with other threats, such that listing is warranted.

A third magnet for robust debate was the question of whether the geographic gap between the two California fisher populations reflects a contraction in population size and constitutes an indicator of population instability. Some comments assert that the two populations are thriving and that the gap does not impact the survival of the species. Opposing comments assert that the geographic separation has caused both genetic differences between the populations, as well as a corresponding increase in genetic similarity among individuals within each population, representing yet another threat to the continued existence of fisher in the California. As discussed above, substantial evidence in the administrative record of proceedings before the Commission indicates that the gap in geographic range has existed for de-

cadecades, if not a century, so the passage of time itself has answered the question as to whether the geographic gap poses a serious danger or threat of extinction in the foreseeable future to fisher populations in California. In light of the evidence before it, the Commission cannot conclude that the geographic gap between the two California fisher populations constitutes evidence that the Pacific fisher is at serious danger of extinction or threatened with extinction in the foreseeable future such that listing is warranted.

A final topic that received much attention was whether the Department's ongoing reintroduction effort will benefit fisher long term, since the release sites are located on managed timberlands. Some comments point to the reintroduction effort as evidence that the Department considers fisher to be in need of the protection afforded by listing. Some of these same commenters also note the uncertainty of whether the translocation effort will be a success to assert that the effort does not remove the imminent threat to the survival of the species that the petition suggests. Opposing comments assert that the availability of suitable habitat as yet unpopulated by the species makes reintroduction a valuable tool for expanding its available range and allowing the species to grow. The totality of the information received by the Commission does not support a finding that the available habitat for Pacific fisher is insufficient to support the species' life requirements, and the Department's relocation efforts further reinforce the Commission's determination that listing is not warranted.

Finally, the issues highlighted in this section represent only a portion of the complex issues aired and considered by the Commission during the CESA listing process for Pacific fisher. The issues addressed here in these findings represent some, but not all of the information, issues, and considerations affecting the Commission's final determination. Other issues aired before and considered by the Commission are addressed in detail in the Commission's administrative record of proceedings.

V. FINAL DETERMINATION BY THE COMMISSION

The Commission has weighed and evaluated all information and inferences for and against designating Pacific fisher as an endangered or threatened species under CESA. This information includes scientific and other general evidence in the Center's 2008 petition, the Department's 2008 Candidacy Evaluation Report and 2010 Status Review, and the Department's related recommendations based on the best available science, written and oral comments received from members of the public, the regulated community, various public

agencies, and the scientific community; and other evidence included in the Commission’s administrative record of proceedings. Based upon substantial evidence in the administrative record the Commission has determined that the best scientific information available indicates that the continued existence of Pacific fisher is not in serious danger or threatened by present or threatened modifications or destruction of the species’ habitat, overexploitation, predation, competition, disease, or other natural occurrences or human-related activities. (See generally Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A); Fish & G. Code, §§ 2062, 2067.) The Commission finds for the same reason that there is not sufficient scientific information at this time to indicate that the petitioned action is warranted. (See *Id.*, § 2070.) The Commission finds, as a result, that designating Pacific fisher, or the northern or southern populations, respectively, as an endangered or threatened species under CESA is not warranted and that, with adoption of these findings, Pacific fisher for purposes of its legal status under CESA shall revert to its status prior to the filing of the Center’s petition. (*Id.*, § 2075.5(2); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).)

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

California Environmental Protection Agency
Office of Environmental Health Hazard Assessment

Notice to Interested Parties October 1, 2010

Soil Screening Levels—Notice of the Availability of
California Human Health Screening Levels for
Ethylbenzene and Perchlorate

Health and Safety Code Section 57008 (The California Land Environmental Restoration and Reuse Act; SB32, Escutia, Chapter 764, Statutes of 2001) requires the California Environmental Protection Agency (Cal/EPA), “in cooperation with the Department of Toxic Substances Control, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment,” to publish a list of screening numbers for specific contaminants. In January 2005, the Office of Environmental Health Hazard Assessment (OEHHA) released a report containing California Human Health Screening Levels (CHHSLs) for 60 chemicals. OEHHA is making available two reports: “California

Human Health Screening Levels for Ethylbenzene” and “California Human Health Screening Levels for Perchlorate.” These reports are new CHHSLs that were not released previously because new toxicity criteria were being prepared on which the CHHSLs would be based.

The CHHSLs for ethylbenzene are soil gas levels of 1.1 µg/L and 0.42 µg/L for residential structures on engineered fill or base soil, respectively. The CHHSLs for ethylbenzene for commercial/industrial structures are soil gas levels of 3.6 µg/L and 1.4 µg/L on engineered fill or base soil, respectively.

The CHHSLs for perchlorate are 28 mg/kg soil for residential property and 350 mg/kg soil for commercial/industrial property.

Both reports were made available in December 2009 for public review and comment. No comments were received and no significant changes have been made to the reports.

The reports are available at www.oehha.ca.gov and looking for the notice under “What’s New.” If the notice is not there, go to “Archived Notices” and look for notices with the date 10/01/10. If you would like to receive further information on this announcement or have questions, please contact our office at (916) 324–2829 or the address below.

Mr. Leon Surgeon
Integrated Risk Assessment Branch
Office of Environmental Health Hazard Assessment
P.O. Box 4010
1001 I Street, MS–12B
Sacramento, California 95812–4010
FAX: (916) 322–9705
IRAB@oehha.ca.gov

DECISION NOT TO PROCEED

EMERGENCY MANAGEMENT AGENCY

September 2, 2010

NOTICE IS HEREBY GIVEN that the California Emergency Management Agency does not intend to proceed with its biennial revision to its Conflict of Interest Code at this time. However, the agency is in the process of revising its Code to reflect the recent merger of the former Governor’s Office of Emergency Services and the former Governor’s Office of Homeland Security (now the California Emergency Management Agency). The Conflict of Interest Code was published in Notice Register No. 2009, No. 40Z, on October 2, 2009.

