



California Regulatory Notice Register

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

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 14. BOARD OF FORESTRY AND
FIRE PROTECTION**

“State Responsibility Area Fire Prevention Benefit Fee, 2012”

Title 14 of the California Code of Regulation (14 CCR), Chapter 13

Adopt:

- § 1665.1. **Authority.**
- § 1665.2. **Definitions.**
- § 1665.3. **Determination of Eligible Habitable Structure.**
- § 1665.4. **Imposition of the Benefit Fee.**
- § 1665.5. **Request for Review and Refunds.**
- § 1665.6. **Fee Structure.**
- § 1665.7. **Fee Exemptions.**
- § 1665.8. **Grant Program.**

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to make permanent the emergency “State Responsibility Area Fire Prevention Benefit Fee” (SRA Fee) regulations adopted pursuant to Assembly Bill X1 29, Chapter 8, Statutes 2011, Public Resources Code Section 4210, *et seq.* The proposed regulations will replace the emergency regulations adopted and readopted consecutively by the Board, and are necessary for continued implementation of the SRA Fee program.

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, December 5, 2012, starting at 8:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. 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 Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code § 11125.1,

any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m., on Tuesday, November 20, 2012. The Board will consider only written comments received at the Board office by that time and any written comments accompanying oral comments made at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244–2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506–14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653–0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Public Resources Code Sections 4210, *et seq.* Reference: Public Resources Code Sections 4003, 4102, 4111, 4114, and 4125.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The Board is authorized pursuant to Public Resources Code Section 4210, *et seq.* adopted by the State Legisla-

ture as Assembly Bill 29 of the First Extraordinary Session in 2011 (AB X1 29). AB X1 29 was authored by Assemblyman Blumenfield and sought to create a fee for State fire prevention services. According to the bill, this fee was to be exclusively charged to individual owners of structures in areas designated by the State Board of Forestry and Fire Protection as State Responsibility Area (SRA) for fire protection. The rationale for this exclusive fee for services, as specified in the bill, is that owners of structures in the SRA receive a “disproportionately larger benefit” from State fire prevention activities than the general citizenry (see Public Resources Code Section 4210(d)). As the Legislature found that structures within the SRA may pose an increased risk of fire ignition and increased potential for fire-related damage to the natural resources of the State, it was deemed appropriate to create a fee-based funding mechanism to support State fire prevention efforts in the SRA.

On June 15, 2011, the California State Senate and Assembly approved the bill with language specifying that the Board’s adoption of emergency regulations, “. . . shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare.” On July 7, 2011, Governor Edmund G. Brown, Jr. signed ABX1 29 into law and it was filed with the Secretary of State on the following day.

The statute being implemented, interpreted, and made specific is Chapter 741/Statutes 2011 adding Public Resources Code Sections 4210–4228. Pursuant to the authority provided by the enacted statute, the Board of Forestry and Fire Protection (BOF) proposes to add Chapter 13 to Title 14 of the California Code of Regulations. Within new Chapter 13, the Board proposes to add Sections 1665.1–1665.8 in accordance with the provisions of the statute. In addition to the newly enacted statute, references utilized in the development of the proposed regulation include Sections 4003, 4102, 4111, 4114, and 4125 of the Public Resources Code.

As discussed above, the regulation is intended to provide funding for statewide fire prevention activities in areas designated as SRA. Absent this funding source, the California Department of Forestry and Fire Protection would be unable to deliver the prevention programs that are crucial elements of the “2010 Strategic Fire Plan for California.” Though the proposed regulation does not itself promote fire prevention activities, it does provide the financial foundation for such activities. The fire prevention actions and activities funded by SRA fees lead to improved protection of public health and safety, and firefighter safety. Where this fire prevention work includes hazardous fuels treatment or creation of strategic fire breaks, the potential for adverse impacts to the environment may also be reduced.

As the regulation is entirely focused on funding of fire prevention activities, it will have no effect upon the prevention of discrimination, the promotion of fairness or social equity, or transparency in business and government.

The proposed regulation is consistent and compatible with existing regulations, as it is limited in scope and application to the collection and disbursement of a fee for service.

DISCLOSURES REGARDING THE PROPOSED ACTION

- The results of the economic impact assessment prepared pursuant to GC 11346.5(a)(10) for this proposed regulation indicate that it will have a direct economic effect upon owners of habitable structures located within areas designated as State Responsibility Area (SRA) for fire protection. Owners of habitable structures within SRA will pay up to one-hundred fifty dollars (\$150.00) per structure annually from which statewide fire prevention activities will be funded.

Results of Economic Impact Analysis

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

The proposed regulation is expected to affect the health and welfare of California residents living in areas designated as SRA through the consistent funding of fire prevention activities. Fire prevention activities could result in benefits to worker safety and the state’s environment through creation of more fire-resilient landscapes.

- Significant adverse economic impacts on business including the ability of California business to compete with business in other states: The Board of Forestry finds that the adoption of these regulations will not have a significant adverse economic impact on small businesses. The total number of commercial, industrial, or office structures estimated to be eligible for the SRA Fee is less than 22,000 statewide. Though it could be argued that the addition of another expense in the form of the SRA Fee could be cumulatively harmful to a small business when combined with other operating expenses, this would likely only occur where businesses were already operating with razor thin profit margins. In comparison to many other Western states, the addition of SRA fees would more closely approximate

arrangements in those states where landowners contribute to fire protection budgets via fees or other methods. There should be no difference in the ability of businesses in SRA to compete with other states.

- Cost impacts on representative private persons or businesses: There will be an impact of up to one hundred–fifty dollars (\$150.00) per habitable structure upon individual owners of every eligible structure. Property owners with multiple structures could face multiple billings of one hundred–fifty dollars (\$150.00). The total fees collected will be dependent upon the total number of eligible structures.
- Effect on small business: the Board of Forestry and Fire Protection has determined that this proposed regulation will not have a significant effect upon small business.
- Mandate on local agencies and school districts: None.
- Costs or savings to any State agency: The combined annual administrative costs of the fee collection program incurred by the Board and Department of Forestry & Fire Protection are estimated to be a maximum of 7.5 million dollars. The annual administrative costs of the fee collection program incurred by the State Board of Equalization are estimated to be a maximum of 6.5 million dollars.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500: None.
- Other non–discretionary cost or savings imposed upon local agencies: If local service districts that provide fire protection cannot obtain voter approval for increased property tax assessments due to the state’s imposition of the SRA Fee, those districts may be compelled to reduce operating costs through reductions in level of service.
- Cost or savings in federal funding to the State: None.
- Significant effect on housing costs: None.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5(a)(13), the Board must determine that no reasonable alternative it considers 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, or would be more cost–effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
 Attn: Eric Huff
 Regulations Coordinator
 P.O. Box 944246
 Sacramento, CA 94244–2460
 Telephone: (916) 616–8643

The designated backup person in the event Mr. Huff is not available is Mr. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection, at the above address. Mr. Gentry may be reached by phone at 916–653–8007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request. When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text — with the changes clearly indicated — available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**TITLE 14. STATE MINING AND
GEOLOGY BOARD**

**PROPOSED AMENDED REGULATIONS FOR
DESIGNATION OF MINERAL LANDS
IN THE PALM SPRINGS
PRODUCTION–CONSUMPTION REGION,
RIVERSIDE COUNTY**

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

REGULATORY ACTION

The SMGB has adopted, by regulation set forth in CCR Section 3550 the designation of certain mineral resource sectors within geographical areas to be of regional significance. Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future. The SMGB proposes to present new proposed regulations which would amend Section 3550.15 to Title 14, Article 2, of the California Code of Regulations (CCR), and provide a description of the locations of mineral resources areas designated to be of statewide signifi-

cance, and areas where designation will be terminated, within the Palm Springs Production–Consumption (P–C) Region, San Bernardino County.

PREVIOUS PUBLIC HEARINGS

The State Geologist recommended to the SMGB 1) several candidates, or areas, which meet or exceed the SMGB’s threshold economic value, thus, each area may be considered for designation as an area of regional or statewide significance by the SMGB, and 2) several candidates, or areas, where the SMGB’s involvement is no longer required. The reclassified areas are identified as Sector K. Candidate Sector K has eight sub–sectors (K–1 through K–8) that border the existing Sector G on the northwestern, northern, and eastern sides, and two areas in the eastern Palm Springs P–C Region being reclassified as MRZ–2b for PCC–grade aggregate. These areas are identified as Candidate Sector I and Candidate Sector J (sub–sectors J–1 through J–6).

In regards to termination of lands previously designated, five areas, in Sectors A–3, B–2, B–3, and B–5 in the San Gorgonio Pass, are sites where large, high–value wind–driven electrical generators have been constructed. One area, Sector C in Little Morongo Canyon near Desert Hot Springs, is the site of recently constructed urban development and flood control infrastructure. These designated sites are located in the western part of the Palm Springs P–C Region and will be terminated. The recommendations were accepted by the SMGB on October 14, 2010.

The 60–day public comment period, pursuant to PRC Section 2762(d)(2), commenced on February 6, 2009, and ended on April 7, 2009. In addition, pursuant to PRC Section 2793, a public hearing was held on March 11, 2009, in Palm Springs. The hearing facility was barrier free in accordance with the Americans with Disabilities Act. At the hearing, an opportunity for any person to present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest, was provided. The SMGB requested, but did not require, that persons who made oral comments at the hearing also submit a written copy of their testimony. Written comments were received from the Coachella Valley Mountains Conservancy (CVMC), and the Friends of the Desert Mountains in regards to designation of new areas. No comments were received pertaining to termination of designated areas.

The CVMC in correspondence dated March 10, 2009, offered several comments as follows:

Comment No. 1: Sector I is described as including “that part of Thermal canyon wash within the Palm Springs P–C Region. It is south of Interstate Highway 10. . .”. Thermal Canyon wash is an important wildlife movement corridor linking the Mecca Hills

Wilderness and Joshua Tree National Park. The Friends has been acquiring land in adjacent to Thermal Canyon with a Proposition 84 grant from the Conservancy to protect this crucial biological corridor. Thermal Canyon is also targeted for conservation within the NCCP Reserve System. Intent to purchase land does not prevent or conflict with designation. A surface mine is temporary and with reclamation the mine site is returned to open space, or some other land use determined by the local lead agency. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining.

Comment No. 2: Sector J-1 (2,633 acres). This is a portion of the 8,881 acres acquired in 2004 by a partnership of conservation entities to conserve the lands in perpetuity as part of the NCCP Reserve System. The lands are currently managed by the California Department of Parks and Recreation (“State Parks”), the California Department of Fish and Game (“CDFG”) and the Friends of the Desert Mountains (“Friends”). These lands were acquired primarily or entirely with Proposition 40 bond funds approved by the voters specifically for the purpose of protecting wildlife habitat and other conservation values. The SMGB has previously not considered designation of mineral lands when such land has been purchased for the sole purpose of protecting wildlife habitat and other conservation values. When the SMGB in 1989 considered designation within the Palm-Springs P-C Region, the SMGB excluded land from designated after public input for the following reasons:

- Within a Habitat Conservation Plan (i.e., endangered species such as fringed-toed lizard habitat);
- Sectors identified as a sensitive resource area;
- High winds and scenic corridors;
- Existing wind turbines and gas lines, high winds, visual concerns, and the potential for high water; and
- Floodplain Reserve because of the existence of endangered species.

Being consistent with previous considerations, it is recommended that approximately 2,633 acres within Sector J-1 not be designated.

Comment No. 3: Sector J-2 (103 acres). This is a portion of the 8,881 acres acquired in 2004 by a partnership of conservation entities to conserve the lands in perpetuity as part of the NCCP Reserve System. The lands are currently managed by State Parks. These lands were acquired primarily or entirely with Proposition 40 bond funds approved by the voters specifically for the purpose of protecting

wildlife habitat and other conservation values. Similar to the response to Comment No. 2, and being consistent with previous considerations, it is recommended that approximately 103 acres within Sector J-2 not be designated.

Comment No. 4: Sector J-3 (1,135 acres). A portion of this sector is part of the 8,881 acres referenced above and is managed in part by the Bureau of Land Management (BLM) and in part by State Parks. BLM used federal funds specifically to protect the habitat values of the property as part of the Coachella Valley Fringe-toed Lizard Area of Critical Environmental Concern. State Parks used Proposition 40 bond funds approved by the voters specifically for the purpose of protecting wildlife habitat and other conservation values. Additional portions of this sector were acquired in the 1980s by ELM with federal funds as part of the establishment of the Coachella Valley Fringe-toed Lizard Area of Critical Environmental Concern, which is part of the Coachella Valley Fringe-toed Lizard Preserve established pursuant to a Habitat conservation Plan to satisfy the federal Endangered Species Act. Similar to the response to Comment No. 2, and being consistent with previous considerations, it is recommended that approximately 1,135 acres within Sector J-3 not be designated.

Comment No. 5: Sector K-I (112 acres). The portion of this that is in Section 28 is owned by State Parks and is within the Indio Hills unit of the State Park system. State Parks is a Permittee under the NCCP and is obligated to manage the land for its habitat conservation values in perpetuity. Similar to the response to Comment No. 2, and being consistent with previous considerations, it is recommended that approximately 52 acres within Sector K-1 not be designated.

Comment No. 6: Sector K-4 (136 acres). The portion of this that is in Section 27 is owned by either State Parks and is within the Indio Hills unit of the State Park system and the NCCP Reserve System, or by the Friends of the Desert Mountains. State Parks is a Permittee under the NCCP and is obligated to manage the land for its habitat conservation values in perpetuity. The Friends is a nonprofit conservation organization that holds land for the purpose of conserving the resource values on the land. The Friends’ land is also with the NCCP Reserve System. Similar to the response to Comment No. 2, and being consistent with previous considerations, it is recommended that approximately 4 acres within Sector K-4 not be designated.

FDM in correspondence dated March 11, 2009, expressed support of the comment letter provided by the CVMC dated March 10, 2009, noting that FDM owns

considerable acreage within potential designated areas, and expressed no interest of any of their lands being designated for possible mineral extraction.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the SMGB. Comments may also be submitted by facsimile (FAX) at (916) 445-0738 or by e-mail to stephen.testa@conservation.ca.gov. The 45-day comment period will commence on October 5, 2012, and closes at 5:00 p.m. on November 19, 2012. The SMGB will consider only comments received at the SMGB office by that time. No public hearing is scheduled, but any person can request a public hearing no later than 15 days before the close of the written comment period.

AUTHORITY AND REFERENCE

The SMGB proposes to adopt a regulation that amends Section 3350.15 to Article 2 of the California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, pursuant to its authority granted in PRC Sections 2790 and 2207 (Reference PRC Section 2726, 2761-2763, 2790-2791, and 2793).

INFORMATIVE DIGEST

The SMGB has adopted, by regulation set forth in CCR Section 3550 the designation of certain mineral resource sectors within geographical areas to be of regional significance. Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future.

In 1985, the California Division of Mines and Geology (CDMG; now CGS) published Special Report 159 (SR 159) — *Mineral Land Classification: Aggregate Materials in the Palm Springs Production-Consumption Region*. In response to this classification report, the SMGB, in 1989, designated construction aggregate resource areas of regional significance in the Palm Springs P-C Region as presented in the report titled “*SMARA Designation Report No. 10 — Designation of Regionally Significant Construction Aggregate Resources in the Palm Springs Production-Consumption Region*”. At its December 13, 2007, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 198 which updated information on Portland cement concrete-grade (PCC) aggregate in the Palm Springs Production-

Consumption (P-C) Region previously presented in SR 159.

The updated mineral classification report prepared by CGS, SR 198, presented the following conclusions:

- As of January 2006, eleven mines, operated by seven different mining companies, were producing PCC-grade aggregate in the Palm Springs P-C Region. In 1985, there were eight mines operated by five mining companies. In addition to PCC aggregates, these mines also produced a full range of lower aggregate grades for such products as asphaltic concrete and base.
- The anticipated consumption of aggregate in the Palm Springs P-C Region for the next 50 years (through the year 2056) is estimated to be 307 million tons, of which 45 percent, or 138 million tons, must be PCC quality. This is nearly double the 50-year consumption estimate made in SR 159.
- Since 1985, permitted PCC-grade aggregate reserves have increased from 67 million tons to 167 million tons, extending the projected depletion date from 2012 to 2038.
- Approximately 10 percent, or 923^(a) acres of the 9,094 acres of lands designated by the SMGB in 1989, has been lost to land uses incompatible with mining.
- An additional 6,638 acres of land containing an estimated 472 million tons of PCC-grade aggregate resources have been identified in the Palm Springs P-C Region.

The publication of Special Report 159, and its update, Special Report 198, accomplish part one of the two-part *Classification-Designation process*. Part two of the two-step process, designation, is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance needed to meet the demands of the future. In the years since the original publication of Special Report 159, termination of designation for certain areas where the direct involvement of the SMGB is no longer required have also been identified.

The State Geologist has recommended several candidates, or areas, which meet or exceed the SMGB’s threshold economic value, thus, each area may be considered for designation as an area of regional or statewide significance by the SMGB. These areas include eight areas which have been reclassified as MRZ-2a, and eight areas that have been reclassified as MRZ-2b.

The State Geologist also recommended five areas for termination of designation. Six areas (in five Sectors) are identified as potential candidates for termination of designation status due to high-value incompatible land use developments. Five areas, in Sectors A-3, B-2,

B-3, and B-5 in the San Gorgonio Pass, are sites where large, high-value wind-driven electrical generators have been constructed. One area, Sector C in Little Morongo Canyon near Desert Hot Springs, is the site of recently constructed urban development and flood control infrastructure. These sites, located in the western part of the Palm Springs P-C Region, are shown on Plate 1 (Western Area). In addition to the areas described below, areas in Sectors E-1, E-2, and F are now underlain by a utility corridor carrying fiber optic cables. These areas amount to 100 acres containing 27 million tons of aggregate. Because these cables may be relocatable, allowing for the mining of the underlying aggregate, the State Geologist did not recommend termination of designation status for these utility corridors at this time.

