



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

ADOPTION

STATE: Sacramento-San Joaquin Delta Conservancy

A written comment period has been established commencing on **October 22, 2010**, and closing on **December 6, 2010**. Written comments should be directed to the Fair Political Practices Commission, Attention **Cynthia Fisher**, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **December 6, 2010**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the re-

spective agency. Requests for copies from the Commission should be made to **Cynthia Fisher**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Title 3 of the California Code of Regulations

Notice of Proposed Rulemaking

45-Day Notice

The Department of Food and Agriculture amended subsection 3591.20(a) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Eradication Area as an emergency action that was effective on September 22, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than March 21, 2011.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on December 6, 2010. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

The amendment of subsection 3591.20(a) established San Diego County as an eradication area for the light brown apple moth, *Epiphyas postvittana*. The effect of this action was to establish authority for the State to conduct eradication activities in San Diego County against this pest. There is no existing, comparable federal regulation or statute.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.
Cost or savings to any state agency: None
Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None and no nondiscre-

tionary costs or savings to local agencies or school districts.

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

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

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

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

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

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend subsection 3591.20(a) pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes to amend subsection 3591.20(a), to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen

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

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended subsection 3591.20(a) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Eradication Area as an emergency action that was effective on July 13, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than January 10, 2010.

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

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

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before December 6, 2010.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

The amendment of subsection 3591.20(a) established Sacramento County as an eradication area for the light brown apple moth, *Epiphyas postvittana*. The effect of this action was to establish authority for the State to conduct eradication activities in Sacramento County against this pest. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that the amendment of Section 3591.20 does not impose a mandate on local agencies or school districts and no reimbursement is required for Section 3591.20 under Section 17561 of the Government Code. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no

costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

EFFECT ON BUSINESSES

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

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

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

ASSESSMENT

The Department has made an assessment that the proposed amendment of the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend subsections 3591.20(a) pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes to amend subsections 3591.20(a), to implement, interpret and make specific

Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The proposed amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Susan McCarthy at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Title 3 of the California Code of Regulations

Notice of Proposed Rulemaking

45-Day Notice

The Department of Food and Agriculture amended subsections 3434(b) and (c) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine as an emergency action that was effective on August 26, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than February 22, 2011.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on December 6, 2010. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any inter-

ested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

AMENDED TEXT

This amendment expanded a portion of the existing contiguous quarantine area in the counties of Alameda, Contra Costa, Monterey and Sonoma counties approximately 205 square miles and designated as a regulated area. New quarantine areas were established in the South Sacramento area of Sacramento County of approximately 16 square miles and in the South Park area of San Diego County of approximately 10 square miles. The existing quarantine area in the Long Beach area of Los Angeles County was expanded by approximately one square mile. The effect of this proposed change to the regulation was to establish authority for the State to perform quarantine activities against LBAM (*Epiphyas postvittana*) in these additional areas. This resulted in a total of approximately 5,147 square miles under regulation within the State.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code

sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

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

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

Cost impacts on a representative private person or business: The cost impact of the amended regulation on a representative private person or business located within the regulated area may be significant. An average infested ornamental nursery producing plants in one-gallon containers may incur initial costs of \$140 to \$218 per acre in eliminating the light brown apple moth to be in reasonable compliance with the proposed action. Approximately 65,000 one-gallon containers may be placed upon one acre. This translates into an initial increased production cost of \$0.002 to \$0.003 per one gallon container. The actual costs may vary with the type of material used, size and production practices of the affected businesses.

However, nursery stock that is infested with the light brown apple moth does not meet the current requirements of Section 3060.2, Standards of Cleanliness, California Code of Regulations (CCR), and cannot be sold. Therefore, there are no additional mandated costs of compliance due to this regulation.

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

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

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend Section 3434 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Susan McCarthy at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Title 3 of the California Code of Regulations

Notice of Proposed Rulemaking

45-Day Notice

The Department of Food and Agriculture amended subsection 3591.15(a) and (b) of the regulations in Title 3 of the California Code of Regulations pertaining to Melon Fruit Fly Eradication Area as an emergency action that was effective on August 13, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than February 9, 2011.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on December 6, 2010. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any inter-

ested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

The amendment of subsection 3591.15(a) established Kern County as an eradication area for the melon fruit fly, *Bactrocera cucurbitae*. The effect of this action was to establish authority for the State to conduct eradication activities in Kern County against this pest. The amendment of subsection 3591.15(b) modified the existing host list based upon the latest scientific information. The effect of this action was to ensure that all known hosts with the appropriate nomenclature are listed in the regulation. There is no existing, comparable federal regulation or statute.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None

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

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

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

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

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

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

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend subsections 3591.15(a) and (b) pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes to amend subsections 3591.15(a) and (b), to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Susan McCarthy at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Title 3 of the California Code of Regulations

Notice of Proposed Rulemaking

45-Day Notice

The Department of Food and Agriculture amended subsections 3425(b) and (c) of the regulations in Title 3 of the California Code of Regulations pertaining to Melon Fruit Fly Interior Quarantine as an emergency action that was effective on August 16, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than February 12, 2011.

The Department of Food and Agriculture amended subsections 3425(b) and (c) of the regulations in Title 3 of the California Code of Regulations pertaining to Melon Fruit Fly Interior Quarantine as an emergency action that was effective on September 2, 2010. The De-

partment proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than March 1, 2011.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on December 6, 2010. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction

and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

TEXT EFFECTIVE August 16, 2010

This amendment added approximately 82 square miles surrounding the Bakersfield area of Kern County to the regulation as the area under quarantine for melon fruit fly. It also added some new hosts and corrected the nomenclature for some existing hosts. The effect of the change is to provide authority for the State to regulate movement of hosts of melon fruit fly from, into and within this area to prevent the artificial spread of the fly to noninfested areas to protect the public and California's agricultural industry.

TEXT EFFECTIVE September 2, 2010

This amendment added approximately nine square miles surrounding the Arvin area of Kern County to the regulation as an additional area under quarantine for melon fruit fly. The total area regulated in Kern County was increased to approximately 91 square miles. The effect of the change is to provide authority for the State to regulate movement of hosts of melon fruit fly from, into and within this additional area to prevent the artificial spread of the fly to noninfested areas to protect the public and California's agricultural industry.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

Cost impacts on a representative private person or business: Approximately \$3,566.

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

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

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend Section 3425 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Susan McCarthy at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS

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

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

**TITLE 3. DEPARTMENT OF FOOD
AND AGRICULTURE**

Title 3 of the California Code of Regulations

Notice of Proposed Rulemaking

45-Day Notice

The Department of Food and Agriculture amended subsection 3423(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Oriental Fruit Fly Quarantine as an emergency action that was effective on August 5, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than January 31, 2011.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on December 6, 2010. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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

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

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321). Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

AMENDED TEXT

This amendment added approximately 89 square miles surrounding the Pasadena and San Marino areas of Los Angeles County to the regulation as additional areas under quarantine for Oriental fruit fly. Approximately 79 square miles of the Sacramento area was previously under regulation. The total area under regula-

tion is now approximately 168 square miles. The effect of this proposed change to the regulation was to establish authority for the State to perform quarantine activities against Oriental fruit fly in these additional areas.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

Cost impacts on a representative private person or business: The cost impact of the amended regulation on a representative private person or business located within the regulated area is approximately \$97.