Please direct any questions to Linda MacRae, Cal
EMA Legal Office (916) 845-8522.

PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW

**OAL REGULATORY
DETERMINATION**

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 MENTAL HEALTH

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:

Chris Johnson
333 Bush Street, Ste. 600
San Francisco, California 94104

Agency contact:

Hon Chan, Senior Counsel
Department of Mental Health
1600 9th Street
Sacramento, California 95814

Please note the following timelines:

Publication of Petition in Notice Register: October 1, 2010

Deadline for Public Comment: November 1, 2010

Deadline for Agency Response: November 15, 2010

Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response

Deadline for OAL Decision: January 31, 2011

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.

RE: **ALLEGED UNDERGROUND
REGULATION**

FROM: Chris Johnson

DATE: July 16, 2010

1. Identifying Information: Petitioners

Your name: Chris Johnson

Your address: 333 Bush Street, Suite 600, San Francisco, California 94104

Your telephone number: 415-544-1900

Your E-Mail: cjohnson@shb.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.

A. DMH's Level II Screening of Potential Sexually Violent Predators

California's Sexually Violent Predator (SVP) program prevents the release of inmates who, due to a diagnosable disorder, are likely to commit violent sexual crimes in the future and defers their release until they have received appropriate psychiatric care and treatment. Before an inmate is released from prison, the Secretary of the Department of Corrections and Rehabilitation (CDCR) determines whether the inmate is a potential sexually violent predator. Welf. & Inst. Code § 6601(a)(1). Section 6600 of the Welfare and Institution Code defines an SVP as "a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior." The CDCR and the Board of Parole Hearings flag inmates who have committed one of the predicate offenses as potential SVPs. See § 6601(b). The CDCR refers these inmates to the State Department of Mental Health (DMH) for a "full evaluation of whether the person meets the criteria in Section 6600." *Id.*

DMH is required to conduct a full evaluation of all persons referred from the CDCR. To fulfill that requirement, DMH must "evaluate the person in accordance with a standardized assessment protocol, developed and updated by the [Department]." § 6601(c). The evaluation must include an "assessment of diagnosable mental disorders, as well as various factors known to be

associated with the risk of reoffense among sex offenders” and be conducted by *two practicing psychiatrists or psychologists*, or one practicing psychiatrist and one practicing psychologist.” § 6601(c), (d) (emphasis added). Furthermore, this evaluation must include an in-person interview. § 6601(b).

While the SVP program has been in place since 1996, 70% of the California electorate voted to pass Jessica’s Law (introduced as Proposition 83), a landmark law designed to strengthen the civil commitment program for sexually violent predators in November 2006. Jessica’s Law broadened the pool of potential sexually violent predators who could be eligible for civil commitment by 1) reducing the number from two to one prior victim of sexually violent offenses, and 2) making certain juvenile crimes count as a sexually violent offense under section 6600. § 6601(a)(1)–(2). In the year preceding Jessica’s Law, from December 1, 2005 to November 1, 2006, the CDCR referred 636 potential sexually violent predators to DMH for review in accordance with section 6600.¹ In the year after Jessica’s law was enacted, the CDCR referred 9,853 cases for review, the most ever referred by the CDCR since California’s SVP program’s inception in 1996.

If an inmate is found to meet the statutory predicates, the law requires that the inmate undergo a full clinical evaluation (now referred to by the DMH as a “Level III” screen). A full evaluation as mandated in the SVP statute requires that the inmate be assessed in-person by two qualified mental health professionals (two psychologists, two psychiatrists, or one of each). § 6601(b), (c), (d). The two evaluators determine whether the inmate meets the criteria for civil commitment, i.e., has a diagnosable mental disorder that makes the person a danger to the health and safety of others such that he or she will engage in sexually violent criminal behavior. A true and correct copy of DMH’s current “Level III” screening protocol is attached as **Exhibit A**.²

DMH has created an illegal and unauthorized intermediate level of review called a “Level II” analysis to avoid the mandatory full, in-person evaluation by two mental health professionals. An initial level of review, called a Level I screen, is to double-check that the in-

mate referred from the CDCR has committed a qualifying offense under the SVP statute and otherwise meets the statutory predicates of an SVP. Under the clear language of the statute, once a potential SVP is confirmed to meet the statutory predicates (Level I screen), the inmate must be given a full evaluation. But that is not being done. Instead, the DMH has implemented a policy whereby inmates who make it past a Level I screen are given an intermediate level of review (Level II screen). *Level II Screening Guidelines* at 1. A true and correct copy of the Level II Screening Guidelines is attached as **Exhibit B**. Level II screenings are conducted by only *one* licensed psychologist and are not done in person. *See id.* Instead, these “paper screens” are based solely on a review of the available records sent from the CDCR, and includes as part of that review “a risk assessment based on that review, and a preliminary clinical diagnosis.” *Id.* If the DMH determines that the potential SVP inmate would not meet all of the requirements including a diagnosable mental disorder, based on this Level II screen alone, then the inmate is allowed to be released without a full evaluation as contemplated by the statutes.

Petitioners allege that the Level II screening process is an underground regulation, as there is no evidence that any portion of this directive has been promulgated pursuant to the Administrative Procedures Act.

B. A Level II Screen Is A Regulation Within The Meaning Of The APA

The APA broadly defines a regulation to include:

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.