POLICY STATEMENT OVERVIEW

The proposed regulations would allow consideration of new information obtained since the publication of the 1985 Mineral Land Classification study. The proposed amended regulations reflect information provided in CGS Special Report 159 which identified 28.2 square miles of sectorized lands available to meet future aggregate needs, and approximately 67 million tons of PCC-grade aggregate resources. A reevaluation and update as presented in CGS Special Report 198 identified an additional 6,638 acres of land containing an estimated 472 tons of PCC-grade aggregate resources. The reclassified areas are identified as Sector K. Candidate Sector K has eight sub-sectors (K-1 through K-8) that border the existing Sector G on the northwestern, northern, and eastern sides, and two areas in the eastern Palm Springs P-C Region being reclassified as MRZ-2b for PCC-grade aggregate. These areas are identified as Candidate Sector I and Candidate Sector J (sub-sectors J-1 through J-6).

Each Sector that may be considered for designation as an area of regional or statewide significance by the SMGB pursuant to Article 6, Section 2790 *et seq.* (SMARA), meets or exceeds the threshold value as established by the SMGB. This proposed regulation is necessary in order for the State to meet its aggregate availability and sustainability needs.

The proposed regulatory language is consistent and compatible with existing state regulations. The specific benefits anticipated by the proposed amendment provides nonmonetary benefits to the environment by avoiding species conservation areas and habitat sensitive areas, while contributing to efforts to reduce greenhouse gas emissions, and does not conflict with the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and trans-

parency in business and government, among other things.

CEQA COMPLIANCE

The SMGB has determined that this rulemaking action is not a project as defined in the California Environmental Quality Act (CEQA) and is exempt from the requirements of CEQA, Title 14, CCR, Section 15061(b)(3).

DISCLOSURES REGARDING THE PROPOSED ACTION

The SMGB's Executive Officer has made the following preliminary determinations:

Mandate on local agencies and school districts:

The adoption of this amended regulation does not impose any new mandates on local agencies or on local school districts.

Costs or savings to any State agency: The proposed amended regulation imposes no savings or additional expenses to state agencies.

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

Other non-discretionary costs or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies are imposed by the proposed amended regulation.

Cost or savings in Federal funding to the State: There are no costs or savings in Federal funding to the State.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: No statewide adverse impacts to California businesses result from the adoption of this proposed amended regulatory language.

Potential cost impact on private persons or directly affected businesses: The imposition of the proposed amended language on a directly affected local mining operation will have a positive cost impact to that operation by the recognition of designated mineral land of regional significance which in some circumstances may reduce the amount of time, thus cost, in acquiring a permit to mine from its lead agency. Furthermore, termination of formally designated areas would not have any cost impact.

Results of Economic Impact Analysis: The adoption of this amended regulation will not:

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

The adoption of this amended regulation will, however, benefit the health and welfare of California residents and the state’s environment by avoiding species conservation and habitat sensitive areas, as well as reducing greenhouse gas emissions related to transportation.

Significant effect on housing costs: The adoption of this amended regulation will have no significant effect on housing costs, but may reduce such costs by providing a source of PCC–grade aggregate closer to users and market areas.

Effects on small businesses: The imposition of the proposed amendment will have no cost impact on small businesses. The SMGB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no costs related or associated with the proposed designation of mineral lands. Such considerations require a lead agency to consider the regional significance of mineral lands designated by the SMGB when making land use decisions, but do not impose any fees or costs to small businesses as part of that consideration.

CONSIDERATION OF ALTERNATIVES

The SMGB must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the SMGB would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost–effective to affected private persons and equally effective in the statutory policy or other provision of law. The SMGB’s Executive Officer has not identified any adverse impacts resulting from the proposed regulation.

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

CONFLICT WITH FEDERAL REGULATIONS

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

GENERAL PURPOSE AND CONDITION ADDRESSED

Article 6 of the Surface Mining and Reclamation Act of 1975 (SMARA), commencing with PRC Section 2790, provides for the SMGB, based upon mineral information from the State Geologist pursuant to subdivision (c) of PRC Section 2761, to adopt in regulation specific geographic areas of the state as areas of state-wide or regional mineral resource significance and specify the boundaries of those areas.

At its December 13, 2007, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 198 which updated information previously presented in a classification report on Portland cement concrete–grade (PCC) aggregate in the Palm Springs Production–Consumption (P–C) Region completed in 1985. The previous report was published by the California Division of Mines and Geology (CDMG; now CGS) as Special Report 159 (SR 159) — *Mineral Land Classification: Aggregate Materials in the Palm Springs Production–Consumption Region*. The State Geologist’s recommendations for designation, and termination of designation, of select mineral resource lands in the Palm Springs P–C Region, Riverside County, were accepted by the SMGB’s Mineral and Geologic Resources Committee at its regular business meeting held on April 10, 2008. The 60–day public comment period commenced on February 6, 2009, and ended on April 7, 2009. In addition, pursuant to PRC Section 2793, a public hearing was held on March 11, 2009, in Palm Springs. During such hearing, comments were received and responses prepared. Written comments were received from the Coachella Valley Mountains Conservancy (CVMC), and the Friends of the Desert Mountains, and addressed. At its October 14, 2010, regular business meeting, the SMGB accepted the proposed regulation with modification in consideration of public comments received.

SPECIFIC PURPOSE

The proposed amended regulation Section 3550.15, Article 2 CCR, is intended to clarify and make specific those mineral lands that are to be designated by the

SMGB as having regional significance within the Bakersfield P–C Region. These regulations are contained under Article 2, titled Areas Designated to be of Regional Significance.

The proposed amended regulations reflect information provided in CGS Special Report 159 identified 28.2 square miles of sectorized lands available to meet future aggregate needs, and approximately 67 million tons of PCC–grade aggregate resources. A reevaluation and update as presented in CGS Special Report 198 identified an additional 6,638 acres of land containing an estimated 472 tons of PCC–grade aggregate resources. The reclassified areas are identified as Sector K. Candidate Sector K has eight sub–sectors (K–1 through K–8) that border the existing Sector G on the northwestern, northern, and eastern sides, and two areas in the eastern Palm Springs P–C Region being reclassified as MRZ–2b for PCC–grade aggregate. These areas are identified as Candidate Sector I and Candidate Sector J (sub–sectors J–1 through J–6).

The State Geologist also recommended five areas for termination of designation in the western Palm Springs P–C Region. Six areas (in five Sectors) are identified as potential candidates for termination of designation status due to high–value incompatible land use developments. Five areas, in Sectors A–3, B–2, B–3, and B–5 in the San Gorgonio Pass, are sites where large, high–value wind–driven electrical generators have been constructed.

Proposed amended regulations, CCR Section 3550.15, indicates reference to two plates (maps). These two plates form an integral part of the regulation.

STATEMENT OF NECESSITY

PRC Section 2790 provides the SMGB the authority to adopt regulations that establish state policy for the designation of mineral lands of statewide or regional significance, in accordance with Article 6 (commencing with Section 2790) of this chapter, and pursuant to PRC Section 2761. PRC Section 2790, states that after receipt of mineral information from the State Geologist, the SMGB may by regulation adopted after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof. Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect

against the premature incompatible development of the area. PRC Section 2791 also requires the SMGB to seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance. PRC Section 2793 allows the SMGB by regulation adopted after a public hearing, to terminate, partially or wholly, the designation of any area of statewide or regional significance on a finding that the direct involvement of the board is no longer required.

In 2006, the California Geological Survey (CGS) in their statewide report titled “*Map Sheet 52 (Updated 2006), Aggregate Availability in California*” noted that the Palm Springs P–C Region 50–year demand for aggregate was on the order of 295 million tons. Permitted aggregate resources were on the order of 176 million tons. The percentage of permitted aggregate resources, as compared to the 50–year demand, was 60 percent, significantly lower than the projected demand.

Special Report 159 “*Mineral Land Classification: Aggregate Materials in the Palm Springs Production–Consumption Region*,” published by the California Division of Mines and Geology (CDMG; now CGS) in 1989, identified 28.2 square miles of sectorized lands containing approximately 67 million tons of PCC–grade aggregate resources available to meet future aggregate needs. In review of the reevaluation and update in Special Report 198 updated information on Portland cement concrete–grade (PCC) aggregate in the Palm Springs Production–Consumption (PC) Region previously presented in SR 159, the State Geologist has recommended several candidates, or areas, which meet or exceed the SMGB’s threshold economic value, and each area may be considered for designation as an area of regional or statewide significance by the SMGB, and has identified an additional 6,638 acres of land containing an estimated 472 million tons of PCC–grade aggregate resources in the Palm Springs P–C Region. These areas include eight areas which have been reclassified as MRZ–2a, and eight areas that have been reclassified as MRZ–2b.

The State Geologist also recommended several candidates for termination of designation. Six areas (in five Sectors) are identified as potential candidates for termination of designation status due to high–value incompatible land use developments. Five areas, in Sectors A–3, B–2, B–3, and B–5 in the San Gorgonio Pass, are sites where large, high–value wind–driven electrical generators have been constructed. One area, Sector C in Little Morongo Canyon near Desert Hot Springs, is

the site of recently constructed urban development and flood control infrastructure.

IDENTIFICATION OF TECHNICAL/
THEORETICAL/EMPIRICAL STUDIES,
REPORTS, OR DOCUMENTS UPON WHICH
THE SMGB HAS RELIED

Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future. In 1985, the California Division of Mines and Geology (CDMG; now CGS) published Special Report 159 (SR 159) — *Mineral Land Classification: Aggregate Materials in the Palm Springs Production–Consumption Region*. In response to this classification report, the SMGB, in 1989, designated construction aggregate resource areas of regional significance in the Palm Springs P–C Region as presented in the report titled “*SMARA Designation Report No. 10 — Designation of Regionally Significant Construction Aggregate Resources in the Palm Springs Production–Consumption Region*”. At its December 13, 2007, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 198 which updated information on Portland cement concrete–grade (PCC) aggregate in the Palm Springs Production–Consumption (P–C) Region previously presented in SR 159.

The updated mineral classification report prepared by CGS, SR 198, presented the following conclusions:

- As of January 2006, eleven mines, operated by seven different mining companies, were producing PCC–grade aggregate in the Palm Springs P–C Region. In 1985, there were eight mines operated by five mining companies. In addition to PCC aggregates, these mines also produced a full range of lower aggregate grades for such products as asphaltic concrete and base.
- The anticipated consumption of aggregate in the Palm Springs PC Region for the next 50 years (through the year 2056) is estimated to be 307 million tons, of which 45 percent, or 138 million tons, must be PCC quality. This is nearly double the 50–year consumption estimate made in SR 159.
- Since 1985, permitted PCC–grade aggregate reserves have increased from 67 million tons to 167 million tons, extending the projected depletion date from 2012 to 2038.
- Approximately 10 percent, or 923 acres of the 9,094 acres of lands designated by the SMGB in 1989, has been lost to land uses incompatible with mining.

- An additional 6,638 acres of land containing an estimated 472 million tons of PCC–grade aggregate resources have been identified in the Palm Springs P–C Region.

The State Geologist has recommended several candidates, or areas, which meet or exceed the SMGB’s threshold economic value, thus, each area may be considered for designation as an area of regional or statewide significance by the SMGB. These areas include eight areas which have been reclassified as MRZ–2a, and eight areas that have been reclassified as MRZ–2b. The State Geologist also recommended five areas for termination of designation.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the SMGB may adopt the proposed regulations substantially as described in this notice. If the SMGB makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the SMGB adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mr. Stephen Testa at the address provided below. The SMGB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT
OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Stephen Testa at the address provided below.

CONTACT PERSON

An interested person may request a copy of the proposed amended regulation and the Initial Statement of Reasons. Questions about the proposed regulation and Initial Statement of Reasons can be directed to the SMGB’s office. All supplemental information, upon which the regulation is based, is contained in the rule-making file.

The rulemaking file is available for inspection at the SMGB Office at 801 K Street, Suite 2015, Sacramento, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday except during state holidays. Copies of the proposed regulation and the Initial Statement of Reasons may be requested by writing to the above address, or viewed on the SMGB’s Internet Web Site at: <http://www.conservation.ca.gov/smgbl>.

Inquiries concerning the substance of the proposed amended regulation should be directed to:

Mr. Stephen M. Testa, Executive Officer
 State Mining and Geology Board
 801 K Street, Suite 2015
 Sacramento, California 95814
 Phone: (916) 322-1082
 Fax: (916) 445-0738
Stephen.Testa@conservation.ca.gov

OR

Amy Scott, Executive Assistant
 State Mining and Geology Board
 801 K Street, Suite 2015
 Sacramento, CA 95814
 Phone: (916) 322-1082
 Fax: (916) 445-0738
Amy.Scott@conservation.ca.gov

TITLE 14. STATE MINING AND GEOLOGY BOARD

PROPOSED AMENDED REGULATIONS FOR DESIGNATION OF MINERAL LANDS IN THE SAN GABRIEL VALLEY PRODUCTION-CONSUMPTION REGION, LOS ANGELES COUNTY

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

REGULATORY ACTION

The SMGB has adopted, by regulation set forth in CCR Section 3550 the designation of certain mineral resource sectors within geographical areas to be of regional significance. Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future. The SMGB proposes to present new proposed regulations which would amend Section 3550.5 to Title 14, Article 2, of the California Code of Regulations (CCR), and provide a description of the locations of mineral resources areas designated to be of statewide significance, and areas where designation will be terminated, within the San Gabriel Valley Production-Consumption (P-C) Region, Los Angeles County.

PREVIOUS PUBLIC HEARINGS

The State Geologist recommended to the SMGB 1) several candidates, or areas, which meet or exceed the SMGB's threshold economic value, thus, each area may be considered for designation as an area of regional or statewide significance by the SMGB, and 2) several candidates, or areas, where the SMGB's involvement is no longer required. The updated Mineral Land Classification study identified an additional 281 acres of land containing more than 311 million tons of PCC-grade aggregate in areas previously classified MRZ-3. These areas were reclassified as MRZ-2 in the update. The areas are identified as Sectors J, K, L, and M are newly identified aggregate resource sectors that were not originally designated. Sector J delineates land that has been reclassified in OFR 91-14 to MRZ-2 from MRZ-3 (Miller, 1994). Sectors K, L, and M delineate lands that were classified MRZ-2 in SR 143 Part IV, but were not included in part of a sector.

In regards to termination of lands previously designated, six sectors are identified for termination of designation. The six areas are identified as potential candidates for termination of designation status due to high-value incompatible land use developments. These areas are situated within Sectors A (263 acres), B (12 acres), C (42 acres), D (391 acres), E (422 acres) and I (104 acres), totaling 908 acres.

The 60-day public comment period commenced on July 29, 2011, and ended on September 26, 2011. In addition, pursuant to PRC Section 2793, a public hearing was held on August 30, 2011, in the City of Irwindale. During such public comment period and hearing, no comments were received. The hearing facility was barrier free in accordance with the Americans with Disabilities Act. At the hearing, an opportunity for any person to present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest, was provided. The SMGB requested, but did not require, that persons who made oral comments at the hearing also submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the SMGB. Comments may also be submitted by facsimile (FAX) at (916) 445-0738 or by e-mail to stephen.testa@conservation.ca.gov. The 45-day comment period will commence on October 5, 2012, and closes at 5:00 p.m. on November 19, 2012. The SMGB will consider only comments received at the SMGB office by that time. No public hearing is scheduled, but any person can request

a public hearing no later than 15 days before the close of the written comment period.

AUTHORITY AND REFERENCE

The SMGB proposes to adopt a regulation that amends Section 3350.5 to Article 2 of the California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, pursuant to its authority granted in PRC Sections 2790 and 2207 (Reference PRC Section 2726, 2761–2763, 2790–2791, and 2793).

INFORMATIVE DIGEST

The SMGB has adopted, by regulation set forth in CCR Section 3550 the designation of certain mineral resource sectors within geographical areas to be of regional significance. Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future.

In 1985, the California Division of Mines and Geology (CDMG; now CGS) published Special Report 159 (SR 159) — *Mineral Land Classification: Aggregate Materials in the San Gabriel Valley Production–Consumption Region*. In response to this classification report, the SMGB, in 1989, designated construction aggregate resource areas of regional significance in the San Gabriel Valley P–C Region as presented in the report titled “*SMARA Designation Report No. 10 — Designation of Regionally Significant Construction Aggregate Resources in the San Gabriel Valley Production–Consumption Region*”. At its December 13, 2007, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 198 which updated information on Portland cement concrete–grade (PCC) aggregate in the San Gabriel Valley Production–Consumption (P–C) Region previously presented in SR 159.

The updated mineral classification report prepared by CGS, SR 198, presented the following conclusions:

- As of January 2006, eleven mines, operated by seven different mining companies, were producing PCC–grade aggregate in the San Gabriel Valley P–C Region. In 1985, there were eight mines operated by five mining companies. In addition to PCC aggregates, these mines also produced a full range of lower aggregate grades for such products as asphaltic concrete and base.
- The anticipated consumption of aggregate in the San Gabriel Valley P–C Region for the next 50 years (through the year 2056) is estimated to be 307 million tons, of which 45 percent, or 138

million tons, must be PCC quality. This is nearly double the 50–year consumption estimate made in SR 159.