Amendment of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Small Business Determination

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

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend Section 3423 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Susan McCarthy at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4, CALIFORNIA CODE OF REGULATIONS
 NOTICE OF PROPOSAL TO AMEND
 RULE 1974. WAGERING INTEREST
 RULE 1954.1. PARLAY WAGERING ON WIN, PLACE OR SHOW
 RULE 1957. DAILY DOUBLE
 RULE 1959. SPECIAL QUINELLA (EXACTA)
 1976. UNLIMITED SWEEPSTAKES
 1976.8. PLACE PICK (N)
 1976.9. PICK (N) POOL
 1977. PICK THREE
 1978. SELECT FOUR
 1979. TRIFECTA
 1979.1. SUPERFECTA

The California Horse Racing Board (Board) proposes to amend the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1974, Wagering Interest to provide for the circumstances under which a horse may be designated to run in a race for purse only. The Board also proposes to amend pari-mutuel wagering rules to provide direction in cases where horses that are entered to race, and may have been selected for wagering by horse racing fans, are instead designated to run for purse only. Designating a horse to run for purse only will affect a number of pari-mutuel wagering regulations, which will necessitate their amendment. The pari-mutuel regulations the Board proposes to amend are: Rule 1957, Daily Double; Rule 1959, Special Quinella (Exacta); Rule 1954.1, Parlay Wagering on Win, Place or Show; Rule 1976, Unlimited Sweepstakes; Rule 1976.8, Place Pick (n); Rule 1976.9, Pick (n) Pool; Rule 1977, Pick Three; Rule 1978, Select Four; Rule 1979, Trifecta and Rule 1979.1, Superfecta.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, December 16, 2010**, or as soon after that as business before the Board will permit, at the **CHRB Headquarters Offices, 1010 Hurley Way, Suite 300, Sacramento, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the

informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on December 6, 2010**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
 California Horse Racing Board
 1010 Hurley Way, Suite 300
 Sacramento, CA 95825
 Telephone: (916) 263-6397
 Fax: (916) 263-6042
 Email: HaroldC@chrb.ca.gov

AUTHORITY AND REFERENCE

Rule 1974: Authority Cited: sections 19420 and 19440, Business and Professions Code. Reference: section 19562, Business and Professions Code.

Business and Professions Code sections 19420 and 19440 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific section 19562, Business and Professions Code.

Rule 1954.1: Authority Cited: sections 19440 and 19590, Business and Professions Code. Reference: sections 19594 and 19597, Business and Professions Code.

Business and Professions Code sections 19440 and 19590 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19594 and 19597, Business and Professions Code.

Rules 1957, 1959, 1976, 1977, 1978, 1979 & 1979.1: Authority Cited: sections 19440 and 19590, Business and Professions Code. Reference: section 19594, Business and Professions Code.

Business and Professions Code sections 19440 and 19590 authorize the Board to adopt the proposed regulations, which would implement, interpret or make specific section 19594, Business and Professions Code.

Rules 1976.8 & 1976.9: Authority Cited: sections 19440 and 19590, Business and Professions Code. Reference: sections 19593 and 19594, Business and Professions Code.

Business and Professions Code sections 19440 and 19590 authorize the Board to adopt the proposed regulations, which would implement, interpret or make specific section 19593 and 19594, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are conducted, and over all persons or things having to do with the operation of such meetings, is vested in the Board. Business and Professions Code section 19440 states the Board shall have all powers necessary and proper to enable it to carry out the purposes of Chapter 4, Business and Professions Code. Responsibilities of the Board include adopting rules and regulations for the protection of the public and the control of horse racing with pari-mutuel wagering, and administration and enforcement of all laws, rules and regulations affecting horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions, consistent with the provisions of Chapter 4, Business and Professions Code, under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19563 states the Board may adopt any rules and regulations of the United States Trotting Association, not inconsistent with Chapter 4, Business and Professions Code, for the regulation of harness racing. Business and Professions Code section 19590 provides that the Board shall adopt rules governing, permitting, and regulating pari-mutuel wagering on horse races under the system known as the pari-mutuel method of wagering. Pari-mutuel wagering shall be conducted only by a person licensed under Chapter 4 to conduct a horse racing meeting. Business and Professions Code section 19593 states no method of betting, pool making, or wagering other than by the pari-mutuel method shall be permitted or used by any person licensed under this chapter to conduct a horse racing meeting. Business and Professions Code section 19594 states any person within the inclosure where a horse racing meeting is authorized may wager on the result of a horse race held at that meeting by contributing his money to the pari-mutuel pool operated by the licensee under Chapter 4, Business and Professions Code. Business and Professions Code section 19597 provides that a person licensed under Chapter 4 to conduct a horse racing meeting shall, as to any payment made to a person who has wagered by contributing to a pari-mutuel pool operated by such licensee, also deduct the applicable breakage, as defined by section 19405.

Rule 1974 provides a definition of wagering interest, which may be any one horse entered in a race, or one or more horses coupled as a single wagering interest. When horses are coupled they are referred to as an "entry" or the "field." Under Board Rule 1606, Cou-

pling of Horses, two or more horses must be coupled as a single wagering interest and as an entry (or field) when they are owned in whole or in part by the same person or persons. Rule 1606 provides exemptions for certain partnerships and for quarter horse races. If a horse racing fan places a wager on a horse that is part of a coupled entry or field, he or she is — in effect — placing a wager on the entire entry. As an example, if the wager is a conventional "win-place-show" on the coupled entry or field, any one horse in the coupled entry or field may place for the wager to be successful. If the horse racing fan places an exotic wager such as a Select 4, and the Select 4 ticket designates a coupled entry in one leg of the wager, any horse in the coupled entry may place first in that race for the fan to be successful in that leg of the wager. (However, the fan must successfully select winners in each of four races to win a portion of the Select 4 pool.) There may be advantages to wagering on a coupled entry, but many horse racing fans also see disadvantages. This is especially true when the "good horse," or the horse they actually wanted to wager on, is scratched or declared from the race. In such instances Rule 1974 currently provides that a declaration or withdrawal of one horse from a wagering interest that consists of more than one horse shall have no effect on any wagers made on such wagering interest. If a horse is withdrawn or declared from a multiple entry, racing fans have no recourse because the wager is still valid. If patrons are in a position to cancel their wagers the problem can be avoided, but many wagers involve multiple races, so the wagers cannot be canceled once the sequence has begun. Also, many patrons make wagers and become otherwise occupied, only to learn later about the scratch. To provide patrons with alternatives if a horse is declared or withdrawn from a coupled entry or a field the Board proposes to amend Rule 1974. Subsection 1974(b) has been modified to provide that a declaration or withdrawal of one horse from a wagering interest that consists of more than one horse shall constitute the declaration or withdrawal of the coupled entry or field. This will prevent those who wagered on the coupled entry or field from being "stuck" with the remaining horses in that wagering interest. Persons who have made selections that include the coupled entry or the field will be treated as if the entire entry was declared or withdrawn. Depending on the regulation that governs the wager, such persons may make an alternate selection, may receive the actual favorite as a substitute, or may receive a refund on the cost of their tickets. Subsection 1974(b) has been further modified to provide that any horses remaining in the coupled entry or field which have not been declared or withdrawn shall start in the race as non-wagering interests for the purse only, and shall be disregarded for pari-mutuel purposes. This protects horse owners, because the horses that remained

in the coupled entry or field will still be allowed to run for the purse. A new subsection 1974(c) has been added to provide additional protection for owners and trainers whose entered horse has been removed from the wagering pool due to a totalizator error or any other error that was not of the owner or trainer's making. Occasionally human error will cause the wrong information to be entered in the totalizator system when a horse is declared or scratched from a race. This will cause the public to believe a different horse has been withdrawn. As a remedy to such situations subsection 1974(c) will allow the horse that has been removed from the wagering pool in error to start in the race as a non-wagering interest for purse only. In accordance with the type of wager, patrons who hold tickets that selected such horses will have the opportunity to select an alternative wagering interest, or will receive a refund.

Board rules governing specific types of pari-mutuel wagers contain subsections that address horses coupled as an entry or the field in accordance with Rule 1974. In each case the rules provide that wagers selecting entries comprised of multiple horses will not be affected if a horse from such a wagering interest is declared or withdrawn from a race. This is because under Rule 1974 a wager on a coupled entry or the field is considered a wager on the remaining part of the entry if any part of the entry starts for pari-mutuel purposes. The Board has determined it is necessary to amend a number of rules governing pari-mutuel wagering to accommodate the proposed amendment of Rule 1974, which would cause the horses remaining in the coupled entry or the field, or horses removed from the wagering pool in error, to run for purse only. The proposed amendments mirror the provisions set forth in each regulation for wagering interests that are scratched, declared or prevented from running. Depending on the regulation, if a horse were to be designated to run for purse only and disregarded for pari-mutuel purposes, then any tickets selecting such horses may be canceled, or the association may provide a substitute, or the holder of the ticket may select an alternative wagering interest. The Board proposes to amend Rule 1954.1, Parlay Wagering on Win, Place or Show, to provide that if a wagering interest is designated to run for purse only in accordance with Rule 1974, the parlay shall consist of the remaining legs. In addition, subsection 1954.1(h) has been amended to require that the entire coupled entry or field start in a race for a wager on the entry to be considered a wager on the remaining part of the entry. Rule 1957, Daily Double, has been amended to provide that if a horse is designated to run for purse only before the first race is run, any tickets selecting the entry will be deducted from the pool and refunded. In addition, subsection 1957(i) has been amended to provide that if a horse is designated to run for purse only after the first race is completed, all