Gov. Code § 11342.600 (2010). Regulations must be adopted pursuant to a specific set of guidelines under the APA, or else they are invalid. *Id.* at § 11340.5(a); *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 576. To comply, the agency adopting the regulation must provide public notice of the proposed action (11346.4, 11346.5); issue a complete text of the proposed regulation with a statement of reasons for it (11346.2(a–b)); give an opportunity for the public to submit written comments and respond to those written comments (11346.9(a)(3)); hold a public hearing if requested by interested parties (11346.8(a)); and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law, which reviews the regulation for consistency with the law, clarity and necessity (11349.1, 11349.3). *Naturist Action Comm. v. California State Dept. of Parks & Recreation* (2009) 175 Cal.App.4th 1244, 1250.

¹ Unless otherwise noted, all statistics are based on information obtained from the California Department of Mental Health Sex Offender Commitment Program webpage: <http://www.dmh.ca.gov>.

² On August 15, 2008, the Office of Administrative Law determined that portions of the Department’s Clinical Evaluator Handbook and Standardized Assessment Protocol (2007) constituted “underground regulations” because they were not adopted pursuant to the Administrative Procedures Act. 2008 OAL Determination No. 19, August 15, 2008 (OAL file No. CTU 2008–0129–01), available at http://www.oal.ca.gov/res/docs/pdf/determinations/2008/2008_OAL_Determination_19.pdf (last visited Oct. 26, 2009).

In *Tidewater*, the California Supreme Court determined that a regulation subject to the APA has “two principal identifying characteristics.” *Tidewater, supra*, 14 Cal.4th at 571. First, the agency must intend for the regulation “to apply generally, rather than in a specific case.” *Id.* Second, the regulation “must ‘implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern the agency’s procedure.’ ” *Id.* It has been noted, however, that a regulation “need not ‘apply universally’ ” to satisfy the first *Tidewater* prong.” *County of San Diego v. Bowen* (2008) 166 Cal.App.4th 501, 517. All that is required is that the regulation decides “how a certain class of cases will be decided.” *Tidewater, supra*, at 571.

Here, a level II screen satisfies the first prong because it applies to all potential SVPs referred from the CDCR who pass the Level I screen. The Level II Screening Guidelines specifically state that: “All case referrals are subject to Level I screening. All cases that are not closed at Level I are evaluated at Level II.” Thus, this is not a regulation that applies only to a specific case but one that applies generally to a class of cases — all potential SVPs who are not screened out at Level I. Furthermore, all evaluators, once trained, are required to conduct Level II screenings. *See* State of California Standard Agreement (STD 213), Scope of Work, at 2–3 (attached as **Exhibit C**). Because Level II screens apply to all inmates who make it past a Level I screen and all evaluators, it satisfies the first *Tidewater* requirement that the regulation apply generally.

Level II screens also meet the second *Tidewater* requirement that the regulation “implement, interpret, or make specific the law.” SVP law requires DMH to determine whether referrals from the CDCR are sexually violent predators. *See* § 6601. A Level II screen is one step in the process of evaluating a referral from the CDCR. After DMH conducts the cursory Level I screen, it assigns the case to one evaluator for a Level II paper screen. The purpose of a Level II screen is to determine whether a case can be closed without the inmate undergoing a full, Level III evaluation. *See* Level II Screening Guidelines at 2 (“These guidelines describe considerations to take into account when making decisions in Level II evaluations about which cases require a Level III evaluation and those that can be closed at a Level II evaluation.”). A Level III screen is a clinical evaluation of the inmate by two evaluators, and it includes an in-person interview with the potential SVP. *See* February 11, 2009 Standardized Assessment Protocol for Sexually Violent Predator Evaluations (attached as **Exhibit A**). DMH implemented Level II screens as one step in the process of determining whether an inmate referred from the CDCR is a sexually violent predator who should be civilly committed under Welfare and Institution Code section 6600 *et seq.* Thus, Level II

screens satisfy the second *Tidewater* requirement because it implements section 6601(b) and (c) of the Welfare and Institution Code.

Previously, the Office of Administrative Law (OAL) has determined that portions of DMH’s 2007 protocol governing Level III screens met the *Tidewater* requirements for similar reasons. *See* 2008 OAL Determination No. 19, August 15, 2008 (OAL file No. CTU 2008–0129–01). First, the challenged provisions met the first requirement of a regulation because they applied to all evaluators and CDCR inmates referred to DMH for evaluation. *Id.* at 6–9. Second, the OAL found that the provisions met second *Tidewater* requirement because they “contain detailed requirements the evaluator must use to make the risk assessment required by Welfare and Institutions Code section 6601(c).” *Id.* at 9. Level II screens are no different here. They apply to all potential SVPs, and all evaluators are required to conduct them. Further, DMH implemented Level II screens as part of the overall process, mandated by section 6601, by which it determines if a referral from the CDCR is a sexually violent predator.

Similarly, Level II screens meet the requirements of a regulation. However, because DMH did not follow APA guidelines before it enacted Level II screens, they are an invalid underground regulation.

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.

As noted above, DMH requires all inmates who qualify under a Level I screen to undergo a Level II screen, which is conducted by one evaluator — a licensed psychologist.

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.

As demonstrated above, Level II screens are a regulation pursuant to section 11342.600. No exception under section 11340.9 excludes the regulation from the APA procedures. The regulation does not relate “only to the internal management” of DMH. Gov. Code § 11340.9(d). Instead, it is a rule that is “intended to be generally applied” to all SVP referrals from the CDCR, not just specific cases. *Armistead v. State Personnel Bd.* (1978) 22 Cal.3d 198, 203–04. For example, in *Armistead*, the regulation at issue was a portion of the State Personnel Board’s Personnel Transactions Manual governing state employees’ ability to withdraw a resigna-

tion. *Id.* at 200. There, the court held that the provision was an invalid underground regulation. *Id.* at 201. In so holding, the court rejected the board's argument that the regulation fit within the internal management exception. *Id.* at 203–04. The court found that the rule did not apply to the board's internal affairs; it "concern[ed] termination of employment, a matter of import to all state civil service employees." *Id.* at 203.