- Since 1985, permitted PCC–grade aggregate reserves have increased from 67 million tons to 167 million tons, extending the projected depletion date from 2012 to 2038.
- Approximately 10 percent, or 923^(a) acres of the 9,094 acres of lands designated by the SMGB in 1989, has been lost to land uses incompatible with mining.
- An additional 6,638 acres of land containing an estimated 472 million tons of PCC–grade aggregate resources have been identified in the San Gabriel Valley P–C Region.

The publication of Special Report 159, and its update, Special Report 198, accomplish part one of the two–part *Classification–Designation process*. Part two of the two–step process, designation, is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance needed to meet the demands of the future. In the years since the original publication of Special Report 159, termination of designation for certain areas where the direct involvement of the SMGB is no longer required have also been identified.

The State Geologist has recommended several candidates, or areas, which meet or exceed the SMGB’s threshold economic value, thus, each area may be considered for designation as an area of regional or statewide significance by the SMGB. These areas include eight areas which have been reclassified as MRZ–2a, and eight areas that have been reclassified as MRZ–2b.

The State Geologist also recommended five areas for termination of designation. Six areas (in five Sectors) are identified as potential candidates for termination of designation status due to high–value incompatible land use developments. Five areas, in Sectors A–3, B–2, B–3, and B–5 in the San Geronio Pass, are sites where large, high–value wind–driven electrical generators have been constructed. One area, Sector C in Little Morongo Canyon near Desert Hot Springs, is the site of recently constructed urban development and flood control infrastructure. These sites, located in the western part of the San Gabriel Valley P–C Region, are shown on Plate 1 (Western Area). In addition to the areas described below, areas in Sectors E–1, E–2, and F are now underlain by a utility corridor carrying fiber optic cables. These areas amount to 100 acres containing 27 million tons of aggregate. Because these cables may be relocatable, allowing for the mining of the underlying aggregate, the State Geologist did not recommend ter-

mination of designation status for these utility corridors at this time.

POLICY STATEMENT OVERVIEW

The proposed regulatory language would allow consideration of new information obtained since the publication of the 1982 Mineral Land Classification study. The proposed amended regulations reflect information provided in CGS Special Report 209 which reported that about 27 percent, or 1,234 acres of the 4,642 acres of lands originally designated by the SMGB have been lost to land uses incompatible with mining. Those 1,234 acres lost contain approximately 483 million tons of PCC-grade aggregate resources, which is 20 percent of the 2,402 million tons of aggregate resources designated in 1984. Furthermore, the report identified an additional 281 acres of land containing more than 311 million tons of PCC-grade aggregate in areas previously classified MRZ-3. These areas were reclassified as MRZ-2 in the update. The reclassified areas are identified as Sectors J, K, L, and M are newly identified aggregate resource sectors that were not originally designated. Sector J delineates land that has been reclassified in OFR 91-14 to MRZ-2 from MRZ-3 (Miller, 1994). Sectors K, L, and M delineate lands that were classified MRZ-2 in SR 143 Part IV, but were not included in part of a sector.

Each Sector that may be considered for designation as an area of regional or statewide significance by the SMGB pursuant to Article 6, Section 2790 *et seq.* (SMARA), meets or exceeds the threshold value as established by the SMGB. This proposed regulation is necessary in order for the State to meet its aggregate availability and sustainability needs.

The State Geologist also recommended six areas for termination of designation in the San Gabriel Valley P-C Region. Six Sectors were identified as candidates for termination of designation status because of high-value incompatible land use developments, particularly urbanization and land filling. These areas are situated within Sectors A (263 acres), B (12 acres), C (42 acres), D (391 acres), E (422 acres) and I (104 acres), totaling 908 acres.

The proposed regulatory language is consistent and compatible with existing state regulations. The specific benefits anticipated by the proposed amendment provides nonmonetary benefits to the environment by avoiding species conservation areas and habitat sensi-

tive areas, while contributing to efforts to reduce greenhouse gas emissions, and does not conflict with the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things.

CEQA COMPLIANCE

The SMGB has determined that this rulemaking action is not a project as defined in the California Environmental Quality Act (CEQA) and is exempt from the requirements of CEQA, Title 14, CCR, Section 15061(b)(3).

DISCLOSURES REGARDING THE PROPOSED ACTION

The SMGB's Executive Officer has made the following preliminary determinations:

Mandate on local agencies and school districts:

The adoption of this amended regulation does not impose any new mandates on local agencies or on local school districts.

Costs or savings to any State agency: The proposed amended regulation imposes no savings or additional expenses to state agencies.

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

Other non-discretionary costs or savings imposed upon local agencies: No other non-discretionary costs or savings to local agencies are imposed by the proposed amended regulation.

Cost or savings in Federal funding to the State: There are no costs or savings in Federal funding to the State.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: No statewide adverse impacts to California businesses result from the adoption of this proposed amended regulatory language.

Potential cost impact on private persons or directly affected businesses: The imposition of the proposed amended language on a directly affected local mining operation will have a positive cost impact to that operation by the recognition of designated mineral land of regional significance which in some circumstances may reduce the amount of time, thus cost, in acquiring a permit to mine from its lead agency. Furthermore, termination of formally designated areas would not have any cost impact.

Results of Economic Impact Analysis: The adoption of this amended regulation will not:

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

The adoption of this amended regulation will, however, benefit the health and welfare of California residents and the state's environment by avoiding species conservation and habitat sensitive areas, as well as reducing greenhouse gas emissions related to transportation.

Significant effect on housing costs: The adoption of this amended regulation will have no significant effect on housing costs, but may reduce such costs by providing a source of PCC-grade aggregate closer to users and market areas.

Effects on small businesses: The imposition of the proposed amendment will have no cost impact on small businesses. The SMGB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no costs related or associated with the proposed designation of mineral lands. Such considerations require a lead agency to consider the regional significance of mineral lands designated by the SMGB when making land use decisions, but do not impose any fees or costs to small businesses as part of that consideration.

CONSIDERATION OF ALTERNATIVES

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

tory policy or other provision of law. The SMGB's Executive Officer has not identified any adverse impacts resulting from the proposed regulation.

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

CONFLICT WITH FEDERAL REGULATIONS

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

GENERAL PURPOSE AND CONDITION ADDRESSED

Article 6 of the Surface Mining and Reclamation Act of 1975 (SMARA), commencing with PRC Section 2790, provides for the SMGB, based upon mineral information from the State Geologist pursuant to subdivision (c) of PRC Section 2761, to adopt in regulation specific geographic areas of the state as areas of statewide or regional mineral resource significance and specify the boundaries of those areas.

At its September 9, 2010, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 209 which updated information previously presented in a classification report on Portland cement concrete-grade (PCC) aggregate in the San Gabriel Valley Production-Consumption (P-C) Region completed in 1988. The original classification study by Kohler (1982) assisted the State Mining and Geology Board (SMGB) in its subsequent mineral land designation process, whereby the SMGB formally recognized in regulation lands containing resources of regional or statewide economic significance in the region. The SMGB designated construction aggregate resource areas of regional significance in the San Gabriel P-C Region in SMARA Designation Report No. 3 — *Designation of Regionally Significant Construction Aggregate Resources in the Orange County — Temescal Valley and San Gabriel Valley Production-Consumption Regions* (August 1984). At its March 10, 2011, regular business meeting, the SMGB accepted the proposed new designations, and areas identified for termination of designation, for the San Gabriel Valley P-C Region pursuant to PRC Section 2761. The 60-day public comment period commenced on July 29, 2011,

and ended on September 26, 2011. In addition, pursuant to PRC Section 2793, a public hearing was held on August 30, 2011, in the City of Irwindale. During such public comment period and hearing, no comments were received.

SPECIFIC PURPOSE

The proposed amended regulation Section 3550.5, Article 2 CCR, is intended to clarify and make specific those mineral lands that are to be designated by the SMGB as having regional significance within the San Gabriel Valley P–C Region. These regulations are contained under Article 2, titled Areas Designated to be of Regional Significance.

The proposed amended regulations reflect information provided in CGS Special Report 209 which identified 281 acres of sectorized lands available, and approximately 311 million tons of PCC–grade aggregate resources, to meet future aggregate needs. Sectors J, K, L, and M are newly identified aggregate resource sectors that were not originally designated. Sector J delineates land that has been reclassified in OFR 91–14 to MRZ–2 from MRZ–3 (Miller, 1994). Sectors K, L, and M delineate lands that were classified MRZ–2 in SR 143 Part IV, but were not included in part of a sector.

The State Geologist also recommended six sectors for termination of designation. Six areas are identified as potential candidates for termination of designation status due to high–value incompatible land use developments. These areas are situated within Sectors A (263 acres), B (12 acres), C (42 acres), D (391 acres), E (422 acres) and I (104 acres), totaling 908 acres.

Proposed amended regulations, CCR Section 3550.5, indicates reference to two plates (maps). These two plates form an integral part of the regulation.

STATEMENT OF NECESSITY

PRC Section 2790 provides the SMGB the authority to adopt regulations that establish state policy for the designation of mineral lands of statewide or regional significance, in accordance with Article 6 (commencing with Section 2790) of this chapter, and pursuant to PRC Section 2761. PRC Section 2790, states that after receipt of mineral information from the State Geologist, the SMGB may by regulation adopted after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof. Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompat-

ible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area. PRC Section 2791 also requires the SMGB to seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance. PRC Section 2793 allows the SMGB by regulation adopted after a public hearing, to terminate, partially or wholly, the designation of any area of statewide or regional significance on a finding that the direct involvement of the board is no longer required.

In 2006, the California Geological Survey (CGS) in their statewide report titled “*Map Sheet 52 (Updated 2006), Aggregate Availability in California*” noted that the San Gabriel P–C Region 50–year demand for aggregate was on the order of 1,148 million tons. Permitted aggregate resources were on the order of 370 million tons. The percentage of permitted aggregate resources, as compared to the 50–year demand, was 32 percent, significantly lower than the projected demand.

The proposed amended regulations reflect information provided in CGS Special Report 209 which identified 281 acres of sectorized lands available, and approximately 311 million tons of PCC–grade aggregate resources, to meet future aggregate needs.

The State Geologist also recommended six sectors for termination of designation. Six areas are identified as potential candidates for termination of designation status due to high–value incompatible land use developments. These areas are situated within Sectors A (263 acres), B (12 acres), C (42 acres), D (391 acres), E (422 acres) and I (104 acres), totaling 908 acres.

IDENTIFICATION OF TECHNICAL/THEORETICAL/EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED

Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future. The original classification study by Kohler (1982) assisted the State Mining and Geology Board (SMGB) in its subsequent mineral land designation process, whereby the SMGB formally recognized in regulation lands containing resources of regional or statewide economic significance in the region. The SMGB designated construction aggregate resource areas of regional significance in the San Gabriel P–C Region in SMARA Designation Report No. 3 — *Designation of Regionally Significant Construction Aggregate Resources in the Orange County — Temescal*

Valley and San Gabriel Valley Production–Consumption Regions (August 1984). At its September 9, 2010, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 209 which updated information previously presented in a classification report on Portland cement concrete–grade (PCC) aggregate in the San Gabriel Valley Production–Consumption (P–C) Region completed in 1988.

The updated report, prepared by CGS, SR 209, presented the following conclusions:

- As of January 2009, seven mines, operated by five different mining companies, were producing PCC–grade aggregate in the San Gabriel P–C Region, along with a full range of lower aggregate grades for such products as asphaltic concrete and base.
- The anticipated consumption of aggregate in the San Gabriel Valley P–C Region for the next 50 years (through the year 2058) is estimated to be 911 million tons, of which 638 million tons must be PCC quality.
- Since 1980, permitted PPC–grade aggregate reserves have increased from 280 million tons (a 19–year supply using the 1980 to 2030 projection) to 328 million tons (a 20–year supply using the updated 2009 through 2058 projection).
- About 27 percent, or 1,234 acres, of the 4,642 acres of lands designated by the SMGB in 1984 has been lost to land uses incompatible with mining. This equates to 435 million tons of PCC–grade aggregate resources lost.
- Since the 1984 designation of PCC–grade aggregate resources in the San Gabriel Valley P–C Region, 435 million tons of aggregate resources underlying 1,234 designated acres have been lost to urban development and land filling, and another 406 million tons of aggregate resources have been depleted due to aggregate mining. This has reduced the designated PCC–grade aggregate resources by about 35 percent, from 2,402 million tons to 1,561 million tons.
- Four additional aggregate resource areas totaling 281 acres and containing 311 million tons of aggregate resources have been identified during the updating of the P–C Region. These areas are not designated.

The State Geologist has recommended several candidates, or areas, which meet or exceed the SMGB’s threshold economic value, and each area may be considered for designation as an area of regional or state-wide significance by the SMGB. Sectors J, K, L, and M are newly identified aggregate resource sectors that were not originally designated. Sector J delineates land that has been reclassified in OFR 91–14 to MRZ–2 from

MRZ–3 (Miller, 1994). Sectors K, L, and M delineate lands that were classified MRZ–2 in SR 143 Part IV, but were not included in part of a sector. At the time of the updated classification study, that threshold value amounted to approximately 1.1 million tons of aggregate. The permitted aggregate resources amounts contained in individual Sectors are considered proprietary.

The State Geologist also recommended six sectors for termination of designation. Six areas are identified as potential candidates for termination of designation status due to high–value incompatible land use developments. These areas are situated within Sectors A (263 acres), B (12 acres), C (42 acres), D (391 acres), E (422 acres) and I (104 acres), totaling 908 acres.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the SMGB may adopt the proposed regulations substantially as described in this notice. If the SMGB makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the SMGB adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mr. Stephen Testa at the address provided below. The SMGB will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Stephen Testa at the address provided below.

CONTACT PERSON

An interested person may request a copy of the proposed amended regulation and the Initial Statement of Reasons. Questions about the proposed regulation and Initial Statement of Reasons can be directed to the SMGB’s office. All supplemental information, upon which the regulation is based, is contained in the rule-making file.

The rulemaking file is available for inspection at the SMGB Office at 801 K Street, Suite 2015, Sacramento, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday except during state holidays. Copies of the proposed regulation and the Initial Statement of Reasons may be requested by writing to the above address, or viewed on the SMGB’s Internet Web Site at: <http://www.conservation.ca.gov/smgb>.

Inquiries concerning the substance of the proposed amended regulation should be directed to:

Mr. Stephen M. Testa, Executive Officer
 State Mining and Geology Board
 801 K Street, Suite 2015
 Sacramento, California 95814
 Phone: (916) 322-1082
 Fax: (916) 445-0738
Stephen.Testa@conservation.ca.gov

OR

Amy Scott, Executive Assistant
 State Mining and Geology Board
 801 K Street, Suite 2015
 Sacramento, CA 95814
 Phone: (916) 322-1082
 Fax: (916) 445-0738
Amy.Scott@conservation.ca.gov

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3173.2 and 3174 in the California Code of Regulations, Title 15, Division 3, concerning Visiting Searches.

PUBLIC HEARING

Date and Time: November 28, 2012 —
 9:00 a.m. to 10:00 a.m.
 Place: Department of Corrections and
 Rehabilitation
 Kern Room
 1515 S Street — North Building
 Sacramento, CA 95811
 Purpose: To receive comments about this
 action.

PUBLIC COMMENT PERIOD:

The public comment period will close November 28, 2012, at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Depart-

ment of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 445-2269

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

G. Long
Regulation and Policy Management Branch
Telephone (916) 445-2276

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

Vaughn Cambridge
Correctional Counselor II
Female Offenders Program
916-323-4226

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500-17630.

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

EFFECT ON HOUSING COSTS

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES

The Department has initially determined that the proposed regulations will not have a significant statewide

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

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has determined that the proposed regulation will have no impact in the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California, or the health and welfare of California residents, worker safety, or the State's environment.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

EFFECT ON SMALL BUSINESSES

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

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

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

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

This action:

- Recognizes CDCR's role in increasing safety in the institutions and adopts new procedures for

screening all visitors to provide increased uniformity and standardization.

- Establishes that metal underwires in brassieres are no longer restricted.
- Allows visitors wearing military or law enforcement type clothing in the visiting area if they are on active duty or in an official capacity.
- Clarifies that visitors cannot wear clothing that resembles State-issued clothing worn by inmates into the visiting room.
- Provides the appropriate authority and direction for staff.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department has determined these proposed regulations will protect the health and safety of California residents, worker safety, the State's environment, will prevent discrimination, promote fairness or social equity, and increase openness and transparency in business and government.

EVALUATION OF INCONSISTENCY/COMPATIBILITY WITH EXISTING REGULATIONS

The Department has determined that these proposed regulations are consistent and compatible with existing State laws and regulations. The Department reached this conclusion because these regulations add specific security guidelines to existing visiting regulations.

TITLE 17. CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

Amendments to Intellectual Property Regulations Sections 100600, 100601, 100602 and 100608

Date: October 5, 2012

Deadline for Submission of Written Comment: November 19, 2012 — 5:00 p.m.

Public Hearing Date: None Scheduled

Subject Matter of Proposed Amendments: Amendments to Intellectual Property Regulations

Sections Affected: The proposed regulatory action amends sections 100600, 100601, 100602 and 100608 of Title 17 of the California Code of Regulations.

Authority: Article XXXV of the California Constitution and Health and Safety Code Section 125290.40, subdivision (j).

Reference: Section 125290.30, Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Institute for Regenerative Medicine ("Institute" or "CIRM") was established in 2005 after the passage in 2004 of Proposition 71 (the "Act"), the California Stem Cell Research and Cures Initiative. The statewide ballot measure established a new state agency to make grants and provide loans for stem cell research, research facilities and other vital research opportunities. The Independent Citizens' Oversight Committee ("ICOC") is the 29-member governing board for the Institute. The ICOC members are public officials, appointed on the basis of their experience earned in California's leading public universities, non-profit academic and research institutions, patient advocacy groups and the biotechnology industry. The Act charges the ICOC with developing standards and criteria to make grant awards and to develop standards and criteria for proper oversight of awards. (§ 125290.50.) In addition, the Act requires the ICOC to:

. . . [e]stablish standards that require that all grants and loan awards be subject to intellectual property agreements that balance the opportunity of the State of California to benefit from the patents, royalties, and licenses that result from basic research, therapy development, and clinical trials with the need to assure that essential medical research is not unreasonably hindered by the intellectual property agreements." (§ 125290.30, subd. (h).)