tickets selecting such horses shall be deducted from the pool, and if they combine the winner of the first race with the designated horse, they shall be paid as a straight pool. Subsection 1957(j) has also been amended to require that the entire coupled entry or field start in a race for a wager on the entry to be considered a wager on the remaining part of the entry. Rule 1959, Special Quinella (Exacta) has been amended to add a new subsection 1959(d)(1), which provides that if any horse in a coupled entry or the field is declared or withdrawn from a race comprising the Special Quinella, the remaining horses in the entry or the field will be designated to run for purse only, and all tickets selecting such horses shall be withdrawn from the pool and refunded. In addition, subsection 1959(e) has been amended to provide that if a horse that is entered in a Special Quinella race is designated to run for purse only after the wagering has commenced, tickets selecting such horses shall be deducted from the pool and shall be refunded. Rule 1976, Unlimited Sweepstakes, has been amended to provide that the actual favorite will be substituted for any selection that is designated to run for purse only in a race comprising the Unlimited Sweepstakes. Rule 1976.8, Place Pick (n) has been amended to provide that the racing association or the patron may substitute an alternate wagering interest if a ticket in any Place Pick (n) race selects a horse that is designated to run for purse only. Rule 1976.9, Pick (n) Pool, has been amended to allow the racing association to substitute the favorite for a horse in a Place Pick (n) race that has been designated to run for purse only. Rule 1977, Pick Three, has been amended to provide that if a horse is designated to run for purse only from any leg of the Pick Three prior to the running of the first leg, tickets selecting such horse shall be refunded. In addition, subsections 1977(i), 1977(j) and 1977(k) have been modified to provide for consolation payouts that if a wagering interest is designated to run for purse only in the second or the third leg of the wager, or in both the second and the third legs of the wager. Rule 1978, Select Four, has been amended to allow the racing association to substitute the actual favorite for any horse that is designated to run for purse only in any of the races comprising the Select Four wager. Rule 1979, Trifecta, has been amended to state the racing association may exchange any ticket that includes a horse designated to run for purse only if such designation takes place before wagering is closed. If a horse is designated to run for purse only after wagering on the Trifecta is closed, any ticket selecting the designated horse shall be eliminated from the pool and the purchase price refunded. Rule 1979.1, Superfecta, has been amended to provide that before wagering on the Superfecta closes the racing association may exchange any ticket selecting a horse that is designated to run for purse only. If wagering on the Superfecta has closed, tickets selecting a

horse that is designated to run for purse only shall be eliminated from the pool and refunded. Additional changes to the regulations are for purposes of consistency and clarity.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

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

The Board has made an initial determination that the proposed amendment of Rule 1974, and the amendment of Rules 1954.1; 1957; 1959; 1976; 1976.8; 1976.9; 1977; 1978; 1979 and 1979.1 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

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

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1974, and of Rules 1954.1; 1957; 1959; 1976; 1976.8; 1976.9; 1977; 1978; 1979 and 1979.1 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.

Effect on small businesses: none. The proposed amendment of Rule 1974, and of Rules 1954.1; 1957; 1959; 1976; 1976.8; 1976.9; 1977; 1978; 1979 and 1979.1 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610. Rule 1974 addresses coupling of horses and the definition of wagering interest. Rules 1954.1; 1957; 1959; 1976; 1976.8; 1976.9; 1977; 1978; 1979 and 1979.1 authorize specific types of pari-mutuel wagering in California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative that is considered, or that has otherwise been identified and brought to the atten-

tion 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.

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

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed texts of the regulations, the initial statement of reasons, the modified texts of the regulations, if any, and other information upon which the rulemaking is based should be directed to

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-Mail: HaroldC@chr.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden,
Policy and Regulation Unit
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed texts of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed texts, the modified texts — with changes clearly marked — shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Re-

quests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulations in their current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulations, and the initial statement of reasons. The Board's Internet address is: www.chrb.ca.gov.

**TITLE 5. COMMISSION ON TEACHER
CREDENTIALING**

**Division VIII of Title 5 of the California
Code of Regulations**

**Proposed Amendments to 5 California Code of
Regulations Pertaining to the Special Education
Added Authorizations and Speech–Language
Pathology Services Credential**

Notice of Proposed Rulemaking

The Commission on Teacher Credentialing proposes to amend regulatory action described below after considering all comments, objections and recommendations regarding the proposed action.

Public Hearing

A public hearing on the proposed actions will be held:

**December 10, 2010
9:00 a.m.
Commission on Teacher Credentialing
1900 Capitol Avenue
Sacramento, California 95811–4213**

Written Comment Period

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by e-mail on the proposed action.

The written comment period closes at 5:00 p.m. on December 7, 2010. Comments must be received by that time or may be submitted at the public hearing. You may fax your response to (916) 322–0048; write to the California Commission on Teacher Credentialing, attn. Terri H. Fesperman, 1900 Capitol Avenue, Sacramento, California 95814–4213; or submit an email at tfesperman@ctc.ca.gov.

Any written comments received 18 days prior to the public hearing will be reproduced by the Commission's staff for each member of the Commission as a courtesy to the person submitting the comments and will be included in the written agenda prepared for and presented to the full Commission at the hearing.

Authority and Reference

Education Code Section 44225 authorizes the Commission to promulgate rules and regulations which will implement, interpret or make specific sections 44225(e), 44225(q), and 44256 of the Education Code and govern the procedures of the Commission.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Summary of Existing Laws and Regulations

In June 2006, the Commission directed staff to begin the review and revision of the structure and requirements for the Special Education Teaching and Services Credentials and Added Authorizations. Later that summer the State Budget Act included funds to carry out the review and the passage of SB 1209 (Chap. 517, Stats. 2006) authorizing the Commission to study the structure and requirements for the Education Specialist and Special Education Services Credentials. The Special Education Credential Workgroup was formed in December.

At the December 2007 meeting, the Commission approved the *Report to the Governor and Legislature on the Study of Special Education Certification*. The report, which was sent to the Governor and Legislature on December 21, 2007, contained 25 recommendations for modifications and improvements for Special Education Teaching and Services Credentials and Added Authorizations. In January 2008, the Commission established a Design Team that had the responsibility for developing a set of proposed *Standards of Program Quality and Effectiveness* for all Education Specialist and Services Credentials, credential authorization statements for teaching and services credentials, and added authorization in special education.

The Workgroup and the Design Team were assisted by subcommittees representing specialized expertise in each of the credential and authorization areas where standards and authorizations were developed. The Office of Administrative Law has approved two sets of

special education regulations, the first in July 2009 concerning Added Authorizations in Special Education and the second in June 2010 on Special Education Teaching and Services Credentials.

Adaptive Physical Education (APE) Specialist Credential

The APE Specialist Credential is currently an add-on authorization for the holder of a general education credential that authorizes the holder to provide instruction in physical education. The APE credential allows an individual to teach special needs students who are precluded from participating in a general education physical education program or a specially designed physical education program. A subcommittee of the Special Education Workgroup discussed changes to the APE Specialist Credential.

The proposed regulations will:

- 1) change the title of the credential to ‘Added Authorization’ to better reflect the type of program completed and the type of document earned;
- 2) combine two sections of APE regulations into one; and
- 3) add the holder of a special education teaching credential or a services credential with a special class authorization as an appropriate prerequisite. Individuals using these prerequisite credentials would also be required to complete twelve semester units of physical education coursework with a minimum of three semester units in both kinesiology and motor development along with the APE program.

Early Childhood Special Education Added Authorization (ECSEAA)

The authorization for the Early Childhood Special Education Added Authorization was included in the regulations approved in June 2010. There is a separate section of regulations for the requirements and period of validity that needs to be updated.

The proposed regulations will:

- 1) change the title of the credential to ‘Added Authorization’ to match the recently approved title change made in the ECSE authorization regulation section; and
- 2) add the preliminary and Level I special education teaching credentials as appropriate prerequisites to earn the ECSEAA. This change aligns with the new requirements to earn a clear Education Specialist Teaching Credential by completion of a Commission-approved induction program that may include up to 12 semester units of coursework. Earning an added authorization such as the ECSEAA is an appropriate option for the clear credential program.