Here, the regulation impacts an even broader scope of individuals than the provision in *Armistead*. The SVP program and Jessica's Law were enacted to protect the safety and welfare of the public. Under the law, DMH is required to determine whether all inmates referred from CDCR should be referred to the district attorney for civil commitment and treatment because they are sexually violent predators. DMH has made Level II screens a mandatory step in this process. Not only do Level II screens govern how evaluators do their jobs and whether inmates referred from CDCR face civil commitment, they affect the entire population of California who may be at risk if a sexually violent predator is released without proper screening and diagnosis. They are not used solely to govern internal affairs at the agency, nor are they utilized in only specific cases. Thus, the internal management exception does not apply here. Nor can DMH show that any other exception under section 11340.9 applies.

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

The DMH has and continues to unlawfully circumvent its responsibility to conduct complete evaluations of potential sexually violent predators before they are released from prison. Once the CDCR refers the inmate to DMH for a review, Jessica's law does not authorize the DMH to screen out the vast majority of potential SVPs using this Level II short cut. The law requires that each referral undergo a full evaluation. *See* § 6601. As articulated above, a full evaluation is more extensive than a Level II screen because two qualified mental health evaluators must conduct a complete records review and an in-person interview.

Screening out inmates at a Level II analysis means that they will never undergo a full evaluation as required under Section 6601. Level II paper screens drastically reduces the number of potential predators referred for in-person psychological and psychiatric evaluations by trained experts. This practice, which has been going on since Jessica's Law was enacted, has resulted in serious harm, including loss of life to untold victims, all for the sake of economic expediency.

Many offenders who have been unlawfully paper screened and released end up in the SVP program again because they have reoffended. These inmates are

known as "recycles" under DMH parlance. Evaluators have first-hand experiences with recycled sexually violent predators, which is not shocking given the sheer number of SVPs referred to DMH that are never fully evaluated by two trained experts.

According to the statistics reported on DMH's website, the CDCR referred 28,228 violent sexual offenders to DMH for full evaluations since Jessica's Law came into effect. Only 6,055 of those referred qualified for full SVP evaluations under DMH's self-imposed criteria. That means that more than 78% (22,173) of all offenders flagged as potential sexual violent predators were "paper screened" out of the SOCP process, never receiving a full evaluation. In fact, each year fewer cases make it past DMH's paper review, and according to the latest statistics, an outrageous 82% were screened out of the system over the past eight months. To put this in real terms, the DMH has allowed the release of more than 22,173 sexual criminals into our communities without complete risk evaluations mandated by the SVP program and Jessica's Law. This "cost-saving" has undoubtedly resulted in the sexual assault, rape, and homicide committed against children and other vulnerable persons in our state. Californians should have had a voice in DMH's rulemaking process but did not. Attached as **Exhibit D** are true and correct copies of print-outs of DMH's website reporting statistics on the SVP program. Attached as **Exhibit E** is a chart showing the number of potential predators referred to DMH, before and after Jessica's law, that were not found to meet the criteria as a sexually violent predator, and **Exhibit F** is a chart showing how many referrals end up in the civil commitment program.

A case in point is worth mentioning. In 2007, Gilton Pitre, a rapist convicted for having chained and sexually assaulting his victim, was deemed "clear" for release under the current DMH paper screening. Only four days after his release from prison, the body of 15 year-old Alyssa Gomez was found near a dumpster wrapped in a blanket. Pitre was arrested and convicted of Alyssa's murder. Based on reliable information and belief, Pitre is not the only instance of a violent sexual offender being released after DMH's "paper review" to horrifically attack again.

California's SOCP program has gone from the model SVP program in the United States to an ineffective and unsafe program. DMH's practice circumvents the law and places the lives and safety of many Californians in jeopardy, especially those of children. While the OAL does not determine whether a particular rule is right or wrong, the fact that there are differences of opinion on the wisdom of DMH's Level II screen stresses the importance of APA guidelines regarding notice and a public hearing. One of the main objectives of the APA is to

give the public a voice in the rulemaking process, thus “ ‘providing some security against bureaucratic tyranny.’ ” *Morning Star Co. v. State Bd. Of Equalization* (2006) 38 Cal.4th 324, 333 (citation omitted). No one other than the DMH had a say on whether Level II screens should be implemented. The families of Alyssa Gomez and other victims should have had a voice when DMH implemented the Level II screens to say that their children’s lives and safety were not worth these revenue savings. Given that the people of California have already answered this question in the negative — not once but twice by enacting laws to protect their children — it is doubtful that DMH would have had their support.

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

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 Mental Health
 1600 9th Street
 Sacramento, CA 95814
 (916) 654-2309

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

/s/ for
 CHRIS JOHNSON
 PETITIONER

7-16-10
 DATE

AVAILABILITY OF INDEX OF PRECEDENTIAL DECISIONS

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Notice of Availability of Precedential Decisions Index

Notice is hereby given that the California Department of Social Services (CDSS) maintains an index of cases CDSS has designated as precedential decisions. The index is available on the Internet at <http://cclcd.ca.gov/PG522.htm>.

This notice is published pursuant to California Government Code section 11425.60, subdivision (c).

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# 2010-0806-01
 AIR RESOURCES BOARD
 California Consumer Products Regulation & Test Method 310

The California Air Resources Board amended sections 94508, 94509, 94510, 94511, 94512, 94513, and 94515 of title 17 of the California Code of Regulations and ARB Test Method 310 to add and modify product category definitions, establish new lower VOC limits for Double Phase Aerosol Air Fresheners, Multi-Purpose Solvents and Paint Thinners and limit the use of compounds with high GWP, and make other changes.