To that end, CIRM has adopted rules regarding Intellectual Property that balance the needs described above.

Under CIRM's regulations, there are two revenue sharing provisions. Section 100608(a) requires Grantees and Collaborators to share 25% of their licensing revenue in excess of \$500,000. This rate is reduced in accordance with the proportional share of CIRM funding which contributed to the licensed inventions and technology as compared to the total project costs incurred during the project period (the "Proportionality Reduction"). The other revenue sharing provision is set forth in section 100608(b). It provides that Grantees and Collaborators must share revenues resulting from CIRM Funded Research as follows: after revenues exceed \$500,000, three times the grant award, paid at a rate of 3% per year, plus upon earning \$250M in a single calendar year, a onetime payment of three times the award, plus upon earning revenues of \$500M in a single

calendar year, an additional onetime payment of three times the award and finally in the instance where a patented CIRM Funded Invention or CIRM Funded Technology contributed to the creation of Net Commercial Revenue greater than \$500M in a single calendar year, and where CIRM awarded \$5 million or more, an additional 1% royalty on revenues in excess of \$500 million annually over the life of the patents.

The one time payments triggered at \$250 million and \$500 million in annual revenues, create an uneven payment obligation which is characterized as being “lumpy” and could be a disincentive for the engagement of industry. In addition, the Proportionality Reduction provided for in Section 100608(a) creates administrative challenges and uncertainty. The following proposed amendments seek to address these issues while at the same time ensuring a comparable economic return to California.

SB 1064, which was enacted by the Legislature in 2010 with CIRM’s support, codified the revenue sharing formulas into law. In recognition of the relatively early stage of the research and need to partner with industry in order to commercialize CIRM–funded discoveries, SB 1064 authorized CIRM’s Governing Board to modify the formulas if it determined that it was necessary to do so either to ensure that research and therapy development are not unreasonably hindered as a result of CIRM’s regulations or to ensure that the State of California has an opportunity to share in the revenues derived from such research and therapy development. The proposed amendments re–strike the balance both to ensure that industry will partner with CIRM and to ensure that the State has the opportunity to benefit from successful therapy development.

The proposed amendments:

- Smooth out payment obligations in order to facilitate industry investment and engagement in CIRM programs which, in turn, will leverage CIRM’s funding and provide access to industry know how
- Extend the revenue sharing obligations to commercializing entities to ensure the State realizes revenues from successful therapy development
- Simplify the proportionality calculation relating to CIRM’s existing licensing revenue sharing regulation
- Maintain the existing revenue sharing scheme as it pertains to non–profit grantees (except with respect to the simplification of the licensing revenue sharing proportionality calculation)

- Maximize the amount of funding that companies can re–invest in product development, by exempting pre–commercial revenues from CIRM’s revenue sharing
- Maintain the requirement that funds generated from CIRM’s revenue sharing regulations are deposited in the California’s General Fund

Specific Benefits:

The proposed amendments simplify revenue sharing calculations, smooth out the payments made, and ensure the State realizes revenues from successful therapy development.

Impact on Existing State Regulations:

CIRM has determined that the proposed amendments have no effect on existing state regulations. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED AMENDMENTS

CIRM has made the following initial determinations:

Mandate on local agencies and school districts:

None.

Submittal of Comments:

Any interested party may present comments in writing about the proposed amendments to the agency contact person named in this notice. Written comments must be received no later than 5:00 p.m. on November 19, 2012. Comments regarding this proposed action may also be transmitted via e–mail to ipamendments@cirm.ca.gov or by facsimile transmission to (415) 396–9141.

Public Hearing:

At this time, no public hearing has been scheduled concerning the proposed regulations. If any interested person or the person’s representative requests a public hearing, he or she must do so in writing no later than November 5, 2012.

Effect on Small Business:

CIRM has determined that the proposed amendments will have no impact on small businesses. The regulation implements conditions on awarding and administering grants for stem cell research. This research is conducted almost exclusively by large public and private nonprofit institutions. As such, the amendments to the regulation are not expected to adversely impact small business as defined in Government Code Section 11342.610.

Impact on Local Agencies or School Districts:

CIRM has determined that the proposed amendments do not impose a mandate on local agencies or school

districts, nor do they require reimbursement by the state pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the amendments do 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. CIRM has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed amendments.

Costs or Savings to State Agencies:

CIRM has determined that no savings or increased costs to any agency will result from the proposed amendments.

Effect on Federal Funding to the State:

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

Effect on Housing Costs:

CIRM has determined that the proposed amendments will have no effect on housing costs.

Significant Statewide Adverse Economic Impact Directly Affecting Businesses:

CIRM has made an initial determination that the proposed amendments 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:

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

Results of Economic Impact Analysis:

The above analysis is based on that fact that the proposed amendments do not impose new requirements on existing business operations or functions of other agencies or individuals, but implement standards for seeking and using state grant funds for scientific research. In most cases, such grants include funds to cover overhead and other indirect costs of the research, including most compliance activities. CIRM has made an initial determination that it is unlikely the proposed amendments 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, nor directly impact the health and welfare of California residents, worker safety, and the state’s environment.

Consideration of Alternatives:

In accordance with Government Code Section 11346.5, subdivision (a)(13), CIRM must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of the law than the proposal described in this Notice. CIRM invites interested persons to present statements or arguments with respect to alternatives to the proposed amendments at the scheduled hearing or during the written comment period.

Availability of Statement of Reasons and Text of Proposed Regulations:

CIRM has prepared an Initial Statement of Reasons, and has available the express terms of the proposed amendments, all of the information upon which the amendments are 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 CIRM 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 holding the hearing and considering all timely and relevant comments, CIRM may adopt the proposed amendments substantially as described in this notice. If CIRM makes modifications that are sufficiently related to the originally proposed text of the amendments, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before it adopts the regulations as amended. Requests for the modified text should be addressed to the agency contact person named in this notice. CIRM 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 Statements of Reasons, the proposed text of the amendments; and inquiries regarding the rulemaking file may be directed to:

Scott Tocher
 Counsel to the Chairman, ICOC
 California Institute for Regenerative Medicine
 210 King Street
 San Francisco, CA 94107
 (415) 396-9100

Questions on the substance of the proposed regulatory action may be directed to:

Amy Cheung
California Institute for Regenerative Medicine
(415) 396-9110

The Notice of Proposed Regulatory Amendment, the Initial Statement of Reasons and any attachments, and the proposed text of the amendments and existing regulation are also available on CIRM's website, www.cirm.ca.gov.

Availability of Final Statement of Reasons:

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code Section 11346.9, subdivision (a), may be obtained from the contact person named above.

**TITLE 24. BUILDING STANDARDS
COMMISSION**

**NOTICE OF PROPOSED ACTION TO
BUILDING STANDARDS OF THE DIVISION
OF THE STATE ARCHITECT (DSA-AC)
REGARDING THE
CALIFORNIA BUILDING CODE
CALIFORNIA CODE OF REGULATIONS,
TITLE 24, PART 2
2010 CALIFORNIA BUILDING CODE**

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Division of the State Architect proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Part 2. The DSA-AC is proposing building standards related to the 2013 California Building Code.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from October 5, 2012, until 5:00 p.m. on November 19, 2012. Please address your comments to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Jim McGowan, 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

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18928.

For DSA-AC the purpose of these building standards is to implement, interpret, and make specific the provisions of Government Code Sections (GC§§) 4450 through 4461, 12955.1 and 14679; Health and Safety Code Section (H&SC§) 18949.1 and 19952 through 19959; and Vehicle Code Section 22511.8. DSA-AC is proposing this regulatory action based on GC§ 4450.

INFORMATIVE DIGEST

An informative digest drafted in plain English in a format similar to the Legislative Counsel's Digest shall include the following:

Summary of Existing Laws

Government Code Section 4450 authorizes the State Architect to develop regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities.

Summary of Existing Regulations

Existing regulations are applicable to:

- 1) Publicly funded buildings, structures, sidewalks, curbs and related facilities;
- 2) All privately funded public accommodations, and commercial facilities; and
- 3) Public housing and private housing available for public use.
- 4) Any portable buildings leased or owned by a school district, and
- 5) Temporary and emergency buildings and facilities.

Existing California state regulations incorporate standards that are:

- 1) Not aligned nor consistent with those regulations published in the Federal Register on September 15, 2010 by the United States Department of Justice for Titles II and III of the Americans with Disabilities Act of 1990 for barrier-free design under:
 - 2010 Standards for State and Local Government Facilities: Title II (28 CFR part 35.151 New Construction and Alterations);
 - 2010 Standards for Public Accommodations and Commercial Facilities: Title III (28 CFR part 36 Subpart D, New Construction and Alteration);
 - 2010 Standards for Titles II and III Facilities: 2004 ADAAG (36 CFR part 1191, appendices B and D).
- 2) Based on the Fair Housing Amendments Act of 1988, and
- 3) Based on the 2009 International Building Code.

Summary of Effect

The Division of the State Architect has initially determined no adverse impact on small business. The proposed modifications will benefit small and large businesses by eliminating forced violations of the federal 2010 ADA Standards, thus minimizing the potential for disputes, claims and litigation. They will also provide clarity of expectations for these accessibility items and allow businesses to proceed with needed improvements without fear they will need to be redone when the 2013 CBC goes into effect.

Comparable Federal Statute or Regulations

Revised regulations for Title II and Title III of the Americans with Disabilities Act of 1990 as adopted by the US Department of Justice. The regulations provide revised enforceable standards for accessible design, known as the 2010 ADA Standards for Accessible Design in three parts:

- 2010 Standards for State and Local Government Facilities: Title II Regulations at 28 CFR Part 35.151;
- 2010 Standards for Public Accommodations and Commercial Facilities: Title III Regulations at 28 CFR Part 36, Subpart D;
- 2010 Standards for Title II and III Facilities: 2004 ADAAG

Policy Statement Overview

After March 15, 2012, compliance with the 2010 Americans with Disabilities Act Standards became the sole option for complying with national accessibility requirements. The Division of the State Architect Access

Compliance unit is working to update its regulations with the most stringent requirements of either the State or federal standards, but until the 2013 California Building Code is adopted and becomes effective on January 1st, 2014 there will be differences and conflicts between the State and federal standards. This rulemaking package addresses the limited number of conflicts where compliance with the State standards forces a violation of the corresponding federal standards.

Evaluation of consistency

There are no inconsistent or incompatible regulations proposed.

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 DSA-AC has determined that the proposed regulatory action would not impose a new mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

(Government Code Section 11346.5(a)(6)) An estimate, prepared in accordance with instructions adopted by Department of Finance, of cost or savings to any state agency, local agency, or school district. Provide a copy of the "Economic and Fiscal Impact Statement" (Form 399)

- 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 NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

DSA-AC has made an initial determination that the adoption of this regulation will not have a significant

statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

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 the public's health, safety or welfare.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

DSA-AC 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

DSA-AC 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.
DSA-AC 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.
DSA-AC has determined that the proposed action has no effect.
- [] The expansion of businesses currently doing business with the State of California.
DSA-AC has determined that the proposed action has no effect.
- [] The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

The DSA has determined that the proposal establishes minimum requirements to safeguard

the public health, safety and general welfare through structural strength, means of egress facilities, stability, access to persons with disabilities, sanitation, adequate lighting and ventilation, and energy conservation; safety to life and property from fire and other hazards attributed to the built environment; and to provide safety to fire fighters and emergency responders during emergency operations.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

DSA-AC has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

DSA-AC has determined that no reasonable alternative considered by the state agency or that has otherwise been identified and brought to the attention of DSA-AC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

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.

CBCS CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

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

Enrique M. Rodriguez, Associate Construction Analyst
 Michael Nearman, Deputy Executive Director
 2525 Natomas Park Drive, Suite 130
 Sacramento, CA 95833
 Telephone No.: (916) 263-0916
 Facsimile No.: (916) 263-0959

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:

Dennis J. Corelis, Deputy State Architect
 Ph. (916) 445-4167
Dennis.Corelis@dgs.ca.gov

Derek M. Shaw, Associate Architect
 Ph. (916) 324-7178
Derek.Shaw@dgs.ca.gov

Division of the State Architect — Headquarters
 1102 Q Street, Suite 5100
 Sacramento, CA 95811
 DSA Facsimile No: (916) 445-7658

TITLE 28. DEPARTMENT OF MANAGED HEALTH CARE

SUBJECT: Pervasive Developmental Disorder and Autism Coverage; Adopting section 1300.74.73 in Title 28, California Code of Regulations; Control No. 2012-3681

PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care (“Department”) proposes to adopt a regulation under the Knox-Keene Health Care Service Plan Act of 1975 (“Knox-Keene Act”), section 1300.74.73, “Pervasive Developmental Disorder and Autism Coverage.”

This rulemaking action proposes to adopt section 1300.74.73, in Title 28, California Code of Regulations. Before undertaking this action, the Director of the Department (“Director”) will conduct written public proceedings, during which time any interested person, or

such person’s duly authorized representative, may present statements, arguments, or contentions relevant to the action described in this notice.

PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may submit a written request for a public hearing pursuant to Section 11346.8(a) of the Government Code. The written request for hearing must be received by the Department’s contact person, designated below, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written statements, arguments or contentions (hereafter referred to as comments) relating to the proposed regulatory action by the Department. Comments must be received by the Department, Office of Legal Services, **by 5 p.m. on November 19, 2012**, which is hereby designated as the close of the written comment period.

Please address all comments to the Department of Managed Health Care, Office of Legal Services, Attention: Jennifer Willis, Senior Counsel. Comments may be transmitted by regular mail, fax, email or via the department’s website:

Website: <http://dmhc.ca.gov/regulations/>
 Email: regulations@dmhc.ca.gov
 Mail: Department of Managed Health Care
 Office of Legal Services
 Attn: Jennifer Willis, Senior Counsel
 980 9th Street, Suite 500
 Sacramento, CA 95814
 Fax: (916) 322-3968

Please note: if comments are sent via the website, email or fax, there is no need to send the same comments by mail delivery. All comments, including via the website, email, fax or mail, should include the author’s name and a U.S. Postal Service mailing address so the Department may provide commenters with notice of any additional proposed changes to the regulation text.

Please identify the action by using the Department’s rulemaking title and control number, **Pervasive Developmental Disorder and Autism Coverage, Control No. 2012-3681** in any of the above inquiries.

CONTACTS

Inquiries concerning the proposed adoption of these regulations may be directed to:

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AVAILABILITY OF DOCUMENTS

The Department has prepared and has available for public review the Initial Statement of Reasons, text of the proposed regulation and all information upon which the proposed regulation is based (“rulemaking file”). This information is available by request to the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Sacramento, CA 95814, Attention: Regulations Coordinator.

The Notice of Proposed Rulemaking Action, the proposed text of the regulation, and the Initial Statement of Reasons are also available on the Department’s website at the “[Open Pending Regulations](http://wps0.dmhc.ca.gov/regulations/)” section of <http://wps0.dmhc.ca.gov/regulations/>.

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the Regulation Coordinator named above.

AVAILABILITY OF MODIFIED TEXT

The full text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days before the date the Department adopts the regulation. A request for a copy of any modified regulation(s) should be addressed to the Regulations Coordinator. The Director will accept comments via the Department’s website, mail, fax or email on the modified regulation(s) for 15 days after the date on which the modified text is made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth without further notice.

AUTHORITY AND REFERENCE

California Health and Safety Code Section 1344 authorizes the Director to adopt, amend and rescind regulations as necessary to carry out the provisions of the Knox-Keene Act, including rules governing applications and reports, and defining any terms, whether or not used in the Knox-Keene Act, insofar as the definitions are not inconsistent with the provisions of the Knox-Keene Act. Furthermore, the Director may waive any requirement of any rule or form in situations where in the Director’s discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to the Knox-Keene Act.

Health and Safety Code Section 1345 requires health care services to be furnished by professionals, organizations, health facilities, or other persons or institutions licensed by the State to deliver or furnish health care services.

Health and Safety Code Section 1367 lays out the general requirements that must be met by health plans under the Knox-Keene Act, including the requirement that a health plan provide enrollees with medically necessary basic health care services and access to an adequate provider network.

Health and Safety Code Section 1374.72 requires health plans to provide coverage for diagnosis and medically necessary treatment of specified mental health conditions, including PDD and autism, under the same terms and conditions that are applied to physical health conditions. Health and Safety Code Section 1374.72 requires all full-service¹ health plan contracts to “provide coverage for the diagnosis and medically necessary treatment of severe mental illness [SMI] of a person of any age, and of serious emotional disturbances of a child.” SMI is specifically defined to include PDD and autism.

Health and Safety Code Section 1374.73 allows health plans to provide medically necessary BHT, including ABA, to individuals with autism and PDD, beginning July 1, 2012, by non-licensed professionals in compliance with detailed criteria set forth in the statute. Health and Safety Code Section 1374.73 states that its provisions do not apply to Healthy Families enrollees and the California Public Employees Retirement System (“CalPERS”) members, it also specifically states that it does not affect, reduce, or limit the health plans’ obligations to cover medically necessary treatment, including BHT, under existing mental health parity law, Health and Safety Code Section 1374.72.