Resource Specialist (RSP) Certificate

The RSP is an add-on authorization for the holder of a special education credential other than the Education Specialist Teaching Credential. The Education Specialist Teaching Credential includes a resource authorization. The RSP Certificate authorizes an individual to provide resource instructional services to special needs students as determined by the Individualized Education Program (IEP), Individualized Family Service Program (IFSP), and/or Individualized Transition Plan (ITP).

Both a preliminary and clear RSP Certificate are issued. The preliminary certificate, issued for three years, must be submitted through an employing agency. The clear RSP Certificate may be submitted through an approved program sponsor, currently either an institution of higher education or Special Education Local Planning Area (SELPA). The regulations include a proposal to sunset the SELPA option by July 1, 2013 to allow the programs to transition to a Commission-approved program accredited by the Committee on Accreditation. One additional route, through an employing agency, based on previous resource experience remains available.

Currently there are eight sections of regulations for the RSP Certificate. Two sections are proposed to be deleted as they are included in the program standards. The remaining six sections have been updated and revised.

The proposed regulations will:

- 1) change the title of the certificate to ‘Added Authorization’ to better reflect the type of program completed and the type of document earned;
- 2) delete two regulation sections;
- 3) add new definitions and twits to clarify appropriate prerequisites and delete obsolete definitions;
- 4) update requirements for the preliminary and clear Resource Specialist Added Authorization (RSPAA); and
- 5) update the authorization for the preliminary and clear RSPAA.

Speech–Language Pathology (SLP) Services Credential

The Office of Administrative Law approved regulations for special education services credentials in the two areas of Orientation and Mobility and Audiology in June 2010. The Commission withdrew the section on requirements and authorizations for the SLP Services Credential from the regulation package.

The Commission met in June 2010 with representatives from the California Speech and Hearing Association (CASHA) to discuss the authorization for the SLP Services Credential which was the area of debate during the public hearing process in the last regulation package. The Commission is seeking an authorization that

reflects the content completed in the approved program. These representatives met with the CASHA organization leadership and sent proposed wording for the authorization to the Commission. Staff reviewed the wording and incorporated the suggestions that were in conjunction with the standards for the SLP Services Credential. The proposed regulations mirror the content in the program standards.

The proposed regulations will:

- 1) add requirements to earn a preliminary and clear SLP credential aligned with the Education Code for California-prepared and out-of-state prepared educators;
- 2) add a validity period for the preliminary and clear SLP credential; and
- 3) add an authorization for the preliminary and clear SLP credential including definitions for Language, Speech, and Hearing Assessment and Educational Services.

Special Class Authorization (SCA)

The SCA allows an individual to provide instruction to special needs students in the areas of autism and speech and language impaired. The Commission may issue an SCA to holders of credentials that authorize speech services including the Speech-Language Pathology Services Credential. The California-prepared individual must complete an approved SCA program and additional requirements. Subject-matter competence is included as a requirement aligned with No Child Left Behind. The Reading Instruction Competence Assessment (RICA) and English learner component completed by teaching credential holders is also required. The out-of-state prepared individual must meet the requirements in the Education Code for out-of-state prepared special educators which include a comparable credential to teach autism and speech and language impaired and the English learner requirement.

The proposed regulations will:

- 1) add requirements to earn a clear SCA for California-prepared and out-of-state prepared educators including subject-matter competence, RICA, and English learner content;
- 2) add a validity period for a clear SCA; and
- 3) add an authorization for the clear SCA including definitions for Educational Assessment and Educational Services.

Proposed Additions, Amendments, and Deletions to Regulation

Section 80046 section deleted

§80046.1 Content in section 80046 is moved into section 80046.1

§80046.1 Title Changes the title of the credential to ‘Added Authorization’ to better reflect the type of program completed and the type of document earned

§80046.1(a) Includes content deleted from section 80046 and updates the document title

§80046.1(a)(1)(A) Includes term for all prerequisites and clarifies the general education requirement and prerequisite credential grade level

§80046.1(a)(1)(B) Adds specific special education documents to serve as a prerequisite provided physical education coursework is completed

§80046.1(a)(2) Clarifies the approved program including field study that must be completed and the document title

§80046.1(a)(3) Adds that the approved program must verify completion of the program

§80046.1(b) Updates the wording for the validity period

§80046.1(c) Adds all previous names of the Adapted Physical Education Added Authorization into the authorization and clarifies the age/grade level

§80046.1(d)(1) Adds a definition for educational assessment

§80046.1(d)(2) Adds a definition for special education support

§80048.5 Title, (a), and (b) The proposed change lists the term ‘added authorization’ as found in Title 5 section 80048.6

§80048.5(a)(1) Adds the preliminary, Level I, and Level II credentials as appropriate prerequisites for the added authorization to include all types of special education teaching credentials.

§80048.5(a)(2) and Note Commission programs are accredited per EC section 44373

§80048.5(b) Clarifies the prerequisite credential needed

§80070.1 Title Changes the title of the credential to ‘Added Authorization’ to better reflect the type of program completed and the type of document earned

§80070.1(a) Updates the section where the resource specialist authorization may be found

§80070.1(a)(1) Changes terminology of ‘pupil’ to ‘students’ and ‘regular’ to ‘general education’ to reflect current terminology used by the Commission, and adds full titles of all types of special education assessment

§80070.1(a)(3) Changes terminology ‘regular’ to ‘general education’

§80070.1(a)(5) Changes terminology of ‘pupils’ to ‘students’ and adds titles of all types of special education assessment

§80070.1(b) Clarifies that the document is a prerequisite credential as found in Title 5, changes terminolo-

gy of ‘pupil’ to ‘students’, and lists documents not appropriate to serve as prerequisite

§80070.1(c) The definition for experience clarifies including how the candidate must obtain and who may verify the experience, changes terminology ‘regular’ to ‘general education’, and removes the special education service region as a place where experience is completed as it is not an employer

§80070.1(c)(1), (2), (3), (4), (5) and (6) Changes terminology ‘regular’ to ‘general education’

§80070.1(d) Updates the Education Code section

§80070.1(e) Adds the definition for ‘Educational Assessment’ found in the authorization in section 80070.5

§80070.1(f) Adds the definition for ‘Special Education Support’ found in the authorization in section 80070.5

§80070.1(g) Adds the definition for ‘Service Across the Continuum of Program Options Available’ found in the authorization in section 80070.5

§80070.2 Title Changes the title of the credential to ‘Added Authorization’ to better reflect the type of program completed and the type of document earned

§80070.2(a)(1) Clarifies a prerequisite credential is required and section where definition may be found

§80070.2(a)(2) Clarifies the individual must have provided resource specialist services and how the experience is verified

§80070.2(a)(3) Clarifies the section with the definition for the application form and rewords subsection

§80070.2(b) Removes the RSP authorization which now found in section 80070.5, updates terminology of ‘term’ to ‘period of validity’ to match other Title 5 sections, changes title of document, and adds where definition of prerequisite credential or authorization may be found

§80070.3 Title Changes the title of the credential to ‘Added Authorization’ to better reflect the type of program completed and the type of document earned

§80070.3(a)(1) Clarifies it is a prerequisite credential and section where definition may be found

§80070.3(a)(2) Technical change and delete how experience is verified as that appears in section 80070.1(c)

§80070.3(a)(3) Change the title of the credential to ‘Added Authorization’ and describes how the candidate must obtain and who may verify the statement of employment and plan to complete the clear credential requirements

§80070.3(a)(4) Clarifies the section with the definition for the application form and reworded subsection

§80070.3(b) Removes authorization which is now found in section 80070.5, updates terminology of ‘term’ to ‘period of validity’ to match other Title 5 sections,

change title of document, adds where definition of prerequisite credential or authorization may be found, and rewords part of the subsection

§80070.4 Title Changes the title of the credential to ‘Added Authorization’ to better reflect the type of program completed and the type of document earned and clarifies that there are Commission–approved programs offered by other entities than institutions of higher education who verify completion of the requirements

§80070.4(a)(1) Clarifies the prerequisite credential and section where definition may be found

§80070.4(a)(2) Technical change and change terminology ‘regular’ to ‘general’ change and delete how experience is verified as that appears in section 80070.1(c)