Title 17
 California Code of Regulations
 AMEND: 94508, 94509, 94510, 94511, 94512, 94513, 94515
 Filed 09/20/2010
 Effective 10/20/2010
 Agency Contact: Amy Whiting (916) 322-6533

File# 2010-0916-03
 BOARD OF ACCOUNTANCY
 Peer Review Program

This is the second readopt of the prior emergency regulatory action (OAL file nos. 2009-1130-01E and 2010-0608-01EE) that implemented AB 138 (Stats. 2009, c. 312) dealing with peer review for California-licensed accounting firms providing accounting and auditing services. These emergency regulations define terms specific to peer review and specify the requirements for Board recognition of a peer review program, standards for administering a peer review, extensions of time for fulfilling the peer review requirement, exclusions from the peer review program, document submission, enrollment and participation, notification of expulsion from a peer review program, reporting requirements for a Board-recognized peer review program provider, withdrawal of Board recognition, and records of Board proceedings.

Title 16
California Code of Regulations
ADOPT: 39, 40, 41, 42, 43, 44, 45, 46, 48, 48.1, 48.2,
48.3, 48.5, 48.6
Filed 09/22/2010
Effective 09/29/2010
Agency Contact:
Matthew Stanley (916) 561-1792

File# 2010-0809-01
BOARD OF REGISTERED NURSING
Prelicensure Nursing Programs

This regulatory action sets minimum educational standards for Board-approved pre-licensure programs whose purpose is to ensure that students who complete those programs have the requisite knowledge, skills and abilities to practice safely and competently at the entry level.

Title 16
California Code of Regulations
ADOPT: 1426.1, 1430, 1431 AMEND: 1420, 1421,
1422, 1423, 1424, 1425, 1425.1, 1426, 1427, 1428,
1428.6, 1429, 1430 (renumbered to 1432)
Filed 09/21/2010
Effective 10/21/2010
Agency Contact: Alcidia Valim (916) 323-8419

File# 2010-0805-02
CALIFORNIA TAX CREDIT ALLOCATION
COMMITTEE
CTCAC Regulations Implementing the Federal and
State LIHTC Laws

These regulations concern the American Jobs and Closing Tax Loopholes Act of 2010, including terms and conditions of awarding grants. These regulations are exempt from the Administrative Procedure Act pursuant to Health and Safety Code section 50199.17.

Title 4
California Code of Regulations
AMEND: 10323
Filed 09/15/2010
Effective 07/28/2010
Agency Contact: Vela Martinez (916) 654-6340

File# 2010-0901-02
DEPARTMENT OF CORRECTIONS AND
REHABILITATION
California Parole Supervision Reintegration Model Pi-
lot Program

This pilot program will assess the functionality of the California Parole Supervision Reintegration Model (CPSRM) and its impact on parole reform. With the recent establishment of Non-Revocable Parole for eligi-

ble offenders, the population of paroled offenders subject to supervision is being reduced. This reduction allows the Department to commit to a parole reform model that provides for more effective parole supervision to the remaining offenders. This program is designed to enable parole staff to utilize a combination of evidence-based practices, best-past practices, and innovative concepts as an operational model.

Title 15
California Code of Regulations
ADOPT: 3999.9
Filed 09/22/2010
Effective 09/22/2010
Agency Contact: Sarah Pollock (916) 255-5605

File# 2010-0819-01
DEPARTMENT OF FISH AND GAME
Issuance of Incidental Take Permits For Timber Operations or Activities That May Take Coho Salmon

The California Department of Fish and Game (DFG) amended sections 787.1, 787.4, 787.5, and 787.6 and repealed sections 787.2 and 787.9 of Title 14 of the California Code of Regulations as changes without regulatory effect not subject to the rulemaking requirements of the Administrative Procedures Act following judgment by the Superior Court of the State of California, County of San Francisco, in Environmental Protection Information Center, et al. v. California Department of Fish and Game, Case No. CPF-08-508127, ordering that DFG set aside its approval of sections 787.1(a)(1), 787.2, 787.4(a), 787.5(a) and (b), 787.6(a) and 787.9 in the "Incidental Take Permit Guidelines for Timber Operations 2007."

Title 14
California Code of Regulations
AMEND: 787.1, 787.4, 787.5, 787.6 REPEAL:
787.2, 787.9
Filed 09/21/2010
Agency Contact: Lacy Bauer (916) 651-7647

File# 2010-0916-04
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Eradication Area

This emergency regulatory action amended section 3591.20(a) of title 3 of the California Code of Regulations to include San Diego County as an eradication area for the Light Brown Apple Moth (LBAM), *Epiphyas postvittana*. This incredibly destructive pest was recently detected at a location approximately 100 miles from the nearest known LBAM infestation. The effect of this change to section 3591.20(a) will be to establish authority for the State to perform control and eradication activities against LBAM across San Diego County.

Title 3
 California Code of Regulations
 AMEND: 3591.20(a)
 Filed 09/22/2010
 Effective 09/22/2010
 Agency Contact: Gina M. Greer (916) 653-3485

File# 2010-0809-02
 DEPARTMENT OF INSURANCE
 Amend Sections 23 and 41 of the CAARP Plan of Operations

The Department of Insurance amended Section 23 and Section 41 of the California Automobile Assigned Risk Plan (CAARP) Plan of Operations manual. The CAARP manual is incorporated by reference in title 10, California Code of Regulations, section 2498.4.9.