¹ A full-service health plan is a health plan that offers all basic health care services as required by the Knox-Keene Act.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**General Background**

Autism spectrum disorders (“ASD”), including PDD, are developmental disabilities that can cause significant social, communication, and behavioral challenges over the span of a person’s entire life. These conditions are typically diagnosed in early childhood and are characterized by social and communication impairments, focused interests, and repetitive behaviors. Many children diagnosed with autism are also intellectually disabled.² The per-capita lifetime costs of autism are estimated at \$3.2 million, including lost productivity and the need for adult care.³ A recent study by the Centers for Disease Control and Prevention estimates the prevalence of ASD at 1 in 88 children, an increase of 23 percent over two years.⁴ The same report noted that the prevalence of ASD in boys is 1 in 54 and the prevalence in girls is 1 in 252.⁵ Given the increase in ASD diagnoses and the significant medical and financial implications for this growing population, uninterrupted behavioral health interventions, such as BHT, including ABA therapy, can substantially improve outcomes for children diagnosed with these conditions. These interventions are critical and should be administered at the earliest possible time.

Research has shown that early and immediate intervention is vital to effective treatment of PDD or autism.⁶ If ASD symptoms are apparent before the age of 3 years, treatment for the condition should begin immediately upon diagnosis. However, disputes over whether certain types of treatments are medically necessary or a covered health care service often delay nec-

essary treatment for children with autism.⁷ This delay can result in stifled improvement, severe impairment, and permanent developmental damage that may not be regained through later treatment.⁸ In addition, when health plans deny or delay coverage for PDD and autism, including ABA therapy, families with children diagnosed with PDD or autism must either pay thousands of dollars out-of-pocket for critical treatment or forgo altogether beneficial and necessary BHT for their children.

The Healthy Families program is California’s low-cost insurance program that provides health, dental and vision coverage to children who do not have insurance and do not qualify for no-cost Medi-Cal. As of April, 2012, the Healthy Families program had over 870,000 enrolled children.⁹ The Managed Risk Medical Insurance Board administers the Healthy Families program and contracts with health plans to arrange and cover health care services.

CalPERS provides comprehensive health benefits to more than 1.3 million California state employees, retirees and their families, and government agency and school employees. CalPERS is the largest purchaser of health benefits in California and the second largest in the country after the federal government. CalPERS offers a choice of coverage between HMO coverage and self-insured products. Two major health plans that contract with CalPERS are regulated under the Knox-Keene Act: Kaiser Foundation Health Plan, Inc. (“Kaiser”) and Blue Shield of California (“BSC”).

It is estimated that 1 out of every 88 children has ASD.¹⁰ This means that it can be estimated that at least 9,886 children in the Healthy Families program have ASD. Using a conservative estimate that 25% of CalPERS members are children under the age of 18, it can be estimated that 3,693 CalPERS members have ASD. With a per-capita lifetime cost for autism of \$3.2 million for the estimated 13,579 Healthy Families enrollees and CalPERS members, this equals approximately \$43,452,800 in lifetime autism care, including health care costs, if services are interrupted.

⁷ Since 2010, the Department’s Help Center has received 228 grievances involving health plan denials of ABA therapy. In those cases where the ABA issue was resolved exclusively using the Department’s standard complaint process, 185, or approximately 81%, of the complaints were resolved in favor of the enrollee. In those cases that involved an IMR, 86% of the IMRs were resolved in favor of the enrollee.

⁸ <http://www.cdc.gov/ncbddd/autism/facts.html#3>

⁹ http://www.mrmib.ca.gov/mrmib/HFP/Apr_12/HFPRptSum.pdf

¹⁰ Centers for Disease Control and Prevention, Prevalence of Autism Spectrum Disorders — Autism and Developmental Disabilities Monitoring Network, 14 Sites, United States, 2008; Morbidity and Mortality Weekly Report (Mar. 30, 2012); http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6103al.htm?s_cid=ss6103al_w.

² Geraldine Dawson et al, Randomized, Controlled Trial of an Intervention for Toddlers with Autism: The Early Start Denver Model, *Pediatrics*, Vol. 125, No. 1 (Nov. 30, 2009), p. e18; <http://pediatrics.aappublications.org/content/125/1/e17.full.html>.

³ *Ibid.*

⁴ Centers for Disease Control and Prevention, Prevalence of Autism Spectrum Disorders — Autism and Developmental Disabilities Monitoring Network, 14 Sites, United States, 2008; Morbidity and Mortality Weekly Report (Mar. 30, 2012); http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6103al.htm?s_cid=ss6103al_w.

⁵ *Ibid.*

⁶ A 2009 study compared young children (18–30 months) who received comprehensive early intervention, including applied behavior analysis, for 25 hours per week to children who received intervention from commonly available community providers. Those who received comprehensive early intervention demonstrated improved outcomes, including significant improvements in IQ, adaptive behavior, and diagnostic status compared to the group who only received community interventions. Geraldine Dawson et al, “Randomized, Controlled Trial of an Intervention for Toddlers with Autism: The Early Start Denver Model,” *Pediatrics*, Vol. 125, No. 1 (Nov. 30, 2009), p. e22.

The three largest health plans with Healthy Families enrollees and CalPERS members are: 1) Kaiser; 2) BSC; and 3) Anthem Blue Cross (“ABC”). Kaiser has approximately 190,000 Healthy Families enrollees and 530,000 CalPERS members. BSC has approximately 33,000 Healthy Families enrollees¹¹ and 400,000 CalPERS members. ABC has approximately 197,000 Healthy Families enrollees and no CalPERS members.

California has a mental health parity law contained in Section 1374.72 of the Knox–Keene Act. This law was enacted in 1999. The mental health parity statute does not list the specific services that health plans must cover. Rather, it identifies specific mental health conditions (such as PDD and autism) that are subject to the statute’s requirements. The mental health parity statute requires that health plans provide medically necessary treatment for those conditions. As such, BHT is used to treat individuals with both physical and mental health issues and conditions.¹² ABA therapy is a type of BHT.¹³ ABA therapy is a recognized treatment used to treat children with PDD or autism.¹⁴ ABA uses modern behavioral learning theory to modify behaviors by focusing on the observable relationship of behavior to the environment. Because ABA comprises many assessment and behavioral changing procedures, ABA can be a medical or nonmedical service depending on its application. Since the implementation of mental health parity in 2000, health plans have been required to cover medically necessary treatments for autism, including ABA services, when provided by a licensed individual.¹⁵ SB 946, which relaxed the licensure requirements for administering ABA therapy, did not affect this coverage requirement for Healthy Families and CalPERS enrollees.

Historically, health plans denied claims for BHT, and more particularly, ABA, for children diagnosed with PDD and autism on the grounds that the services were either not medically necessary or were experimental/investigational. Those decisions by the health plans were generally overturned by the Department’s external review process known as Independent Medical Review (IMR). However, a few years ago health plans be-

gan denying coverage for those services altogether, arguing they have no legal obligation to cover ABA because the services are: (1) not health care services and health plans are only obligated under the Knox–Keene Act to cover health care services; (2) excluded under the terms and conditions of the health plan contract; or (3) educational services. Another frequent health plan argument was that since ABA services could be administered by non–licensed individuals, they could not, as a matter of law, be health care services. This argument, however, ignored the fact that licensed health care providers were authorized to provide BHT, including ABA therapy, as an integral part of a patient’s treatment plan.

In the vast majority of cases that come to the Department, the Department finds that the requested ABA is a covered health care service that must be provided by a licensed provider. The determination whether ABA therapy is a covered benefit requires a case–by–case analysis and depends primarily on the licensed treating provider’s assessment and evaluation. If the treating provider determines that the requested ABA therapy requires the skill and expertise of a licensed health care provider, then the services are likely to be considered health care services and, consequently, a covered benefit, subject to exclusions and limitations in the health plan contract. If the individual’s condition does not require the skill and expertise of a licensed health care provider, prior to July 1, 2012, the services were not found to be a covered benefit.

While health plan BHT denials have been frequently overturned by the Department’s Complaint and Independent Review Processes,¹⁶ health plans have resisted developing adequate networks of licensed providers with the skill and expertise to deliver medically necessary BHT therapy, and particularly ABA. Health plans generally have two reasons for failing to develop adequate networks: 1) a shortage of appropriately licensed providers willing to provide ABA, and 2) their claim that ABA is not a health care service. Currently, when ABA services are deemed medically necessary, many health plans enter into arrangements with a licensed provider with BHT or ABA experience on an individual patient basis. But that provider remains unavailable to other health plan members seeking similar services.

In July 2011, to improve access to ABA therapy, the Department undertook enforcement actions against two of California’s largest health plans: ABC and BSC for their systemic denial of ABA authorizations for individuals with autism, in violation of Health and Safety Code Section 1374.72, the mental health parity statute. To avoid the prospect of litigation, these two major health plans entered into settlement agreements with

¹¹ BSC will be exiting the Healthy Families program on October 31, 2012.

¹² For example, see <http://www.healthline.com/galecontent/behavioral-therapy>.

¹³ See the National Autism Center’s National Standards Project, “Findings and Conclusions,” (2009). <http://www.nationalautismcenter.org/pdf/NAC%20Findings%20&%20Conclusions.pdf>.

¹⁴ Geraldine Dawson et al, Randomized, Controlled Trial of an Intervention for Toddlers with Autism: The Early Start Denver Model, *Pediatrics*, Vol. 125, No. 1 (Nov. 30, 2009), pgs. e21–22; <http://pediatrics.aappublications.org/content/125/1/e17.full.html>.

¹⁵ Health and Safety Code Section 1374.72(a).

¹⁶ Health and Safety Code Sections 1368(b), 1370.4, and 1374.30(d)(3).

the Department to provide coverage for medically necessary ABA services without waiving their coverage and provider licensure defenses. Time restraints impeded the Department's ability to secure similar settlement agreements with the other full-service health plans¹⁷ that are subject to the mental health parity statute.

Knox–Keene Act and Other Statutory Provisions

Under the Knox–Keene Act, a health plan may be obligated to cover a service because it is: (1) a basic health care service as defined in Health and Safety Code Section 1345(b); (2) a specific service mandated by the Legislature; or (3) a service the health plan contractually agreed to provide.

Health and Safety Code Section 1345(b) of the Knox–Keene Act defines the broad categories of basic health care services that health plans must offer, which include physician services, both consultation and referral; hospital inpatient services and ambulatory care services; diagnostic laboratory and diagnostic and therapeutic radiologic services; home health services; preventative health services; emergency health care services, ambulance transport services; and hospice care.¹⁸ Health and Safety Code Section 1345 requires health care services to be furnished by professionals, organizations, health facilities, or other persons or institutions licensed by the State to deliver or furnish health care services. Business and Professions Code Section 2052 states that only licensed individuals can diagnose or treat a person for any physical or mental condition unless the Legislature provides an exception to the prohibition.

Health and Safety Code Section 1367 sets forth the general requirements that health plans must meet under the Knox–Keene Act, including the requirement that a health plan provide enrollees with medically necessary basic health care services and access to an adequate network.¹⁹ The Knox–Keene Act, with the exception of specific health benefit mandates, does not attempt to enumerate the specific health care services and treatments that are included in the concept of “basic health care services” under Health and Safety Code Section 1367(i).²⁰ As indicated above, in addition to basic health care services, the Legislature enacts specific health benefit mandates that require health plans to include specific services in their health insurance products (plans and policies).²¹

¹⁷ A full-service health plan is a health plan that offers all basic health care services as required by the Knox–Keene Act.

¹⁸ Health and Safety Code Section 1345(b).

¹⁹ Health and Safety Code Section 1367(i).

²⁰ For examples of required statutory benefit mandates see the California Health Benefits Review Program, “Appendix 20: Existing Mandates in California Law,” (2009) at http://www.chbrp.org/documents/sb1704/ap_20.pdf.

²¹ *Ibid.*, at p. 6.

In 1999, AB 88 (Thompson), Chapter 534, Statutes of 1999, California enacted a mental health parity law, Health and Safety Code Section 1374.72 of the Knox–Keene Act, which requires health plans to provide coverage for diagnosis and medically necessary treatment of specified mental health conditions, including PDD and autism, under the same terms and conditions that are applied to physical health conditions.²² Health and Safety Code Section 1374.72 requires all full-service health plan contracts to “provide coverage for the diagnosis and medically necessary treatment of severe mental illness [SMI] of a person of any age, and of serious emotional disturbances of a child.” SMI is specifically defined to include PDD and autism.

SB 946 adds Section 1374.73 to the Knox–Keene Act. The statute provides:

Every health care service plan contract that provides hospital, medical, or surgical coverage shall *also provide coverage for behavioral health treatment* for pervasive developmental disorder or autism no later than July 1, 2012. The coverage shall be provided in the same manner and shall be subject to the same requirements as provided in Section 1374.72. (Section 1374.73(a)(1), emphasis added.)

Health and Safety Code Section 1374.73 defines BHT to mean professional services and treatment programs, including ABA and evidence-based behavior intervention programs, needed to develop or restore functioning in an individual with PDD or autism, and meets criteria requirements such as a treatment plan with measurable goals.²³

Health and Safety Code Section 1374.73(b) authorizes health plans to use non-licensed professionals and paraprofessionals to deliver BHT: “[e]very health care service plan subject to this section *shall maintain an adequate network* that includes qualified autism service providers who supervise and employ qualified autism service professionals and qualified autism service paraprofessionals . . .” (Emphasis added.) Once SB 946 created an exception to the licensed provider requirement, the Legislature simply required health plans to maintain an adequate network of qualified autism service providers, professionals or paraprofessionals who provide and administer BHT, including ABA therapy.²⁴

Health and Safety Code Section 1374.73(d) expressly excludes Healthy Families enrollees and CalPERS members from the relaxed provider licensure requirements that apply to health plans under the Knox–Keene Act and the Business and Professions Code. Specific-

²² Health and Safety Code Section 1374.72(a).

²³ Health and Safety Code Section 1374.73(c)(1).

²⁴ Health and Safety Code Section 1374.73(b).

ly, Health and Safety Code Section 1374.73(d) provides that the SB 946 requirements do not apply to health plan contracts for: (1) specialized health plans that do not provide mental or behavioral health services, (2) Medi-Cal Managed Care, (3) the Healthy Families Program, and (4) CalPERS.²⁵

Health and Safety Code Section 1374.73(d) must be read in conjunction with subsection (e), which emphasizes that, “Nothing in this section shall be construed to limit a health plan’s obligation to provide services under Section 1374.72.” As previously discussed, Section 1374.72 of the Knox–Keene Act is the existing mental health parity law, which requires health plans to cover medically necessary treatment for PDD and autism, including BHT and ABA therapies, so long as the service is provided by a licensed professional. After the July 1, 2012, implementation date of SB 946, health plans continued to be required to cover medically necessary services for PDD or autism to Healthy Families and CalPERS enrollees by licensed health care providers as originally contemplated by Health and Safety Code Section 1374.72.

Health Plan Confusion Regarding Coverage Requirements under the Knox–Keene Act

On December 11, 2011 and April 26, 2012, BSC and ABC notified the Department that effective June 30, 2012, they would cease providing ABA therapy pursuant to the terms of their respective settlement agreements.²⁶ BSC further informed the Department the health plan believes that as a result of the enactment of SB 946, health plans have no legal requirement to provide BHT or ABA services to CalPERS members and Healthy Families enrollees as of July 1, 2012, even under existing mental health parity law.²⁷ ABC verbally communicated the same to the Department. The Department understands that this position is shared by many of the other full–service health plans that provide

services to Healthy Families enrollees and CalPERS members. BSC sent a second letter to the Department on February 27, 2012, reiterating its decision to cease providing ABA services under the terms of the health plan’s settlement agreement with the Department.²⁸ The Department is also currently reviewing health plan filings that contain information regarding each health plan’s implementation of SB 946. All health plans that have Healthy Families enrollees and CalPERS members have provided a written affirmation in their SB 946 filings that state it is their understanding that Healthy Families and CalPERS coverage is exempt from the requirements of SB 946. The revised Evidence of Coverage (“EOC”) for most of the health plans with CalPERS members or Healthy Families enrollees does not contain information regarding BHT, unlike other EOCs for different types of coverage.

Following the receipt of the health plan communications regarding cessation of ABA services, the Department immediately commenced discussions with the health plans. In June 2012, the Department entered into limited informal interim agreements with BSC, ABC and Kaiser in which these three major health plans agree to continue covering BHT, including ABA, for Healthy Families enrollees and CalPERS members after the July 1, 2012 implementation date of SB 946. BSC agreed to cover ABA through September 30, 2012 for Healthy Families enrollees and CalPERS members and will cover and authorize ABA services on or after June 15, 2012, for a period of three months. ABC agreed to follow the terms of the previous executed settlement agreement and issue 6 month authorizations for Healthy Families enrollees, and more recently, the parties have agreed to extend ABC’s interim agreement to December 31, 2012. These agreements are temporary in nature and are not a permanent fix to the coverage disputes amongst the parties. In addition, these settlements do not bind the 25 other health plans that provide services to Healthy Families enrollees. Kaiser agreed to cover medically necessary BHT for both Healthy Families enrollees and CalPERS members diagnosed with PDD or autism for no specific duration.

On June 27, 2012, Kaiser sent the Department a “Petition Requesting Initiation of Formal Rulemaking and Promulgating of Regulations” (“Petition”) requesting

²⁵ Health and Safety Code Section 1374.73(d).

²⁶ See Attachment 1, December 7, 2011, Letter from Mary C. St. John, Associate General Counsel, Blue Shield of California, to Brent Barnhart, Director of the Department of Managed Health Care: “Re: Enforcement Matters 10–560, 10–561, 11–022, 11–038, 11–039, 11–262, Settlement Agreement of July 1, 2011.” See also April 26, 2012, Letter from Andrew Russell, Associate General Counsel, Anthem Blue Cross, to Brent Barnhart, Director of the Department of Managed Health Care, “Re: Notice Pursuant to Settlement Agreement.”