§80070.4(a)(3) Change the title of the credential to ‘Added Authorization’ and list the Education Code section for the Committee on Accreditation

§80070.4(a)(4) Clarifies the section with the definition for the application form and reworded subsection

§80070.4(b) remove authorization which is now found in section 80070.5, update terminology of ‘term’ to ‘period of validity’ to match other Title 5 sections, change title of document, add where definition of prerequisite credential may be found, and reworded part of the subsection

§80070.5 Title delete the wording on the developing, evaluating, and approving the approved programs and add new title for the authorization

§80070.5 All subsections delete the wording on the developing, evaluating, and approving the approved programs as it is contained with the program standards and preconditions

§80070.5(a) Add an authorization for both the preliminary and clear resource specialist which updates the authorization previously found in subsection 80070.2, 80070.3, 80070.4, and 80070.6

§80070.6 Title Changes the title of the credential to ‘Added Authorization’ to better reflect the type of program completed and the type of document earned and clarifies that programs are not offered by school districts or county offices but rather by the special education service regions who verify completion of the requirements

§80070.6(a)(1) Clarifies the prerequisite credential and section where definition may be found

§80070.6(a)(2) Includes a technical change and changes terminology ‘regular’ to ‘general education’

§80070.6(a)(3) Changes the title of the credential to ‘Added Authorization’ and updates the information on the ‘local plan’

§80070.6(a)(4) Clarifies the section with the definition for the application form and reworded subsection

§80070.6(b) Adds in the validity period of the clear resource specialist added authorization

§80070.6(c) Establishes a sunset date for special education service regions to move from their current program approval to formal Commission–approved programs under the accreditation process to align with the policy established by the Commission in September 2006 that all educator preparation programs that lead to a credential, authorization, or certificate be included in the accreditation system

§80070.7 Section Deletes the section on the requirements for the programs approved to access for the resource specialist as it is contained with the program standards and preconditions

§80070.8 Section Deletes the section on the skills, knowledge and performance competencies for the approved programs as it is contained with the program standards and preconditions

§80048.9 Title Clarifies that Education Code section 44265.3 established a two–tier credential to provide speech and language services

§80048.9(a)(1) Adds the master’s degree as found in EC §44265.3(a)(1) and closely related field and accredited by the American Speech–Language–Hearing Association’s Council on Academic Accreditation

§80048.9(a)(2)(A) and (B) Adds the program as found in EC §44265.3(a)(1) and the route for individuals prepared outside of California

§80048.9(a)(3) Adds the basic skills requirement is in alignment with EC §44252

§80048.9(a)(4)(A) Clarifies that California–prepared teachers must be recommended for the credential per EC §44265.3(a)(1)

§80048.9(a)(4)(B) Clarifies the method to apply for the credential if prepared outside of California

§80048.9(a)(5) Adds the issuance of a one–year non-renewable credential as found in EC §44252(b)(3)

§80048.9(b) Lists the validity period of the preliminary credential as found in EC §44265.3(a)(1)

§80048.9(c) Adds the requirements and method of applying for the clear credential as found in EC §44265.3(a)(2)

§80048.9(d) Adds the requirements for the clear credential for individuals that do not earn a preliminary as found in EC §44265.3(a)(2)

§80048.9(e) Clarifies that the clear credential is issued for five years as found in EC §44251

§80048.9(f) Lists the authorization for the preliminary and clear credential

§80048.9(g)(1) and (2) Adds definitions for the credential authorization for the credential regarding ‘Language, Speech, and Hearing Assessments’ and ‘Educational Services’

§80048.9.4(a) Lists the requirements to earn the authorization

§80048.9.4(a)(1) Lists the appropriate prerequisite credentials for the Special Class Authorization

§80048.9.4(a)(2)(A) and (B) Adds the program that must be completed for California–prepared or the equivalent out–of–state program.

§80048.9.4(a)(3) Adds the basic skills requirement is in alignment with EC §44252.

§80048.9.4(a)(4)(A), (B) and (C) Lists the options to meet the subject–matter competence requirement aligned with No Child Left Behind

§80048.9.4(a)(5) Contains the reading and reading instruction competence assessment requirements

§80048.9.4(a)(6) Contains the English learner requirement as required in statute

§80048.9.4(b)(1) Clarifies the method of verifying completion for California–prepared teachers

§80048.9.4(b)(2) Clarifies the method to apply for credential if prepared outside of California.

§80048.9.4(c) Lists the validity period.

§80048.9.4(d) Lists the authorization for the credential.

§80048.9.4(e)(1) and (2) Adds a definition for the authorization regarding ‘Educational Assessment’ and ‘Special Education Support’ aligned with Title 5 section 80048.6.

Documents Incorporated by Reference:

Education Specialist and Other Related Services Credentials (2008–10) Standards

Documents Relied Upon in Preparing Regulations:

Individuals with Disabilities Education Act (IDEA) Part B Regulations (34 CFR Parts 300 and 301)

Report on the Study of Special Education Certification: A Report to the Governor and Legislature as Required by SB 1209 (Chap.517, Stats, 2006)

Disclosures Regarding the Proposed Actions

The Commission has made the following initial determinations:

- Mandate to local agencies or school districts:* None.
- Other non–discretionary costs or savings imposed upon local agencies:* None.
- Cost or savings to any state agency:* None.
- Cost or savings in federal funding to the state:* None.
- Significant effect on housing costs:* None.
- Significant statewide adverse economic impact directly affecting businesses including the ability of*

California businesses to compete with businesses in other states: None.

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with Section 17500) of the Government Code.

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

Assessment regarding the creation or elimination of jobs in California [Govt. Code §11346.3(b)]: The Commission has made an assessment that the proposed amendments to the regulation would not (1) create nor eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: The Commission has determined that the proposed amendment to the regulations does not affect small businesses. The regulations are not mandatory but an option that affects school districts and county offices of education.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the agency or that had otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or small businesses than the proposed action. These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with Section 17500) of the Government Code.

Contact Person/Further Information

General or substantive inquiries concerning the proposed action may be directed to Terri H. Fesperman by telephone at (916) 323-5777 or Terri H. Fesperman, California Commission on Teacher Credentialing, 1900 Capitol Ave., Sacramento, CA 95814. General question inquiries may also be directed to Janet Bankovich at (916) 323-7140 or at the address mentioned in the previous sentence. Upon request, a copy of the express terms of the proposed action and a copy of the initial statement of reasons will be made available. This information is also available on the Commission's web site at www.ctc.ca.gov. In addition, all the information on which this proposal is based is available for inspection and copying.

Availability of Statement of Reasons and Text of Proposed Regulation

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of regulations, and the initial statement of reasons.

Modification of Proposed Action

If the Commission proposes to modify the actions hereby proposed, the modifications (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

Availability of Final Statement of Reasons

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, after the public hearing. When it is available, it will be placed on the Commission's web site at www.ctc.ca.gov or you may obtain a copy by contacting Terri H. Fesperman at (916) 323-5777.

Availability of Documents on the Internet

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations in underline and strikeout can be accessed through the Commission's web site at www.ctc.ca.gov.

TITLE 13. NEW MOTOR VEHICLE BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California New Motor Vehicle Board ("Board"), pursuant to the authority vested in it by Vehicle Code section 3050(a), proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend sections 550, 551.2, 551.11, and 551.12 and add sections 551.19, 551.20, 551.23, 551.24, and 551.25 of Title 13 of the California Code of Regulations pertaining to case management.