Title 10
 California Code of Regulations
 AMEND: 2494.4.9
 Filed 09/20/2010
 Effective 10/20/2010
 Agency Contact: Mike Riordan (415) 538-4226

File# 2010-0817-01
 DEPARTMENT OF REAL ESTATE
 Continuing Education

This is a resubmittal of a regulatory action dealing with continuing education for licensees including, but not limited to, criteria used by the Commissioner when reviewing an application for a continuing education course for approval, what supporting documentation must be submitted with the application, the procedures that must be followed during the administration of a final examination regardless of the method of delivery to ensure the integrity of the final examination is protected, and what documentation needs to be submitted when petitioning for equivalency for course instruction, authorship of articles or books, or credit for attendance at unapproved programs.

Title 10
 California Code of Regulations
 AMEND: 3006, 3007, 3007.05, 3007.2, 3007.3, 3007.6, 3008, 3010, 3011.1, 3011.2, 3011.4, 3012.2
 REPEAL: 3005
 Filed 09/16/2010
 Effective 01/01/2011
 Agency Contact:
 Daniel E. Kehew (916) 227-0425

File# 2010-0813-02
 DEPARTMENT OF REHABILITATION
 Business Enterprises Program for the Blind

On June 26, 2009, the Office of Administrative Law approved a regulatory action adopted by the Department of Rehabilitation which amends existing regulations concerning Business Enterprises for the Blind licensing, establishment and operation of vending facilities, collection of vending machine income, the State Committee of Blind Vendors, and administrative review and full evidentiary hearing procedures, and adopts new regulations on interim vending facilities. Pursuant to section 395.4(a) of title 34 of the Code of Federal Regulations, these regulations were not operative until approved by the Secretary of the United States Department of Education. These regulations were approved by the Secretary of the United States Department of Education on June 2, 2010, licensees and vendors were notified at least 45 days prior to proposed action as required by section 7210(b)(2) of title 9 of the California Code of Regulations, and the regulations became operative on September 15, 2010.

Title 9
 California Code of Regulations
 ADOPT: 7212.1, 7212.2, 7212.3, 7212.4 AMEND:
 7210, 7211, 7212
 Filed 09/20/2010
 Effective 09/15/2010
 Agency Contact: Lisa Neigel (916) 558-5830

File# 2010-0813-03
 DEPARTMENT OF REHABILITATION
 Business Enterprises Program for the Blind

On September 22, 2009, the Office of Administrative Law approved a regulatory action adopted by the Department of Rehabilitation which amends existing regulations concerning Business Enterprises for the Blind licensing, establishment and operation of vending facilities, collection of vending machine income, the State Committee of Blind Vendors, and administrative review and full evidentiary hearing procedures, and adopts new regulations on interim vending facilities. Pursuant to section 395.4(a) of title 34 of the Code of Federal Regulations, these regulations were not operative until approved by the Secretary of the United States Department of Education. These regulations were approved by the Secretary of the United States Department of Education on June 2, 2010, licensees and vendors were notified at least 45 days prior to proposed action as required by section 7210(b)(2) of title 9 of the California Code of Regulations, and the regulations became operative on September 15, 2010.

Title 9

California Code of Regulations

ADOPT: 7213, 7213.1, 7213.2, 7213.4, 7213.5, 7213.6, 7214, 7214.1, 7214.2, 7214.3, 7214.4, 7214.5, 7214.6, 7214.7, 7214.8, 7215, 7215.1, 7216, 7216.1, 7216.2, 7218, 7220, 7220.3, 7220.5, 7220.7, 7221, 7225 AMEND: 7213.3, 7224, 7226, 7226.1, 7226.2, 7227, 7227.1, 7227.2 REPEAL: 7213, 7213.1, 7213.2, 7214, 7215, 7216, 7218, 7219, 7220, 7221, 7225

Filed 09/20/2010

Effective 09/15/2010

Agency Contact: Lisa Neigel (916) 558-5830

File# 2010-0903-01

FISH AND GAME COMMISSION

Waterfowl Hunting

This regulatory action amends the migratory waterfowl hunting season length in certain areas and amends the bag limits for specified migratory waterfowl.

Title 14

California Code of Regulations

AMEND: 502, 507

Filed 09/21/2010

Effective 09/21/2010

Agency Contact: Sherrie Fonbuena (916) 654-9866

File# 2010-0803-01

STATE WATER RESOURCES CONTROL BOARD

Soquel Lagoon Watershed BPA Pathogen TMDLs, Lagoon SHELL Removal, Prohibition

In this State Water Resources Control Board (Board) filing subject to Government Code section 11353, the Board submits amendments to the Water Quality Control Plan for the Central Coast Region which were adopted by the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) in Resolution No. R3-2009-0024. In these amendments, the Central Coast Water Board addresses impairment of the Soquel Lagoon Watershed due to fecal coliform concentrations exceeding water quality objectives, and the improper inclusion of shellfish harvesting as a beneficial use of the water body. These amendments establish Total Maximum Daily Loads for fecal coliform concentrations in the Soquel Lagoon Watershed, and create an implementation plan to be complied with by responsible parties. The amendments also subject the Soquel Lagoon Watershed to a Domestic Animal Waste Discharge Prohibition and a Human Fecal Material Discharge Prohibition.

Title 23

California Code of Regulations

ADOPT: 3929.4

Filed 09/15/2010

Effective 10/15/2010

Agency Contact:

Michael Buckman (916) 341-5479

File# 2010-0811-01

STATE WATER RESOURCES CONTROL BOARD

Policy for Maintaining Instream Flows in Northern California Coastal Streams

In this rulemaking the State Water Board is adopting the North Coast Instream Flow Policy. This policy applies to application to appropriate water, small domestic use, livestock stockpond registrations and water right petitions. The geographic scope of this policy encompasses five counties — Marin, Sonoma, portions of Napa, Mendocino and Humboldt counties. The policy focuses on measures to protect native fish populations with particular focus on steelhead trout, coho salmon and Chinook salmon and their habitat. The policy prescribes protective measures regarding the season of diversion, minimum bypass flow, and maximum cumulative diversion. Applicants choose between a regionally protective criteria or site-specific studies to implement the policy principles. The policy also limits the construction of new onstream dams. The policy provides a watershed-based approach to evaluate the effects of multiple diversions on instream flows within a watershed as an alternative to evaluating water diversion projects on an individual basis. The policy also contains enforcement requirements.