²⁷ See Attachment 1, December 7, 2011, Letter from Mary C. St. John, Associate General Counsel, Blue Shield of California, to Brent Barnhart, Director of the Department of Managed Health Care: “Re: Enforcement Matters 10–560, 10–561, 11–022, 11–038, 11–039, 11–262, Settlement Agreement of July 1, 2011.”

²⁸ See Attachment 2, February 27, 2012, Letter from Mary C. St. John, Associate General Counsel, Blue Shield of California, to Brent Barnhart, Director of the Department of Managed Health Care: “Re: Enforcement Matters 10–560, 10–561, 11–022, 11–038, 11–039, 11–262, Settlement Agreement of July 1, 2011.”

that the Department adopt a regulation under Government Code section 11340.6.²⁹ The terms of the requested regulation would clarify:

- Whether contracts between health care service plans and the Board of Administration of the California Public Employees Retirement System (CalPERS) and the Healthy Families Program (Healthy Families) administered by the California Managed Risk Medical Insurance Board (collectively referred to herein as the “Public Purchasers”) must include coverage of Behavioral Health Treatment (BHT), including applied behavior analysis (ABA) defined in Health & Safety Code § 1374.73 (S.B. 946);
- If DMHC requires coverage of BHT in health care service plan contracts with Public Purchasers, the licensure and certification requirements for individuals who provide BHT;
- The ongoing statutory obligations of the Regional Centers to provide BHT to enrollees of the Public Purchasers pursuant to the Regional Centers’ contracts with the State of California for services governed by the Lanterman Act (Cal. Welf. & Instit. Code § 4500 et seq.) and the Intervention Services Act (Cal. Gov’t Code § 95000 et seq.) in light of the statutory exemption contained in S.B. 946 for health care service contracts with the Public Purchasers.

The Department responded to the Kaiser Petition on August 27, 2012.³⁰

Purpose of the Regulation

The health plans’ stated confusion and misinterpretation regarding whether there is a statutory obligation after July 1, 2012 to provide medically necessary services will lead to denials or delays in authorizing BHT, including ABA, to Healthy Families enrollees and CalPERS members. These denials and delays could cause stifled improvement, severe impairment and permanent developmental damage to impacted enrollees that may not be regained through later treatment as well as substantial financial harm.

This confusion could also lead to negotiation problems with the Managed Risk Medical Insurance Board (“MRMIB”) and CalPERS as they attempt to negotiate premium rates with health plans based on the scope of

covered services for enrollees, and whether BHT, including ABA, is included.

The regulation proposed in this rulemaking action clarifies and makes specific the requirements within State law. The regulation proposed in this rulemaking action is neither inconsistent nor incompatible with existing state regulations.

This regulation was initially adopted by the Department as an emergency regulation that was approved by the Office of Administrative Law on September 6, 2012.

Broad Objectives and Benefits of Regulation

Pursuant to Government Code Section 11346.5(a)(3)(C), the broad objectives and benefits of this proposed regulation, subdivision (a)(1), is that it will clarify that SB 946 did not reduce, limit, or exclude coverage for medically necessary mental health services, including BHT and ABA, provided by licensed providers for Healthy Families enrollees and CalPERS members after the July 1, 2012 implementation date of the legislation. The public health will be protected because the regulation will ensure that Healthy Families enrollees and CalPERS members access to medically necessary BHT, including applied behavior analysis, is not interrupted or delayed. It is generally recognized that significant interruptions or delays in securing medically necessary BHT, including ABA therapy, can result in stunted and permanent impaired developmental outcomes and can cause irreparable disability to children with PDD and autism.

Pursuant to Government Code Section 11346.5(a)(3)(C), the broad objectives and benefits of this proposed regulation, subdivision (a)(2) is that health plans cover health care services that are medically necessary and health plans may perform utilization review of requested health care services to ensure that the services are medically necessary.

Pursuant to Government Code Section 11346.5(a)(3)(C), the broad objectives and benefits of this proposed regulation, subdivisions (a)(3)(A)–(a)(3)(D), is that the Department must be able to verify the adequacy of each health plan’s BHT network to protect the public health. This reporting requirement will help ensure that children with autism will not be subject to potential delays and/or interruptions in accessing BHT, including ABA services, which can result in stifled improvement, severe impairment and permanent developmental damage that may not be regained through later treatment. The network reporting information will allow the Department to determine service areas where provider shortages exist and to identify strategies, in collaboration with the health plans, to make certain that children with autism who live in underserved or other challenged geographic

²⁹ See Attachment 3, June 27, 2012, Letter from Jerry Fleming, Senior Vice President, Kaiser Permanente, to Brent Barnhart, Director of the Department of Managed Health Care: “Re: Petition Requesting Initiation of Formal Rulemaking and Promulgating of Regulation.”

³⁰ The Department and Kaiser entered into an agreement on July 24, 2012, extending the date that the Department could respond to the Petition until July 27, 2012.

areas receive timely access to medically necessary BHT services and are not subject to potential delays or interruptions in care because of an inadequate network.

Comparison to Existing Regulations

Pursuant to Government Code Section 11346.5(a)(3)(D) the proposed regulation was evaluated and was not found to be inconsistent or incompatible with existing state regulations. The Department compared the following related existing regulations located in the California Code of Regulations, title 28: 1300.74.72, 1300.67.2, 1300.67.2.1, 1300.67.2.2, 1300.45, and 1300.74.30.

ALTERNATIVES CONSIDERED

Pursuant to Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or has otherwise been identified or brought to the attention of the Department would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

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

SUMMARY OF FISCAL IMPACT

- Mandate on local agencies and school districts: None.
- Cost or Savings to any State Agency: Yes (see below).
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Costs to private persons or businesses directly affected: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Housing Costs: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.

COSTS OR SAVING TO STATE AGENCY

The Department of Developmental Services (“DDS”) states in the May 2012 Revised Budget that there will be an anticipated savings of \$69.4 million to the General Fund resulting from the implementation of SB 946, because health plans are now authorized as a result of this bill to provide medically necessary behavioral health treatments, including applied behavior analysis, through non-licensed professionals and paraprofessionals that meet certain specified criteria. These savings stem from a DDS assumption that certain medically necessary behavioral services that health plans previously refused to cover and pay for because they were provided by non-licensed individuals will now be available (reimbursable) through private health insurance coverage.

DETERMINATIONS

The Department has made the following initial determinations:

The Department has determined the regulation will not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has determined the regulation will have no significant effect on housing costs.

The Department has determined the regulation does not affect small businesses. Health care service plans are not considered a small business under Government Code Section 11342.610(b) and (c).

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

The Department has determined that this regulation will have no cost or savings in federal funding to the state.

**RESULTS OF THE ECONOMIC
IMPACT ANALYSIS
(Government Code § 11346.3(b))**

Creation or Elimination of Jobs Within the State of California

This regulation is intended to clarify and make specific the existing State law for health plans under the Knox-Keene Act. This regulation is designed to clarify and make specific that health plans are required to provide medically necessary BHT, including ABA, for CalPERS members and Healthy Families enrollees under existing law. The health plans continue to be able to

conduct utilization review to determine the medical necessity of these requested services. Health plans subject to the requirements of SB 946 must also demonstrate that they have an adequate network of providers to treat enrollees as required by this legislation. Therefore, the Department has determined the regulation will not significantly affect the creation or elimination of jobs within the State of California.

Creation of New or Elimination of Jobs Within the State of California

This regulation is intended to clarify and make specific the existing State law for health plans under the Knox-Keene Act. This regulation is designed to clarify and make specific that health plans are required to provide medically necessary BHT, including ABA, for CalPERS members and Healthy Families enrollees under existing law. The health plans continue to be able to conduct utilization review to determine the medical necessity of these requested services. Health plans subject to the requirements of SB 946 must also demonstrate that they have an adequate network of providers to treat enrollees as required by this legislation. The Department has determined the regulation will not significantly affect the creation of new businesses or the elimination of existing businesses within the State of California.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California

This regulation is intended to clarify and make specific the existing State law for health plans under the Knox-Keene Act. This regulation is designed to clarify and make specific that health plans are required to provide medically necessary BHT, including ABA, for CalPERS members and Healthy Families enrollees under existing law. The health plans continue to be able to conduct utilization review to determine the medical necessity of these requested services. Health plans subject to the requirements of SB 946 must also demonstrate that they have an adequate network of providers to treat enrollees as required by this legislation. The Department has determined the regulation will not significantly affect the expansion of businesses currently doing business within the State of California.

BENEFITS OF THE REGULATION

This regulation will clarify that SB 946 did not reduce, limit, or exclude coverage for medically necessary mental health services, including BHT and ABA, provided by licensed providers for Healthy Families enrollees and CalPERS members after the July 1, 2012 implementation date of the legislation. This regulation benefits the public by making specific that health plans continue to be obligated to provide medically necessary

BHT, including ABA, to CalPERS members and Healthy Families enrollees. The public health will be protected because the regulation will ensure that Healthy Families enrollees' and CalPERS members' access to medically necessary BHT, including applied behavior analysis, is not interrupted or delayed. It is generally recognized that significant interruptions or delays in securing medically necessary BHT, including ABA therapy, can result in stunted and permanent impaired developmental outcomes and can cause irreparable disability to children with PDD and autism. The regulation also clarifies that health plans continue to be permitted to perform utilization review of requested health care services to ensure that the prescribed services are medically necessary.

This regulation is necessary so that the Department is able to verify the adequacy of each health plan's BHT network to protect the public health. The benefit of this reporting requirement is that it will help ensure that children with autism will not be subject to potential delays and/or interruptions in accessing BHT, including ABA services, which can result in stifled improvement, severe impairment and permanent developmental damage that may not be regained through later treatment. The network reporting information will allow the Department to determine service areas where provider shortages exist and to identify strategies, in collaboration with the health plans, to make certain that children with autism who live in underserved or other challenged geographic areas receive timely access to medically necessary BHT services and are not subject to potential delays or interruptions in care because of an inadequate network.

ATTACHMENT 1

Blue Shield of California

December 7, 2011

Brent Barnhart, Director
 Department of Managed Health Care
 980 Ninth Street, Suite 500
 Sacramento, CA 95814

Re: Enforcement Matters 10-560, 10-561,
 11-022, 11-038, 11-039, 11-262
 Settlement Agreement of July 11, 2011

Dear Mr. Barnhart:

This letter serves to notify the Department of Managed Health Care (the "Department") that the California Legislature has taken action that impacts the Settlement Agreement between the Department and Blue Shield of California (the "Plan") dated July 11, 2011

(the "Agreement"). While the Plan could cease performance under the Agreement, the Plan intends to continue covering ABA services to provide its members continuity. However, in order to transition members to the coverage contemplated by the Legislature, the Plan is proposing to amend the Agreement, as described below.

Pursuant to Paragraph J of Section II of the Agreement, the Plan has the right to cease performance upon 60 days notice to the Department that an act by the California Legislature supports the Plan's contention that ABA is not required to be covered under the Knox-Keene Act. On October 9, 2011, SB 946 (Steinberg, Chapter 650) was enacted into California law. This bill requires health care service plans to provide coverage of behavioral treatment, including Applied Behavior Analysis ("ABA") services, beginning July 1, 2012. The benefit mandate imposed by SB 946 does not apply to CalPERS or Healthy Families members. Additionally, the mandate to provide the coverage is inoperative as of July 1, 2014 and does not require coverage beyond that which is required as an essential benefit under federal regulations (currently undefined).

The Plan contends that SB 946 provides legislative confirmation that health care service plans are under no obligation to cover ABA services prior to July 1, 2012. However, the Plan will continue covering ABA while it implements the requirements of SB 946. In order to facilitate a smooth transition from the Settlement Agreement to SB 946, and in recognition of the new law, the Plan proposes amending the Agreement as follows:

- 1) The Agreement will automatically terminate at midnight June 30, 2012.
- 2) Authorizations for services made pursuant to the Agreement will be phased out to end July 1, 2012.
- 3) From January 1, 2012 to March 31, 2012 Blue Shield will cover ABA services for an initial 3 month period and will not dispute the medical necessity of the services or the frequency of which the services are prescribed.
- 4) Authorizations made pursuant to the Agreement from April 1, 2012 to June 30 will end July 1, 2012. After April 1 and after the plan's SB 946 implementation filing is submitted, the Plan will have the option to cover ABA services pursuant to its SB 946 filing.
- 5) Healthy Families and CalPERS members will continue to receive coverage until July 1, 2012.
- 6) Beginning January 1, 2012, once the enrollee has received services for the initial six- or three-month period, ongoing authorizations will be subject to medical necessity review.
- 7) Amendments to the Agreement will not impact authorizations currently in effect.

Thank you for your prompt attention to this matter. Please feel free to contact me with any questions.

Very truly yours,

s/s

Mary C. St. John, Esq.
Associate General Counsel

Anthem Blue Cross

April 26, 2012

Mr. Brent Barnhart
Director
Ms. Maureen McKennan
Deputy Director of Plan and Provider Relations
California Department of Managed Health Care
980 Ninth Street, Suite 500
Sacramento, CA 95814

RE: Notice Pursuant to Settlement Agreement

Dear Mr. Barnhart and Ms. McKennan:

This letter serves as notice to the Department of Managed Health Care (the "Department") that as of July 1, 2012, the effective date of the ABA coverage mandate in California SB 946, Blue Cross of California dba Anthem Blue Cross ("Anthem Blue Cross") will cease to perform its obligations under the Settlement Agreement that the Department and Anthem Blue Cross entered into on July 15, 2011 (the "Settlement Agreement"), as provided for in the Settlement Agreement.

Paragraph C of the Settlement Agreement states that "BLUE CROSS agrees to arrange for the provision of all medically necessary ABA services for the treatment of PDD or ASD for all current and future Enrollees and the Subject Enrollees, in accordance with the terms of this Agreement, subject to any development or change in law or regulation, as set forth in paragraph I, that clarifies BLUE CROSS' legal obligations with respect to ABA services."

SB 946 is a change in law that clarifies Anthem Blue Cross' legal obligations with respect to ABA services by requiring every health care service plan that provides hospital, surgical or medical coverage to also provide coverage for behavioral health treatment (including ABA services) for pervasive developmental disorder and autism as of July 1, 2012.

Pursuant to paragraphs C and I of the Settlement Agreement, the enactment of SB 946 relieves Anthem Blue Cross of its responsibility to perform in accordance with any provision of the Settlement Agreement as of July 1, 2012. Consequently, Anthem will change its practices as of that date to comply with SB 946 and cease to perform under the Settlement Agreement as of that date.

Anthem Blue Cross is willing to work with the Department on a transition plan for enrollees who are re-

ceiving coverage for ABA services pursuant to the Settlement Agreement as of July 1, 2012.

Please feel free to call me at (818) 234-2217 if you have any questions about this letter.

Sincerely yours,

s/s

Andrew Russell
Associate General Counsel

cc: Tony Manzanetti, Deputy Director,
DMHC Office of Enforcement

ATTACHMENT 2

Blue Shield of California

February 27, 2012

Brent Barnhart, Director
Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, California 95814

Re: Enforcement Matters 10-560, 10-561,
11-022, 11-039, 11-262 Notice of
Termination of the Settlement Agreement of
July 11, 2011 re ABA Services

Dear Mr. Barnhart:

On December 7, 2011, Blue Shield of California (the "Plan") gave notice pursuant to Paragraph J of Section II of the Settlement Agreement of July 11, 2011 (the "Agreement") between the Plan and the Department of Managed Health Care (the "Department") that actions of the California Legislature supported the Plan's position that ABA is not required to be covered under the Knox-Keene Act. Thereafter, the Plan and the Department entered into good faith negotiations to amend the Agreement consistent with the enactment of SB 946 and in anticipation of the July 1, 2012 effective date of Health & Safety Code § 1374.73.

Regrettably, those negotiations have not resulted in an agreement to amend the Agreement. Pursuant to Paragraph J, the Plan hereby gives notice that it considers the Agreement to have terminated, effective February 5, 2012, and will cease performance under the Agreement. To avoid disruption to Plan enrollees, the Plan will continue to authorize ABA services consistent with the Agreement Section II.A. However, all authorizations under the Agreement will end no later than June 30, 2012.

If Department has further questions or believes that additional information is required, please do not hesitate to contact the undersigned.

Sincerely,

s/s

Mary C. St. John, Esq.
Associate General Counsel

cc: Maureen McKennan, Deputy Director,
Plan and Provider Relations
Anthony Manzanetti, Deputy Director,
Office of Enforcement
Holly Pearson, Deputy Director and
General Counsel
Gretchen M. Lachance, Esq.
Kathleen Lynaugh, Esq.

ATTACHMENT 3

Kaiser Permanente

June 27, 2012

Brent Barnhart
Director
Department of Managed Health Care
980 9th Street, Suite 500
Sacramento, CA 95814-2725

Re: **Petition Requesting Initiation of Formal
Rulemaking and Promulgating of
Regulations**

Dear Director Barnhart:

Pursuant to California Government Code Section 11340.6, Kaiser Foundation Health Plan, Inc. ("Petitioner") petitions the Department of Managed Health Care ("DMHC") to initiate formal rulemaking and to promulgate regulations to clarify:

(1) Whether contracts between health care service plans and the Board of Administration of the California Public Employees Retirement System ("CalPERS") and the Healthy Families Program ("Healthy Families") administered by the California Managed Risk Medical Insurance Board (collectively referred to herein as the "Public Purchasers") must include coverage of Behavioral Health Treatment ("BHT") including Applied Behavioral Analysis ("ABA") defined in Health & Safety Code Section 1374.73 ("S.B. 946");

- (2) If DMHC requires coverage of BHT in health care service plan contracts with Public Purchasers, the licensure and certification requirements for individuals who provide BHT;
- (3) The ongoing statutory obligations of the Regional Centers to provide BHT to enrollees of the Public Purchasers pursuant to the Regional Centers' contracts with the State of California for services governed by the Lanterman Act (Cal. Welfare & Institutions Code § 4500 et seq.) and the Intervention Services Act (Cal. Government Code § 95000 et seq.) in light of the statutory exemption contained in S.B. 946 for health care service contracts with the Public Purchasers.