PUBLIC DISCUSSIONS PRIOR TO NOTICE

Prior to the publication of this notice, the Board considered an initial draft of the proposed regulations at a noticed meeting held on February 11, 2008. At that meeting comments were received by members of the industry. Based on those comments and those of its mem-

bers, the Board revised the proposed text. The proposed text was adopted at a noticed meeting held on February 4, 2010. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to the Board's Public Mailing List and Electronic Public Mailing List, a list of approximately 90–100 individuals, entities and governmental agencies who have requested notification by the Board of pending Board matters, and the 38 California New Car Dealers Association Directors. The agenda was also posted on the Board's website. No comments by the public were received at the February 4, 2010, General Meeting, and no further public discussions were held prior to publication of the notice.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any person interested, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 323–1632 or by e-mail at rparker@nmvb.ca.gov or nmvb@nmvb.ca.gov. The written comment period closes at 5:00 p.m. on Monday, December 6, 2010. The Board will consider only comments received at the Board's offices by that time. Submit comments to:

Robin P. Parker, Senior Staff Counsel
 New Motor Vehicle Board
 1507 21st Street, Suite 330
 Sacramento, CA 95811
 (916) 323–1536 direct line
 (916) 445–1888 main line
 (916) 323–1632 fax
rparker@nmvb.ca.gov

AUTHORITY AND REFERENCE

Vehicle Code section 3050(a) authorizes the Board to adopt the proposed regulations. The proposed regulations implement, interpret, and make specific Business and Professions Code section 472.5(b), California Rules of Court, Rules 2.550 and 2.551, Code of Civil Procedure sections 284, 1013a, 2015.5 and 2016.020, Evidence Code section 751, Government Code sections

11425.20, 11425.40, 11435.05, 11435.10, 11435.25, 11435.55, 11435.65, 11440.20, 11440.30, 11450.30, and 68560, et seq., Rule 3–700, Rules of Professional Conduct, and Vehicle Code sections 1504, and 3050–3079.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 3050, subdivision (a) authorizes the Board to adopt rules and regulations governing such matters as are specifically committed to it.

The adopted mission of the Board is to: “. . .enhance relations between dealers and manufacturers throughout the State by resolving disputes in the new motor vehicle industry in an efficient, fair and cost–effective manner. The adopted vision statement provides that the Board safeguard for its “constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes, which ultimately improves relations and reduces the need for costly litigation and develop methods that further improve the delivery of Board services in a timely and cost–effective manner. . .”

The Board proposes to amend Section 550 to add a number of definitions that are not currently in the Board's regulations including: administrative law judge (“ALJ”); affidavit; appeal; appellant; day; declaration; electronic; electronically stored information; hearing; motion(s); papers; petition; protest; and service. Furthermore, it proposes adding clarifying language that all of the definitions in Section 550 are supplementary to and do not replace those found in the Vehicle Code and other applicable laws and regulations.

The Board proposes to amend Section 551.2 to encompass motions to quash consistent with the Administrative Procedure Act (“APA”) and the Office of Administrative Hearings (“OAH”) regulations (1 CCR § 1024), update obsolete references when the California Civil Discovery Act was reorganized, and reference electronically stored information (Section 1985.8 of the Code of Civil Procedure). The proposed amendments also require service of the request for subpoena on counsel and clarify service of the subpoena.

The Board proposes to amend Section 551.11 to clarify the submission of settlement conference statements. The amendment allows the parties to agree orally or in writing that the statements may only be submitted to the Board for use by the assigned settlement conference judge instead of being served on counsel; these statements would be designated “confidential” by the parties. This proposed amendment is the result of feedback provided by counsel appearing before the Board.

The Board proposes to amend Section 551.12 concerning assignment of ALJs and preemptory challenges

to further clarify the process, and shorten the length of time to file a peremptory challenge.

The Board proposes to add Section 551.19 to fill a gap in the Board's case management procedures concerning motions. Motions are routinely filed before the Board but there are no regulations that address the format, i.e., oral or written, whether an opposition or reply brief is permissible, or whether the hearings are in-person or telephonic. Government Code section 11440.30(a) of the APA provides that "[t]he presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe the exhibits." Subsection (b) goes on to provide that "[t]he presiding officer may not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects." The proposed regulation exempts the Board's hearings from this optional provision of the APA and clarifies that all motion hearings are conducted by telephone, television, or other electronic means unless otherwise determined by the ALJ. However, in the event of live testimony, the hearing shall be conducted in person before the ALJ.

The Board proposes to add Section 551.20 to also fill a gap in the Board's case management procedures. The APA addresses protective orders as does OAH's regulations (1 CCR §§ 1024, 1030). The proposed regulation encompasses motions seeking closure of a hearing, a motion to seal designated portions of the record, and other protective orders. The motions can be oral or written but must be made as early as practicable. The regulation also requires the ALJ to set forth on the record the facts, legal basis, and findings that support any protective order.

The Board proposes to add Section 551.23 to ensure that parties and their counsel are aware that language assistance, accommodation for a disability, hearing impairment amplification, and other special accommodations are available at Board proceedings. This regulation is consistent with OAH's regulation concerning the same (1 CCR § 1032). It is also consistent with the APA. Additionally, it specifies that an interpreter used at the hearing must have an oath on file with the Superior Court and be certified and registered in accordance with the Government Code. To allow for flexibility in Board proceedings, if an interpreter certified pursuant to Government Code section 11435.20 cannot be present at the hearing, the Board shall have discretionary authority to provisionally qualify and use another interpreter.

The Board proposes to add Section 551.24 to formalize how proof of service can be accomplished in Board proceedings. This regulation is consistent with Section 1013a of the Code of Civil Procedure and current Board

practice that provides for service via facsimile and electronic mail.

The Board proposes to add Section 551.25 because there is nothing in the Board's statutes or regulations which address substitution or withdrawal of counsel. This regulation is being proposed to ensure the parties and counsel are aware of the parameters permitting a change or withdrawal of counsel. The regulation does not allow a change of counsel alone to constitute grounds for a continuance of any previously scheduled dates in the proceeding. It is consistent with the Rules of Professional Conduct and the Code of Civil Procedure.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

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

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

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

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

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.

Significant effect on housing costs: None.

Small Business Determination:

The Board has determined that the proposed regulations will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation. The proposed regulations merely clarify case management for franchised new motor vehicle dealers and their franchisors (new vehicle manufacturers or distributors) who choose to file a protest, petition or appeal with the Board.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, 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.

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

CONTACT PERSONS

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Parker at the following address:

Robin P. Parker, Senior Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1536 direct line
(916) 445-1888 main line
(916) 323-1632 fax
rparker@nmvb.ca.gov

The back-up contact person for these inquiries is:

Polly Riggenschach, Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1282 direct line
(916) 445-1888 main line
(916) 323-1632 fax
priggenschach@nmvb.ca.gov

AVAILABILITY OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and all the information upon which the proposal is based. Copies may be obtained by contacting Ms. Parker, the contact

person, or Ms. Riggenschach, the back-up contact person.

AVAILABILITY OF CHANGES OR MODIFIED TEXT

After 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. Requests for copies of any modified regulation should be addressed to the Board contact person or back-up contact person at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Parker or Ms. Riggenschach at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout font can be accessed through the Board’s website at www.nmvb.ca.gov.

TITLE 13. NEW MOTOR VEHICLE BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California New Motor Vehicle Board (“Board”), pursuant to the authority vested in it by Vehicle Code section 3050(a), proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to delete section 593, and amend sections 594, 595, and 597 of Title 13 of the California Code of Regulations pertaining to the format of pleadings.

PUBLIC DISCUSSIONS PRIOR TO NOTICE

Prior to the publication of this notice, the Board considered an initial draft of the proposed regulations at a noticed meeting held on February 11, 2008. At that meeting comments were received by members of the industry. Based on those comments and those of its members, the Board revised the proposed text. The proposed text was adopted at a noticed meeting held on February 4, 2010. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to the Board’s Public Mailing List and Electronic Public Mailing List, a list of approximately 90–100 individuals, entities and governmental agencies who have requested notification by the Board of pending Board matters, and the 38 California New Car Dealers Association Directors. The agenda was also posted on the Board’s website. No comments by the public were received at the February 4, 2010, General Meeting, and no further public discussions were held prior to publication of the notice.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any person interested, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 323–1632 or by e–mail at rparker@nmvb.ca.gov or nmvb@nmvb.ca.gov. The written comment period closes at 5:00 p.m. on Monday, December 6, 2010. The Board will consider only comments received at the Board’s offices by that time. Submit comments to:

Robin P. Parker, Senior Staff Counsel
 New Motor Vehicle Board
 1507 21st Street, Suite 330
 Sacramento, CA 95811
 (916) 323–1536 direct line
 (916) 445–1888 main line
 (916) 323–1632 fax
rparker@nmvb.ca.gov

AUTHORITY AND REFERENCE

Vehicle Code section 3050(a) authorizes the Board to adopt the proposed regulations. The proposed regulations implement, interpret, and make specific Vehicle Code sections 3050 and 3051.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 3050, subdivision (a) authorizes the Board to adopt rules and regulations governing such matters as are specifically committed to it.