Title 23

California Code of Regulations

ADOPT: 2921

Filed 09/22/2010

Effective 09/22/2010

Agency Contact: Karen Niiya (916) 341-5365

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN April 21, 2010 TO
September 22, 2010**

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

Title 2

09/07/10 AMEND: Renaming of headings only, as follows: Article 4 of Chapter 1 to new Subchapter 1.2; Subarticles 1–10 of nes Subchapter 1.2 to new Articles 1–10; and Chapters 1–5 of new Article 6 to new Subarticles 1–5.

09/02/10 ADOPT: 60804.1, 60815.1, 60820.1, 60855, 60856, 60857, 60858, 60859, 60860, 60861, 60862, 60863 AMEND: 60841, 60846, 60853 REPEAL: 60855

09/01/10 AMEND: 234, 548.70

09/01/10 AMEND: 234, 548.70

08/18/10 ADOPT: 51.3, 52.1, 52.2, 52.3, 52.5, 52.8, 52.10, 53.1, 53.2, 53.3, 53.4, 54.1, 55.1, 56.1, 56.2, 56.3, 56.4, 57.1, 57.2, 58.1, 58.2, 58.6, 58.7, 58.9, 58.10, 58.11, 59.2, 59.3, 59.4, 60.1, 63.1, 64.1, 64.2, 64.3, 64.4, 64.5, 64.6 AMEND: 51 (renumbered to 51.1), 51.1 (renumbered to 51.2), 51.2 (renumbered to 52.4), 52.3 (renumbered to 52.6), 51.9 (renumbered to 52.7), 51.5 (renumbered to 52.9), 52.6 (renumbered to 55.2), 52.2 (renumbered to 58.3), 51.4 (renumbered to 58.4), 52.1 (renumbered to 58.5), 57.2 (renumbered to 59.1), 52.5 (renumbered to 60.2), 57.3 (renumbered to 60.3), 53.1 (renumbered to 66.1), 56 (renumbered to 67.1), 56.1 (renumbered to 67.2), 56.2 (renumbered to 67.3), 56.3 (renumbered to 67.4), 56.4 (renumbered to 67.5), 56.5 (renumbered to 67.6), 56.6 (renumbered to 67.7), 56.7 (renumbered to 67.8) REPEAL: 51.3, 52, 52.4, 53, 53.2, 54, 54.2, 56.8, 57.1, 57.4, 60, 60.1, 60.2, 60.3, 60.4, 60.5, 60.6, 60.7, 60.8, 60.9, 60.10, 65, 547, 547.1

08/13/10 AMEND: 18707

07/08/10 AMEND: 18313.5(c)

07/06/10 AMEND: 51000

07/01/10 AMEND: 1859.90.1

06/24/10 ADOPT: 1859.90.1 AMEND: 1859.90.1 renumbered as 1859.90.2, 1859.129, 1859.197

06/24/10 AMEND: 47000, 47001, 47002

06/23/10 AMEND: 1859.184

06/17/10 AMEND: 18703.3

06/17/10 ADOPT: 18313.5

06/09/10 AMEND: Div. 8, Ch. 64, Sec. 55300

05/25/10 AMEND: div. 8, ch. 65, sec. 55400

05/11/10 AMEND: 18945

05/06/10 AMEND: 1859.2

05/03/10 AMEND: 60040, 60045

04/21/10 AMEND: 1859.96, 1859.148.2, 1859.166.2

Title 3

09/22/10 AMEND: 3591.20(a)

09/14/10 AMEND: 3434(b)

09/13/10 ADOPT: 3437

09/09/10 AMEND: 3434(b)

09/02/10 AMEND: 3425(b)

08/26/10 AMEND: 3406(b)

08/26/10 AMEND: 3406(b)

08/26/10 AMEND: 3434(b) & (c)

08/26/10 ADOPT: 6531 AMEND: 6502, 6511, 6530

08/24/10 AMEND: 3700(c)

08/19/10 AMEND: 3423(b)

08/17/10 AMEND: 3437

08/16/10 AMEND: 3425(b) and (c)

08/13/10 AMEND: 3591.15(a) and (b)

08/11/10 AMEND: 3437

08/05/10 AMEND: 3423(b)

07/26/10 AMEND: 3435(c)

07/20/10 AMEND: 3437

07/16/10 AMEND: 3434(b) and (c)

07/13/10 AMEND: 3591.20(a)

07/07/10 ADOPT: 3591.24

07/01/10 AMEND: 3437

06/30/10 AMEND: 3423(b)

06/18/10 AMEND: 6448, 6448.1, 6449, 6449.1, 6450, 6450.1, 6450.2, 6451, 6451.1

06/10/10 ADOPT: 429, 430 AMEND: 441

06/10/10 ADOPT: 3024.5, 3024.6, 3024.7, and 3024.8 AMEND: 3024, 3024.1, 3024.2, 3024.3, 3024.4, and 4603

06/09/10 AMEND: 3434(b), (c), (d), and (e)

06/07/10 AMEND: 4500

06/02/10 AMEND: 3435

06/01/10 AMEND: 3437(b)

05/24/10 AMEND: 3434(b)

05/17/10 AMEND: 3591.5(a)

05/17/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7, 3701.8 AMEND: 3407(e), 3407(f) REPEAL: 3000, 3001, 3002, 3003, 3004