S.B. 946 mandates that certain Knox-Keene health care service plans "provide coverage for behavioral health treatment for pervasive developmental disorder or autism no later than July 1, 2012." Cal. Health & Safety Code § 1374.73(a)(1). However, S.B. 946 contains a provision exempting certain types of plans from its mandates (in relevant part):

(d) This section shall not apply to the following:

...

- (2) A health care service plan contract in the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).
- (3) A health care service plan contract in the Healthy Families Program (Part 6.2 (commencing with Section 12693) of Division 2 of the Insurance Code).
- (4) A health care benefit plan or contract entered into with the Board of Administration of the Public Employees' Retirement System pursuant to the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22750) of Division 5 of Title 2 of the Government Code).

Id., § 1374.73 (d)(1)–(4).

The plain statutory language, legislative history, and various legislative analyses of S.B. 946 appear to demonstrate the California Legislature's explicit and purposeful exclusion of health care service plan contracts with Medi-Cal, Healthy Families and CalPERS from S.B. 946's coverage mandates. Initial drafts of S.B. 946 required all health care service plan contracts, except for contracts with the Medi-Cal program, to provide coverage for BHT.¹ A report analyzing the initial draft of S.B. 946 determined that the coverage mandates

would cost the State more than \$50 million annually for Healthy Families and CalPERS enrollees alone.² Subsequent drafts of S.B. 946 excluded contracts with Healthy Families and CalPERS from its coverage mandates.³ A Senate Appropriations Committee analysis found that because S.B. 946 "would exempt health plans and insurers that contract with Medi-Cal, Healthy Families, and CalPERS, there would be minimal costs to the state to pay for these mandated services."⁴ The Assembly Appropriations Committee Bill analysis similarly noted that S.B. 946 would create "[m]inor, if any, state health care costs. This bill exempts health plans provided through Medi-Cal, Healthy Families program, and CalPERS from the coverage mandate."⁵

In November 2011, the DMHC informed some health care service plans that despite Section 1374.73(d), it believed that, pursuant to Health and Safety Code Section 1374.72, health care service plans should cover BHT for autism and pervasive developmental disorder for the Public Purchaser enrollees, though not Medi-Cal enrollees. Moreover, in or around March 2012, the DMHC confirmed with the California Association of Health Plans that it had begun an emergency rulemaking process to address its interpretation of S.B. 946 and Section 1374.72. Health care service plans have been awaiting the issuance of these emergency regulations.

It is our further understanding that Public Purchasers interpret Section 1374(d) differently than the DMHC's apparent interpretation. Health care service plans and Public Purchasers negotiate premium rates based on the totality of covered services. Therefore, inclusion or exclusion of a particular set of services will necessarily, and possibly materially, impact the premium. Accordingly, it is essential for health care service plans and Public Purchasers to have a meeting of the minds regarding the scope of contractually covered services. However, the current uncertainty and confusion precludes a meeting of the minds about a sufficient and sustainable premium.

It is our further understanding that several Regional Centers assume that effective July 1, 2012, they will discontinue providing BHT to health care service plan enrollees and refer their clients, including Public Purchaser enrollees, to the health care service plan or insurer with whom a client is enrolled. The Regional Centers' anticipated plans exacerbate the current regulatory

² California Health Benefit Review Program, Analysis of Senate Bill TBD 1: Health Care Coverage: Autism, at 16, Table 1 (March 20, 2011).

³ Fiscal Summary, *supra* note 1 ("... in addition to plans and insurers contracting with Medi-Cal, [S.B. 946] would exempt plans and insurers contracting with Healthy Families and CalPERS.").

⁴ *Id.* at p. 3.

⁵ California State Assembly Appropriations Committee Bill Analysis, September 8, 2011, at p. 2.

¹ California State Senate Appropriations Committee Fiscal Summary, September 9, 2011, at p. 2.

and contract uncertainty with respect to Public Purchasers and their enrollees and underscore the urgent need for clarifying regulations.

Based on the forgoing, Petitioner requests that DMHC complete its emergency rulemaking as soon as possible in light of the July 1, 2012 effective date of S.B. 946.

Promulgation of regulations will clarify Public Purchaser enrollees' expectations about their benefits and enable Public Purchaser enrollees to make informed plans and decisions about the needs of their children.

It will establish clear and fair guidance for all health care service plans as they complete their implementation in preparation for the July 1, 2012 effective date of S.B. 946.

It will enable health care service plans and Public Purchasers to agree on the scope of contractual coverage and enable negotiation of premiums appropriately reflecting the scope of coverage.

It will eliminate the uncertainty and confusion that does not serve anyone.

We respectfully await the DMHC's response.

Sincerely,

s/s

Jerry Fleming

Senior Vice President

Kaiser Foundation Health Plan, Inc.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FOOD AND AGRICULTURE

CORRECTED NOTICE OF A REQUESTED HEARING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) has proposed to adopt section 1350 and amend section 1354 of Subchapter 3, Chapter 1, Division 3, of Title 3 of the California Code of Regulations. The proposal was published in the *California Regulatory Notice Register* on July 6, 2012 [Register 2012, No. 27-Z] but no hearing was scheduled. The Department has received a request for a public hearing; therefore, the hearing will be held in accordance with Government Code section 11346.8 for the proposal relating to the regulation of persons registered with the Department to engage in business in

California as an egg producer or egg handler, and any registered out-of-state egg handler or producer selling eggs in California.

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. Sections 27521, 27531, 27533, 27541, 27573 and 27637 of the Food and Agricultural Code authorize the Department to regulate, in part, the marketing of shell eggs sold to consumers to assure that healthful and wholesome eggs of known quality are sold in the state. This proposal amends the requirements for the marketing of eggs in California by adopting section 1350 (Shell Egg Food Safety) and amending section 1354 (Marking Requirements) of Subchapter 3, Chapter 1, Division 3, of Title 3 of the California Code of Regulations, to ensure that eggs are produced in a uniform manner to ensure the quality and safety of shell eggs sold for human consumption.

The Department is publishing this corrected notice due to a change in the hearing date for the previously noticed public hearing in Sacramento, CA [Register 2012, No. 38-Z]. The Sacramento hearing date has been changed from October 2, 2012 to October 15, 2012, as follows:

October 15, 2012

10:00 a.m. – 2:00 p.m.

Department of Food and Agriculture
1220 N Street, First Floor Auditorium,
Sacramento, CA 95814

Conference Call-In Info:

866-762-9676; Participant Code: 5493774#

Please note: The Department may adjourn the hearing prior to the posted time if all public testimony has been received and/or no person is present that wishes to provide testimony.

Public Comments

Any interested person, or his or her duly authorized representative, may appear and be heard and provide written and/or oral testimony. Written comments may be faxed or emailed by 5:00 p.m., the day of the hearing to the contact person named in this Notice. All written comments received during the original 45-day public comment period ending August 20, 2012, or the additional 15-day public comment period ending September 15, 2012, or at the public hearing, will become a part of the Department's official rulemaking file.

Contact Persons

Inquiries or comments concerning the substance of the proposed regulations are to be addressed to:

Tony Herrera, Program Supervisor
Department of Food and Agriculture
Egg Safety and Quality Management
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5060
Fax: (916) 900-5334
Email: tony.herrera@cdfa.ca.gov

The backup contact person is:

Nancy Grillo, Regulation/Legislation Coordinator
Department of Food and Agriculture
Animal Health and Food Safety Services
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5033
Fax: (916) 900-5332
Email: nancy.grillo@cdfa.ca.gov

Website Access

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

FISH AND GAME COMMISSION

NOTICE OF RECEIPT OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.3 of the Fish and Game Code, the California Fish and Game Commission, on September 7, 2012 received a petition from the Environmental Protection Information Center to list the northern spotted owl (*Strix occidentalis caurina*) as threatened or endangered under the California Endangered Species Act.

Large areas of older, structurally complex forests provide the habitat necessary to support viable populations of northern spotted owls.

Pursuant to Section 2073 of the Fish and Game Code, on September 10, 2012 the Commission transmitted the petition to the Department of Fish and Game for review pursuant to Section 2073.5 of said code. It is anticipated that the Department's evaluation and recommendation relating to the petition will be received by the Commission at its February, 2013 Commission meeting. Interested parties may contact Dr. Eric Loft, Wildlife Branch, Department of Fish and Game, 1812 Ninth Street, Sacramento, CA 95811, or telephone 916-445-3555 for information on the petition or to submit information to the Department relating to the petitioned species.

DISAPPROVAL DECISION

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. The full text of disapproval decisions is available at www.oal.ca.gov under the "Publications" tab. You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916) 323-6225 — FAX (916) 323-6826. Please request by OAL file number.

EMERGENCY MEDICAL SERVICES AUTHORITY

In re:

Emergency Medical Services Authority

Regulatory Action:

Title 22

California Code of Regulations

Adopt sections: 100144

Amend sections: 100135, 100136, 100137, 100139, 100140, 100141, 100142, 100143, 100144, 100145, 100146, 100147, 100148, 100149, 100150, 100151, 100152, 100153, 100154, 100155, 100156, 100157, 100158, 100159, 100160, 100161, 100162, 100163, 100164, 100165, 100166, 100167, 100168, 100169, 100170, 100171, 100172, 100173, 100174, 100175

DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2012-0801-07 S

SUMMARY OF REGULATORY ACTION

The Emergency Medical Services Authority (EMSA) proposed this action to adopt one and amend forty-one sections pertaining to paramedics in title 22 of the California Code of Regulations (CCR). This action would expand the paramedic basic scope of practice and would also adopt a new category of paramedic

provider: the Critical Care Transport Paramedic. Controlled substance security policy requirements were also added in this rulemaking. Additionally, there is some clean-up of language proposed throughout the paramedic chapter.

DECISION

On September 13, 2012, the Office of Administrative Law (OAL) notified EMSA that OAL disapproved the proposed regulations for failure to comply with specified standards and procedures of the California Administrative Procedure Act (APA). The reasons for the disapproval are summarized below:

- A. The agency failed to comply with the “Necessity” standard of Government Code section 11349.1(a)(1);
- B. The proposed regulations failed to comply with the “Clarity” standard of Government Code section 11349.1(a)(3); and
- C. The agency failed to comply with all required Administrative Procedure Act procedures.

CONCLUSION

For the reasons set forth above, OAL has disapproved this regulatory action.

Date: September 20, 2012

 Peggy J. Gibson
 Senior Counsel
 FOR: DEBRA M. CORNEZ
 Director

Original: Howard Backer
 Copy: Laura Little

**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# 2012-0816-04
 BOARD OF OPTOMETRY
 Renting Space & Fingerprints

This regulatory action clarifies that an optometrist who rents or leases, and practices optometry in, a commercial space is required to have a sign designating that the rented space is occupied by an optometrist. This action also further clarifies which licensees are required to submit fingerprints during the license renewal process.

Title 16
 California Code of Regulations
 AMEND: 1514, 1525.1
 Filed 09/25/2012
 Effective 10/25/2012
 Agency Contact: Andrea Leiva (916) 575-7182

File# 2012-0827-01
 BOARD OF STATE AND COMMUNITY
 CORRECTIONS
 2007 Local Jail Construction Funding

This Certificate of Compliance makes permanent the emergency regulatory action (OAL file no. 2012-0615-02EON) that was submitted to OAL pursuant to Penal Code section 5058.3 as operationally necessary. This rulemaking action amends some sections and adopts some sections within Title 15 of the California Code of Regulations. This is CSA’s implementation of the \$1.2 billion 2007 Local Jail Construction Program authorized by AB 900 (Stats. 2007, Chap. 7) (Solorio) as amended by AB 111 and AB 94 (Stats. 2011). The original legislation in AB 900 resulted in Phase I of the Local Jail Construction Financing Program. The 2011 Realignment Legislation Addressing Public Safety (AB 111, CH 16, Stats. 2011 and AB 94, CH 23, Stats. 2011) amended AB 900 and resulted in Phase II of the Local Jail Construction Financing Program. The package adopts 5 new regulations and amends 27 regulations which establish Phase II of the county jail bond funding program. Some of the main differences from Phase I to Phase II is the deletion of the requirement that CSA give funding preference to counties that assist the state in siting specified facilities and instead requiring CSA to give preference to counties that committed the largest percentage of inmates to state custody in relation to the total inmate population of the department in 2010. Phase II also deletes the provision prohibiting the department and CSA from awarding funds until specified construction progress and siting requirements are met. Further, in Phase II the minimum 25% contribution of county matching funds is reduced to 10%. Phase II also allows counties to relinquish their Phase I funding to apply for the Phase II funding instead.

Title 15
California Code of Regulations
ADOPT: 1712.1, 1714.1, 1730.1, 1740.1, 1748.5
AMEND: 1700, 1706, 1712, 1714, 1730, 1731,
1740, 1747, 1747.1, 1747.5, 1748, 1751, 1752,
1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770,
1772, 1776, 1778, 1788 REPEAL: 1757
Filed 09/25/2012
Effective 09/25/2012
Agency Contact: Charlene Aboytes (916) 324-1914

File# 2012-0813-02
BUREAU OF AUTOMOTIVE REPAIR
CAP Application and STAR Program Modifications
This change without regulatory effect simplifies and shortens the Bureau's Consumer Assistance Program application form, which is incorporated by reference in section 3394.6, for ease of use by the public and to reduce costs of printing. The regulation changes also include non-substantive changes to the numbering of subsections of section 3340.15 to correct for an error in that section.

Title 16
California Code of Regulations
AMEND: 3340.15, 3394.6
Filed 09/25/2012
Agency Contact: Alex Christian (916) 403-8622

File# 2012-0830-01
CALIFORNIA RESIDENTIAL MITIGATION PROGRAM
Conflict of Interest Code Adoption
This is a Conflict of Interest Code filing that has been approved by FPPC and is being submitted for filing with the Secretary of State and printing only.

Title 2
California Code of Regulations
ADOPT: 59730
Filed 09/20/2012
Effective 10/20/2012
Agency Contact: Niel Hall (916) 325-3800

File# 2012-0827-04
DEPARTMENT OF FOOD AND AGRICULTURE
European Grapevine Moth Interior Quarantine
This certificate of compliance makes permanent the prior emergency regulatory action (OAL file no. 2012-0301-03E) that deregulated the entire counties of Fresno, Mendocino, Merced and San Joaquin due to the eradication of the European Grapevine Moth (EGVM),

"Lobesia botrana," in these counties, reduced the EGVM quarantine areas in Napa, Nevada, Santa Clara, Santa Cruz, Solano and Sonoma counties because a new federal order requires only a three-mile radius around each location where EGVM has been found instead of the current five-mile radius, and removed "Rubus" as a host plant and possible carrier of EGVM. This action will permanently remove approximately 1,031 square miles from the quarantine areas leaving a total of approximately 1,303 square miles of quarantine areas for the EGVM in California.

Title 3
California Code of Regulations
AMEND: 3437(b) and (c)
Filed 09/21/2012
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2012-0813-01
DEPARTMENT OF MOTOR VEHICLES
Clean Air Vehicle Decals
In this rulemaking the Department of Motor Vehicles is amending two sections in Title 13 to establish a green identifier, or decal, for use by advanced technology partial zero-emission vehicles (AT PZEV) in the high-occupancy vehicle (HOV) lanes. This rulemaking provides instructions on where to affix the decals and updates the form required when applying for the decals.

Title 13
California Code of Regulations
AMEND: 156.00, 156.01
Filed 09/25/2012
Effective 10/25/2012
Agency Contact:
Debbie Swank Cockrill (916) 657-6469

File# 2012-0918-02
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY
Electronic Waste Recycling Fees
This emergency rulemaking action is a biennial adjustment of the recycling and recovery fee paid by consumers on purchases of electronic devices which contain video screens. The Department of Resources, Recycling, and Recovery reviews and adjusts the amount of this fee for the purpose of ensuring that sufficient revenues remain in the account for purposes of funding the recycling and recovery program. This rulemaking action lowers the fee paid by consumers, effective January 1, 2013, to ensure that the fund account maintains only the revenues necessary to fund this program.

Title 14
 California Code of Regulations
 AMEND: 18660.40
 Filed 09/25/2012
 Effective 09/25/2012
 Agency Contact: Harlee Branch (916) 341-6056

File# 2012-0824-01
 FISH AND GAME COMMISSION
 Waterfowl Hunting

This rulemaking by the California Fish and Game Commission amends the migratory waterfowl hunting season dates and bag limits for specified zones within California.

Title 14
 California Code of Regulations
 AMEND: 502
 Filed 09/21/2012
 Effective 09/21/2012
 Agency Contact: Sheri Tiemann (916) 654-9872

File# 2012-0821-02
 OCCUPATIONAL SAFETY AND HEALTH
 STANDARDS BOARD
 Tree Work, Maintenance or Removal

This rulemaking action updates the regulations of the Occupational Safety and Health Standards Board regarding tree trimming and specific to safe work practices, high voltage wires, tree-climbing equipment, mobile equipment, portable power tools, and employee training.