The adopted mission of the Board is to: “. . .enhance relations between dealers and manufacturers throughout the State by resolving disputes in the new motor vehicle industry in an efficient, fair and cost–effective manner.” The adopted vision statement provides that the Board safeguard for its “constituency, a fair, expeditious and efficient forum for resolving new motor vehicle industry disputes, which ultimately improves relations and reduces the need for costly litigation and develop methods that further improve the delivery of Board services in a timely and cost–effective manner. . .”

The Board proposes to delete Section 593 pertaining to papers and approved forms because it is obsolete and the Board does not have any pre–approved forms. It also eliminates the requirement that “papers” have original signatures. This will allow for e–mail and facsimile of documents, something that the litigants that appear before the Board have been requesting.

The Board proposes to amend Section 594 pertaining to size of paper and pagination for clarity and to delete obsolete requirements. The requirement of an original paper is being deleted in renumbered subdivision (f). The parties will be permitted to submit documents that do not have an original signature. Subdivision (h) pertains to the current practice that requires each paper filed with the Board bear a footer in the bottom of each page that contains the title of the paper or some abbreviation and the page number.

The Board proposes to amend Section 595 for clarity and to make grammatical changes. The proposed amendments delete obsolete language concerning when protest numbers are assigned and clarifies that the same case number shall not be assigned to more than one petition, appeal, or protest. The proposed amendments specify that upcoming dates in the proceeding should be on the first page. These amendments incorporate several of the provisions in the Office of Administrative Hearing’s regulations (1 CCR § 1006). Lastly, the proposed amendments formalize the following practices:

- Allows the Board to direct a party to submit pleadings or other papers electronically, if the party is able to do so.
- Formalizes how a party may obtain a conformed copy of a paper filed with the Board.
- Permits the filing of papers via facsimile or electronic-mail. Unless the ALJ or Board order requires such, the original paper does not need to be filed with the Board if the party gets Board confirmation that a complete and legible copy of the papers was received.
- Clarifies when papers delivered to the Board are “filed.” Specifies that papers received after regular business hours are filed on the next regular business day.
- Specifies that protests sent by U.S. Postal Service certified or registered mail are deemed received by the Board on the date of certified or registered mailings and will be filed as of the date of the certified or registered mailing. This amendment is consistent with Sections 585 and 598 of the Board’s regulations.

The Board proposes to amend Section 597 to allow the Board to accept for filing papers, documents, or exhibits that bear a copy of a signature.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

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

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

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

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

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.

Significant effect on housing costs: None.

Small Business Determination:

The Board has determined that the proposed regulations will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation. The proposed regulations merely clarify case management for franchised new motor vehicle dealers and their franchisors (new vehicle manufacturers or distributors) who choose to file a protest, petition or appeal with the Board.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, 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.

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

CONTACT PERSONS

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Parker at the following address:

Robin P. Parker, Senior Staff Counsel
 New Motor Vehicle Board
 1507 21st Street, Suite 330
 Sacramento, CA 95811
 (916) 323-1536 direct line
 (916) 445-1888 main line
 (916) 323-1632 fax
rparker@nmvb.ca.gov

The back-up contact person for these inquiries is:

Polly Riggenschach, Staff Counsel
New Motor Vehicle Board
1507 21st Street, Suite 330
Sacramento, CA 95811
(916) 323-1282 direct line
(916) 445-1888 main line
(916) 323-1632 fax
priggenschach@nmvb.ca.gov

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and all the information upon which the proposal is based. Copies may be obtained by contacting Ms. Parker, the contact person, or Ms. Riggenschach, the back-up contact person.

**AVAILABILITY OF CHANGES OR
MODIFIED TEXT**

After 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. Requests for copies of any modified regulation should be addressed to the Board contact person or back-up contact person at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

**AVAILABILITY OF THE FINAL STATEMENT
OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Parker or Ms. Riggenschach at the above address.

**AVAILABILITY OF DOCUMENTS ON
THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in

underline and strikeout font can be accessed through the Board's website at www.nmvb.ca.gov.

**TITLE 14. DEPARTMENT OF
CONSERVATION**

**NOTICE OF INTENTION TO AMEND THE
CONFLICT-OF-INTEREST CODE OF THE
DEPARTMENT OF CONSERVATION**

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its Conflict-of-Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

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

This amendment incorporates new positions which have been added to the previously existing divisions and offices within the Department, adds the Office of Equality, Safety and Workforce Planning, deletes the Division of Recycling, deletes other positions, and makes other technical changes to reflect the current organizational structure of the Department. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than the end of the 45 day public comment period, which is December 7, 2010, or at the conclusion of the public hearing if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than November 22, 2010, by contacting the Contact Person set forth below.

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

The Department of Conservation proposes to adopt this Conflict of Interest Code to implement and admin-

ister the requirements of the California Political Reform Act codified in the Government Code commencing with section 81000. This Conflict of Interest Code requires disclosure of financial interests and disqualification of the Department's employees from decision-making when they have a financial conflict of interest. In implementing the requirements of the Political Reform Act, the Department of Conservation has determined that the proposed amendments:

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

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

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

Andrea Derich
 Human Resources Office
 Department of Conservation
 801 K Street, MS 22-13
 Sacramento, CA 95814
 Telephone Number: (916) 322-7685
 Fax: (916) 445-5130
 Email: Andrea.Derich@conservation.ca.gov

TITLE 20. CALIFORNIA ENERGY COMMISSION

**California Code of Regulations, Title 20
 Division 2, Chapter 9, Article 1
 Sections 2700-2704**

**NOTICE OF PROPOSED ACTION
 October 22, 2010**

The Energy Commission's Renewables Committee will hold a public hearing on the following date to re-

ceive public comment on the Express Terms (45-Day Language). The hearing will be held:

DECEMBER 7, 2010

1:00 p.m. to 4 p.m.

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

First Floor, Hearing Room B

Sacramento, California

(Wheelchair Accessible)

Audio from this hearing will be broadcast over the Internet. Details regarding the Energy Commission's webcast can be found at: www.energy.ca.gov/webcast.

At this hearing any person may present statements or arguments relevant to the proposed action. Interested parties may also submit written comments; if possible, please provide written comments to be considered at the Committee hearing by **December 6, 2010**. The Energy Commission appreciates receiving written comments at the earliest possible date.

INTRODUCTION

In 2006, the Governor signed into law Senate Bill 1 (SB 1, Murray, Chapter 132, Statutes of 2006) a bill that expanded Governor Schwarzenegger's "Million Solar Roofs Initiative" and builds on the California Public Utilities Commission's California Solar Initiative Program, the California Energy Commission's New Solar Homes Partnership and existing publicly owned utility solar energy system incentive programs. SB 1 directs total expenditures of up to \$3.3 billion by 2017 with goals to install solar energy systems with generation capacity equivalent of 3,000 megawatts, to establish a self-sufficient solar industry so that in 10 years solar energy systems are a viable mainstream option for homes and commercial buildings, and to put solar energy systems on 50 percent of new homes by the end of the program. The overall goal is to help build a self-sustaining solar electricity market combined with improved energy efficiency in the state's residential and non-residential buildings.

Public Resources Code Section 25405.5, enacted by SB 1, directs the California Energy Commission to develop regulations that require a seller of production homes, beginning January 1, 2011, to offer the option of a solar energy system to all customers negotiating to purchase a new production home constructed on land meeting certain criteria and disclose certain information. Section 25405.5 also requires the Energy Commission to develop an offset program that allows a developer or seller of production homes to forgo the solar as an option offer requirement on a project by installing solar energy system generating specified amounts of electricity on other projects.

On January 13, 2010, the Energy Commission approved an Order Instituting Rulemaking (Docket # 09-SOPR-1) to adopt guidelines, definitions, and other provisions necessary for the administration of the Homebuyer Solar Option and the Solar Offset Program. The purpose of this rulemaking is to develop and adopt regulations that are necessary to clarify ambiguities in the statute and create certainty and transparency in the administration of the program.

In May 2010, staff developed a paper titled, *Solar Offset Program Pre-Rulemaking*, Energy Commission Publication No. CEC-300-2010-005, which presented issues and possible alternatives that were raised by Energy Commission staff and stakeholders. Staff conducted a workshop on May 20, 2010 to discuss the issues and proposed solutions outlined in the staff paper and to seek comments from interested stakeholders.