05/13/10 AMEND: 3437

05/04/10 AMEND: 3423(b)

05/04/10 AMEND: 3437(b)

05/04/10 AMEND: 3434(b)

05/03/10 AMEND: 3434(b), 3434(c) and 3434(d)

04/22/10 AMEND: 3434(b)

04/22/10 AMEND: 3406(b), 3406(c)

Title 4

09/15/10 AMEND: 10323

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07/22/10	AMEND: 10300, 10302, 10305, 10310, 10315, 10317, 10320, 10322, 10323, 10325, 10326, 10327, 10328, 10330, 10335, 10337	
07/13/10	AMEND: 8034, 8035, 8042, 8043	
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06/01/10	AMEND: 10020	
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06/09/10	AMEND: 19824, 19851, 19854		4315, 4320, 4325, 4330, 4415, 4420
05/27/10	ADOPT: 80048.8, 80048.8.1, 80048.9,	07/07/10	ADOPT: 1850.350(a), 1850.350(b),
	80048.9.1, 80048.9.2, 80048.9.3		1850.350(c) AMEND: 1810.203.5(d)
	AMEND: 800.46.5, 80047, 80047.1,	07/07/10	ADOPT: 1850.350(a), 1850.350(b),
	80047.2, 80047.3, 80047.4, 80047.5,		1850.350(c) AMEND: 1810.203.5(d)
	80047.6, 80047.7, 80047.8, 80047.9,	05/07/10	REPEAL: 3520
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06/21/10	AMEND: 202 REPEAL: 212		3011.2, 3011.4, 3012.2 REPEAL: 3005
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08/17/10	AMEND: 4885		2548.18, 2548.19, 2548.20, 2548.21,
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06/01/10	AMEND: 2498.6	05/26/10	AMEND: 7.50
05/26/10	AMEND: 2699.6809	05/03/10	AMEND: 820.01
05/19/10	ADOPT: 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5507	04/30/10	AMEND: 27.80
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07/23/10 AMEND: 66261.3, 66261.4, 66268.1, 100208, 100209, 100210, 100211,
66268.7, 66268.9, 66268.124 100212, 100213, 100214, 100215,
100216, 100217 REPEAL: 100218

07/22/10 ADOPT: 52000, 52100, 52101, 52102, 52103, 52104, 52500, 52501, 52502, 52503, 52504, 52505, 52506, 52508, 52509, 52510, 52511, 52512, 52513, 52514, 52515, 52516, 52600 05/12/10 ADOPT: 5300, 5400 AMEND: 5002, 5010, 5052, 5055, 5062, 5102, 5105

07/21/10 AMEND: 97232 05/12/10 AMEND: 11-425, 22-001, 22-003, 22-009, 45-302, 45-303, 45-304, 45-305, 45-306

06/24/10 AMEND: 51510, 51510.1, 51510.2, 51510.3, 51511, 51511.5, 51511.6, 51535, 51535.1, 51544, 54501 05/06/10 AMEND: 66273.36

06/22/10 AMEND: 2706-7
06/17/10 AMEND: 51516.1
05/25/10 AMEND: 66262.44
05/19/10 AMEND: 100159, 100166, 100171
05/18/10 ADOPT: 100102.1, 100103.1, 100103.2, 100106.1, 100106.2, 100107.1 AMEND: 100101, 100102, 100103, 100104, 100105, 100106, 100107, 100108, 100109, 100110, 100111, 100112, 100113, 100114, 100115, 100116, 100117, 100118, 100119, 100120, 100121, 100122, 100123, 100124, 100125, 100126, 100127, 100128, 100129, 100130

05/18/10 ADOPT: 100059.1, 100061.2 AMEND: 100057, 100058, 100059, 100059.2, 100060, 100061, 100061.1, 100062, 100063, 100063.1, 100064, 100064.1, 100065, 100066, 100067, 100068, 100069, 100070, 100071, 100072, 100073, 100074, 100075, 100076, 100077, 100078, 100079, 100080, 100081, 100082, 100083

05/18/10 ADOPT: 100340, 100341, 100342, 100343, 100343.1, 100343.2, 100343.3, 100344, 100345, 100346, 100346.1, 100347, 100348, 100349

05/18/10 ADOPT: 100202.1, 100206.1, 100206.2, 100206.3, 100206.4, 100208.1, 100211.1, 100214.1, 100214.2, 100214.3 AMEND: 100201, 100202, 100203, 100204, 100205, 100206, 100207, 100208, 100209, 100210, 100211, 100212, 100213, 100214, 100215, 100216, 100217 REPEAL: 100218

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09/03/10 ADOPT: 84067 AMEND: 83064, 84001, 84076, 84079, 84087.2, 84088, 84090, 86065, 88065, 89405
07/09/10 ADOPT: 87606 AMEND: 87202, 87208, 87212, 87455, 87633

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09/22/10 ADOPT: 2921
09/15/10 ADOPT: 3929.4
07/19/10 ADOPT: 6932 REPEAL: 6932
07/12/10 ADOPT: 3929.3
07/12/10 ADOPT: 3919.8
05/20/10 ADOPT: 2910 REPEAL: 2910

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07/19/10 ADOPT: 6932 REPEAL: 6932
06/11/10 AMEND: 8315
05/25/10 AMEND: 7966, 7970

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09/03/10 ADOPT: 31-021 AMEND: 31-003, 31-410, 31-501
08/26/10 AMEND: 40-188
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06/02/10 AMEND: 19-005
05/17/10 ADOPT: 31-021 AMEND: 31-003, 31-410, 31-501
05/17/10 AMEND: 44-211
05/10/10 AMEND: 11-425, 22-001, 22-003, 22-009, 45-302, 45-303, 45-304, 45-305, 45-306