Title 8
 California Code of Regulations
 AMEND: 2950, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427 REPEAL: 3428
 Filed 09/25/2012
 Effective 10/25/2012
 Agency Contact: Marley Hart (916) 274-5721

File# 2012-0816-03
 OFFICE OF ENVIRONMENTAL HEALTH
 HAZARD ASSESSMENT
 Specific Regulatory Levels Posing No Significant Risk: NSRL for TDCPP

This regulatory action adopts a No Significant Risk Level (NSRL) for tris(1,3-dichloro-2-propyl) phosphate (TDCPP) of 5.4 micrograms per day based on a carcinogenicity study in rodents.

Title 27
 California Code of Regulations
 AMEND: 25705(b)
 Filed 09/20/2012
 Effective 10/20/2012
 Agency Contact: Susan Luong (916) 327-3015

File# 2012-0814-01
 STATE CONTROLLER'S OFFICE
 Unclaimed Property

This rulemaking action by the State Controller's Office amends sections 1155.250 and 1155.350 of title 2 of the California Code of Regulations by updating three forms incorporated by reference and removing language for which statutory authority has been repealed. These amendments make the unclaimed property reporting process more accurate and efficient.

Title 2
 California Code of Regulations
 AMEND: 1155.250, 1155.350
 Filed 09/19/2012
 Effective 10/19/2012
 Agency Contact:
 David Brownfield (916) 322-7535

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN May 2, 2012 TO
 September 26, 2012**

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
 09/20/12 ADOPT: 59730
 09/19/12 AMEND: 1155.250, 1155.350
 09/14/12 REPEAL: 52100
 09/10/12 ADOPT: 59650
 08/30/12 AMEND: 60000, 60010, 60300, 60310, 60323, 60325, 60330, 60400, 60550, 60560, 60600, 60610 REPEAL: 60020, 60025, 60030, 60040, 60045, 60050, 60055, 60100, 60110, 60200
 08/16/12 AMEND: 1859.2, 1859.61, 1859.74, 1859.77.1, 1859.79, 1859.79.2,

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1859.79.3, 1859.83, 1859.104 REPEAL: 1859.70.3, 1859.71.5, 1859.78.9, 1859.93.2, 1859.93.3	05/04/12	ADOPT: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060
08/13/12	ADOPT: 59720	
08/07/12	AMEND: 18640	
07/16/12	AMEND: 18215.3	
07/09/12	ADOPT: 22620.1, 22620.2, 22620.3, 22620.4, 22620.5, 22620.6, 22620.7, 22620.8	
06/28/12	AMEND: 649.32	
06/19/12	AMEND: 56800	
06/04/12	ADOPT: 18313.6	
05/29/12	AMEND: 20811(c)	
05/15/12	AMEND: 1859.2	
05/10/12	AMEND: 1859.2, 1859.82	
05/08/12	ADOPT: 559.1	
Title 3		
09/21/12	AMEND: 3437(b) and (c)	
09/18/12	AMEND: 6449.1, 6486.7	
09/12/12	AMEND: 3700(c)	
09/12/12	AMEND: 3435(b)	
08/24/12	AMEND: 3406(b)	
08/22/12	AMEND: 6800(b)	
08/20/12	AMEND: 3435(b)	
08/06/12	AMEND: 3435(b)	
06/19/12	ADOPT: 6970, 6972 AMEND: 6000	
05/17/12	AMEND: 4603(i)	
Title 4		
09/12/12	ADOPT: 12391(a)(1), (3), (4), (b) & (c), 12392 AMEND: 12360	
09/04/12	AMEND: 10032, 10033, 10034, 10035	
08/30/12	ADOPT: 1489.1	
08/29/12	ADOPT: 5205 AMEND: 5000, 5054, 5144, 5190, 5200, 5230, 5370, 5170, 5350 REPEAL: 5133	
08/01/12	ADOPT: 5255, 5256 AMEND: 5170, 5230, 5250, 5560, 5580	
08/01/12	AMEND: 5000, 5052	
07/26/12	AMEND: 8070	
07/26/12	AMEND: 12101, 12202, 12205.1, 12218, 12218.7, 12218.8, 12222, 12225.1, 12233, 12235, 12238, 12309, 12335, 12342, 12350, 12352, 12354	
07/23/12	AMEND: 8035	
07/16/12	AMEND: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057	
06/25/12	AMEND: 8070, 8071, 8072, 8078, 8078.2	
06/25/12	AMEND: 1663	
06/06/12	AMEND: 1843.3	
06/01/12	ADOPT: 5205 AMEND: 5000, 5054, 5144, 5170, 5190, 5200, 5230, 5350, 5370 REPEAL: 5133	
05/15/12	REPEAL: 61.3	
09/06/12	AMEND: 1216.1	
08/09/12	AMEND: 40403	
08/09/12	AMEND: 59400, 59402, 59404, 59406, 59408	
08/09/12	AMEND: 40500	
08/09/12	ADOPT: 40541	
08/09/12	AMEND: 40407.1	
08/08/12	ADOPT: 40540	
08/08/12	ADOPT: 19824.1, 19841, 19851.1, 19854.1 AMEND: 19816, 19816.1, 19824, 19850, 19851, 19854	
07/31/12	AMEND: 19816, 19816.1, 19845.2	
06/12/12	ADOPT: 18004 AMEND: 18000, 18001, 18002, 18003	
05/29/12	AMEND: 42600	
Title 5		
Title 7		
07/03/12	AMEND: 219	
Title 8		
09/25/12	AMEND: 2950, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427 REPEAL: 3428	
09/05/12	AMEND: 1512, 2320.10, 2940.10	
09/04/12	AMEND: 5189, 5192(a)(3), 5198(j)(2)(D)2., 1532.1(j)(2)(D)2.	
08/07/12	ADOPT: 3558 AMEND: 3207, 4184	
07/30/12	ADOPT: 32802, 32804 AMEND: 32380, 32603, 32604	
05/21/12	ADOPT: 10582.5, 10770.1 AMEND: 10770	
05/07/12	AMEND: 477	
05/07/12	AMEND: 2340.22	
05/02/12	AMEND: 20363, 20365, 20393, 20400, 20402	
Title 9		
07/27/12	AMEND: 7141.5, 7143, 7227, 7350, 7351, 7353.6, 7354, 7355, 7356, 7357, 7358, 7400	
Title 10		
08/30/12	AMEND: 2468.5	
08/27/12	AMEND: 260.204.9	
08/22/12	ADOPT: 2327, 2327.1, 2327.2	
08/03/12	ADOPT: 2561.1, 2561.2	
07/19/12	AMEND: 2698.302	
07/19/12	AMEND: 2699.301	
07/19/12	AMEND: 5501, 5506	
05/31/12	AMEND: 2318.6, 2353.1, 2354	
05/09/12	AMEND: 2698.208	
Title 11		
09/18/12	AMEND: 410, 411, 415, 416, 417, 420, 421, 425 REPEAL: 419, 419.1	

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07/31/12	AMEND: 999.16, 999.17, 999.19, 999.22	renumber as 17945.2, 17946(i) renumber as 17945.3, 17946.5 renumber as 17945.5, 17947, 17948, 17948.5, 17949
06/26/12	AMEND: 1005, 1007, 1008	REPEAL: 17942, 17944.2, 17944.5, 17945
06/21/12	AMEND: 1005, 1007	
05/09/12	ADOPT: 1019 REPEAL: 9020	
05/07/12	ADOPT: 999.24, 999.25, 999.26, 999.27, 999.28, 999.29 AMEND: 999.10, 999.11, 999.14, 999.16, 999.17, 999.19, 999.20, 999.21, 999.22	06/25/12 AMEND: 791.7
Title 12		06/06/12 ADOPT: 18950, 18951, 18952, 18953, 18954, 18955, 18955.1, 18955.2, 18955.3, 18956, 18957, 18958
06/04/12	AMEND: 506	06/01/12 REPEAL: 660
Title 13		05/30/12 AMEND: 11960
09/25/12	AMEND: 156.00, 156.01	05/29/12 AMEND: 360, 361, 362, 363, 364, 365, 708.12
09/14/12	AMEND: 2479	05/21/12 AMEND: 703
08/07/12	ADOPT: 1962.2 AMEND: 1962.1, 1962.2 (renumbered to 1962.3)	05/21/12 AMEND: 7.50
08/07/12	ADOPT: 1961.2, 1961.3 AMEND: 1900, 1956.8, 1960.1, 1961, 1961.1, 1965, 1968.2, 1968.5, 1976, 1978, 2037, 2038, 2062, 2112, 2139, 2140, 2145, 2147, 2235, 2317	05/21/12 AMEND: 705
08/02/12	ADOPT: 426.00	05/17/12 AMEND: 7.50
07/30/12	AMEND: 1268, 1270.3	05/07/12 ADOPT: 18835, 18836, 18837, 18838, 18839
07/12/12	ADOPT: 345.58, 345.73 AMEND: 345.50, 345.52, 345.56, 345.74, 345.78, 345.86, 345.88, 345.90 REPEAL: 345.54, 345.58, 345.60	Title 15
06/29/12	AMEND: 225.00, 225.03, 225.09, 225.12, 225.15, 225.18, 225.21, 225.24, 225.35, 225.36, 225.38, 225.42, 225.45, 225.54, 225.60, 225.63, 225.66, 225.69, 225.72 REPEAL: 225.06	09/25/12 ADOPT: 1712.1, 1714.1, 1730.1, 1740.1, 1748.5 AMEND: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.1, 1747.5, 1748, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788 REPEAL: 1757
Title 13, 17		09/13/12 AMEND: 3162
09/14/12	AMEND: 2299.2, 93118.2	09/13/12 ADOPT: 3078, 3078.1, 3078.2, 3078.3, 3078.4, 3078.5, 3078.6 AMEND: 3000, 3043, 3075.2, 3097, 3195, 3320, 3323
Title 14		08/29/12 AMEND: 2606, 2635.1, 2646.1, 2733, 2740, 2743, 2744
09/25/12	AMEND: 18660.40	08/20/12 AMEND: 1006, 1007, 1008, 1012, 1013, 1024, 1032, 1044, 1046, 1051, 1055, 1056, 1058, 1059, 1062, 1063, 1069, 1072, 1080, 1081, 1083, 1084, 1100, 1104, 1125, 1140, 1141, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1151, 1203, 1205, 1206, 1208, 1217, 1241
09/21/12	AMEND: 502	07/02/12 ADOPT: 3999.12
09/12/12	AMEND: 18660.17, 18660.19, 18660.31	06/26/12 ADOPT: 1712.1, 1714.1, 1730.1, 1740.1, 1748.5 AMEND: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.1, 1747.5, 1748, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788 REPEAL: 1757
09/07/12	AMEND: 300	06/26/12 ADOPT: 3079, 3079.1 AMEND: 3000, 3075.2, 3075.3
08/31/12	ADOPT: 671.8 AMEND: 671.1	06/26/12 AMEND: 3000, 3076.1, 3076.3, 3375, 3375.1, 3375.2, 3375.3, 3375.4, 3375.5, 3377.2, 3521.2
08/14/12	AMEND: 13055	06/06/12 AMEND: 3000, 3006, 3170.1, 3172.1, 3173.2, 3315, 3323
08/02/12	ADOPT: 2231, 2301 AMEND: 2000, 2200, 2230, 2235, 2240, 2245, 2300, 2305, 2310, 2320	05/10/12 ADOPT: 3375.6 AMEND: 3000, 3375
07/26/12	AMEND: 18836	
07/12/12	AMEND: 790, 851.20, 851.21, 851.22, 851.25, 851.26, 851.27, 851.27.1, 851.28, 851.29, 851.30, 851.31, 851.32	
07/09/12	ADOPT: 1665.1, 1665.2, 1665.3, 1665.4, 1665.5, 1665.6, 1665.7, 1665.8	
07/02/12	ADOPT: 602	
06/28/12	ADOPT: 17944.1, 17945.1, 17945.4, 17946, 17946.5, 17948.1, 17948.2 AMEND: 17943, 17944, 17946(a)-(h)	

Title 16

09/25/12 AMEND: 1514, 1525.1
 09/25/12 AMEND: 3340.15, 3394.6
 09/12/12 AMEND: 961 REPEAL: 933
 09/10/12 ADOPT: 4116, 4117, 4118, 4119
 09/07/12 AMEND: 4
 08/30/12 ADOPT: 2557, 2557.1, 2557.2, 2557.3, 2595, 2595.1, 2595.2, 2595.3
 08/29/12 ADOPT: 4146, 4148, 4149, 4149.1 AMEND: 4100, 4101
 08/20/12 ADOPT: 1333, 1333.1, 1333.2, 1333.3
 07/23/12 ADOPT: 1397.2 AMEND: 1380.4
 07/17/12 ADOPT: 1399.23, 1399.24 AMEND: 1398.4
 07/10/12 ADOPT: 3394.25, 3394.26, 3394.27
 06/18/12 ADOPT: 1727.2 AMEND: 1728
 06/18/12 AMEND: 443
 06/14/12 ADOPT: 302.5
 05/25/12 ADOPT: 1399.364, 1399.375, 1399.377, 1399.381, 1399.384 AMEND: 1399.301, 1399.302, 1399.303, 1399.320, 1399.330, 1399.352.7, 1399.353, 1399.360, 1399.370, 1399.374, 1399.376 (renumbered to 1399.382), 1399.380, 1399.382 (renumbered to 1399.383), 1399.383 (renumbered to 1399.385), 1399.384 (renumbered to 1399.378), 1399.385 (renumbered to 1399.379), 1399.395 REPEAL: 1399.340, 1399.381, 1399.387, 1399.388, 1399.389, 1399.390, 1399.391
 05/17/12 ADOPT: 4544, 4600, 4602, 4604, 4606, 4608, 4610, 4620, 4622 AMEND: 4422, 4440, 4446, 4470
 05/14/12 AMEND: 932
 05/04/12 ADOPT: 2509, 2518.8, 2524.1, 2568, 2576.8, 2579.11 AMEND: 2503, 2524.1 (renumber to 2524.5), 2563, 2579.11 (renumber to 2579.20)

Title 17

09/04/12 ADOPT: 30305.1, 30308.1, 30311.1
 08/30/12 AMEND: 95802, 95812, 95814, 95830, 95831, 95832, 95833, 95834, 95856, 95870, 95892, 95910, 95911, 95912, 95913, 95914, 95920, 95021
 08/29/12 AMEND: 100800
 08/15/12 ADOPT: 54521, 54522, 54523, 54524, 54525, 54526, 54527, 54528, 54529, 54530, 54531, 54532, 54533, 54534, 54535 AMEND: 54500, 54505, 54520 REPEAL: 54521, 54522, 54523, 54524, 54525
 07/26/12 AMEND: 94006
 06/15/12 AMEND: 6508

Title 18

08/07/12 AMEND: 1618
 07/27/12 AMEND: 1684
 07/10/12 AMEND: 1205, 1212, 1271
 07/10/12 AMEND: 1105, 1120, 1132, 1161
 07/10/12 AMEND: 1435, 1436
 07/10/12 AMEND: 25128.5
 07/03/12 AMEND: 3301
 07/03/12 AMEND: 263

Title 21

08/28/12 AMEND: 6640, 6680

Title 22

09/06/12 ADOPT: 66269.2
 08/20/12 AMEND: 87224
 08/13/12 AMEND: 100104, 100106, 100106.1, 100113, 100115, 100119, 100120, 100121, 100123, 100127
 07/12/12 AMEND: 66263.18, 66263.41, 66263.43, 66263.44, 66263.45, 66263.46
 07/12/12 AMEND: 66268.40, 66268.48
 07/09/12 AMEND: 4416
 07/03/12 AMEND: 51516.1
 06/28/12 AMEND: 91477
 06/21/12 AMEND: 50195, 50197, 50256, 50258, 50258.1, 50262, 50268, 50815, 51000.53
 06/12/12 AMEND: 66261.32
 05/24/12 AMEND: 90417
 05/22/12 ADOPT: 60098, 64400.05, 64400.29, 64400.36, 64400.41, 64400.66, 64400.90, 64402.30, 64400.46 AMEND: 60001, 60003, 63790, 63835, 64001, 64211, 64212, 64213, 64252, 64254, 64256, 64257, 64258, 64259, 64400.45, 64415, 64463.1, 64463.4, 64470, 64481, 64530, 64531, 64533, 64534, 64534.2, 64534.4, 64534.6, 64534.8, 64535, 64535.2, 64535.4, 64536.6, 64537, 64537.2 REPEAL: 60430, 64002, 64439, 64468.5

05/17/12 AMEND: 51240, 51305, 51476
 05/04/12 AMEND: 123000

Title 23

09/06/12 ADOPT: 3959.5
 08/08/12 ADOPT: 3969.2
 07/30/12 ADOPT: 2923
 07/11/12 ADOPT: 597, 597.1, 597.2, 597.3, 597.4
 07/05/12 AMEND: 570, 571, 572, 573, 574, 575, 576

Title 25

08/13/12 ADOPT: 7097 AMEND: 7054, 7056, 7058, 7060, 7062, 7062.1, 7072, 7076, 7078, 7104 REPEAL: 7064, 7066, 7074,

	7078.1, 7078.2, 7078.3, 7078.4, 7078.5, 7078.6, 7078.7	06/18/12	AMEND: 25705
06/07/12	ADOPT: 4326, 4328 AMEND: 4004, 4200, 4204, 4208	Title 28	
		09/06/12	ADOPT: 1300.74.73
Title 27		Title MPP	
09/20/12	AMEND: 25705(b)	06/25/12	AMEND: 40-105.4(g)(1), 44-111.23, 44-113.2, 44-133.54(QR), 44-315.39(QR), 89-201.513
09/12/12	AMEND: 25403(a), 25603.3(a)		
07/12/12	AMEND: 25305, 25701, 25705, 25801		