On September 20, 2010, staff published a report titled, *Solar Offset Program Pre-Rulemaking Draft Regulations*, Energy Commission Publication No. CEC-300-2010-009-SF, which outlined proposed draft regulations to be considered during the rulemaking for both the Homebuyer Solar Option and Solar Offset Program.

The Energy Commission has prepared this Notice of Proposed Action (NOPA) and an Initial Statement of Reasons as part of the supporting documents to adopt the proposed regulations. The Energy Commission has also published the Express Terms (45 day language) of the proposed regulations language. These documents can be obtained from the contact persons designated below or from the Energy Commission website at www.energy.ca.gov/2010-SOPR-1/index.html. In addition, all the information upon which this proposed rulemaking is based will be made available at the California Energy Commission, 1516 Ninth Street, Sacramento, CA 95814.

**SECOND HEARING/PROPOSED
ADOPTION DATE**

The Energy Commission will consider possible adoption of the 45-Day Language at the regularly scheduled Energy Commission Business meeting unless the Energy Commission decides to modify the Express Terms through issuance of 15-Day Language.

DECEMBER 29, 2010

10 a.m.
California Energy Commission
1516 Ninth Street
First Floor, Hearing Room A
Sacramento, California
(Wheelchair Accessible)

Audio for the **December 29, 2010**, adoption hearing will be broadcast over the internet. Details regarding the Energy Commission's webcast can be found at: www.energy.ca.gov/webcast.

If you have a disability and require assistance to participate in these hearings, please contact Lou Quiroz at (916) 654-5146 at least 5 days in advance.

At this hearing any person may present statements or arguments relevant to the proposed action. Interested parties may also submit written comments (see below).

**PUBLIC COMMENT PERIOD/
WRITTEN COMMENTS**

The public comment period for this NOPA will be from **October 22, 2010** through **December 6, 2010**. Any interested person may submit written comments on the proposed regulations. Regarding the Renewables Committee and Adoption Hearings, the Energy Commission appreciates receiving written comments at the earliest possible date. For the **December 7, 2010** hearing, please provide written comments by **December 6, 2010**; for the **December 29, 2010** adoption hearing, please provide written comments by **December 28, 2010**. However written comments will still be accepted at both hearings. Written comments shall be emailed to [docket@energy.state.ca.us] and [sneidich@energy.state.ca.us], or mailed or delivered to the following address (emailing is preferred):

California Energy Commission
Docket No. 10-SOPR-1
Docket Unit
1516 Ninth Street, MS-4
Sacramento, California 95814-5504

Include docket number **10-SOPR-1** and indicate **Solar Offset Program** in the subject line or first paragraph of your comments. The Energy Commission encourages comments by electronic mail (e-mail). Please include your name or organization in the name of the file. Those submitting comments by e-mail should provide them in either Microsoft Word format or as a Portable Document File (PDF) to [docket@energy.state.ca.us].

AUTHORITY AND REFERENCE

Public Resources Code Section 25213 and 25218(e) provide the Commission with the authority to adopt rules and regulations necessary to carry out its assigned duties and responsibilities. Further, Public Resources Code Section 25218.5 provides that provisions specifying any power of the Commission, such as Commission's rulemaking authority, shall be liberally construed. The proposed regulations implement, inter-

pret, and make specific provisions of Public Resources Code Sections 25405.5 and 25783

gy Commission Publication No. CEC-300-2010-004-CMF.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Existing law (Public Resources Code Section 25405.5, as enacted by Senate Bill 1) directs the California Energy Commission to develop regulations that require a seller of production homes, beginning January 1, 2011, to offer the option of a solar energy system to all customers negotiating to purchase a new production home constructed on land meeting certain criteria and disclose certain information. Public Resources Code Section 25405.5 also requires the Energy Commission to develop an offset program that allows a developer or seller of production homes to forgo the solar as an option offer requirement on a project by installing solar energy systems generating specified amounts of electricity on other projects.

The purpose of this rulemaking is to adopt regulations to add Article 1, Sections 2700–2704 to California Code of Regulations, Title 20, Division 2, Chapter 9.

In the rulemaking proceeding that is the subject of this Notice of Proposed Action, the Energy Commission is proposing to adopt the following regulations to comply with Public Resources Code Section 25405.5: (1) add a scope which defines the Homebuyer Solar Option and the Solar Offset Program; (2) add the following definitions, AC, Banking, Building Energy Efficiency Standards for Residential and Nonresidential Buildings Solar Offset Program Calculator, Climate Zone, Energy Commission, IOU, kW, MW, Minimal Shading, New Solar Homes Partnership (NSHP), Offset Solar Energy System, POU, Production Home, PV, Reference Solar Energy System, Solar Energy System, Time Dependent Valuation (TDV); (3) define the requirements for the Homebuyer Solar Option which includes information the seller of production homes needs to disclose to a prospective home buyer, reporting and verification of compliance requirements that a seller of production homes shall adhere to; (4) define the requirements for the Solar Offset Program which includes requirements of the offset solar energy system, reference solar energy system details, banking definition, details on managing the banking system, and withdrawing from the banking system, annual reporting requirements that the developer/seller must adhere to; and (5) how future ordinances will affect the regulations.

LIST OF DOCUMENTS INCORPORATED BY
REFERENCE

California Energy Commission

Guidelines for California’s Solar Electric Incentive Program (Senate Bill 1) Third Edition June 2010, Ener-

LOCAL MANDATE

The proposed regulations will not impose a mandate on state of local agencies or districts.

ECONOMIC AND FISCAL IMPACTS

The Energy Commission has made the following initial determinations:

- The proposed regulations will not impose a mandate on state or local agencies or districts.
- The proposed regulations will not impose any costs on local agencies or school districts for which Government Code sections 17500 to 17630 require reimbursement.
- The proposed regulations will not result in other non-discretionary costs or savings imposed upon local agencies.
- The proposed regulations will not result in any costs or savings for state agencies.
- The proposed regulations will not result in any costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

The proposed regulations will have no direct impact on housing costs because prospective home buyers are not required to install a solar energy system; this is an option during the home purchase negotiations. If a prospective home buyer chooses to install a solar energy system, the cost of this system could be added to the purchase price of the home. It is estimated that the average cost of a residential solar installation, less than 10 kW, is \$8.49 per watt (California Public Utilities Commission, California Solar Initiative, 2009 Impact Evaluation). The Energy Commission determined that a median sized new construction, residential solar energy system is 2 kW or 2,000 watts. The cost of installation for this solar energy system, before state rebates and a federal tax incentive, would be approximately \$16,980. Incorporating the cost of the solar energy system into the home loan will increase the monthly mortgage payment, however, the home buyers’ investment may be offset through reduced energy costs and increased value of the home.

If the home buyer does not elect to install a solar energy system then there would be no increase in the purchase price of the home, and therefore, no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The Energy Commission has made an initial determination that there will be no significant (or insignificant) statewide adverse economic, fiscal, or environmental impact directly affecting businesses, including small businesses, as a result of the proposed regulations, including the ability of California businesses to compete with businesses in other states.

If the developer selects the option to install an offset solar energy system, there would be a cost to the developer. It is unknown at this time how big this offset solar energy system would be or the cost to install it. It is estimated that the average cost of a large commercial solar installation, over 10 kW, is \$7.09 per watt (CPUC California Solar Initiative, 2009 Impact Evaluation). Since it is unknown how large an offset system will be installed we can only provide an estimate.

If a developer built a housing development that consisted of 100 homes, and our regulations assume that 20 percent of prospective home buyers will install a solar energy system, then 20 homes would be the number that would be offset. The Energy Commission has already determined that a 2 kW solar energy system will be used as the baseline for determining expected time-dependent valuation weighted equivalent energy of the solar energy system for the offset location. The developer will divide the homes that are being offset by 2 kW. Therefore, the developer will be required to build an offset solar energy system that is at least 40 kW or 40,000 watts. The cost to build this offset solar energy system would be approximately \$283,600. This is an approximate number, since it is unclear what the developer will actually pay for the offset solar system.

The developer could pass the cost of the offset system onto the purchase price of the homes in the housing development that is using the offset. This is also an unknown.

There could be a positive impact to the solar industry and new housing developments. With the implementation of the Homebuyer Solar Option, homebuyers will now have an option to install solar on their new home and incorporate the cost of this option into their monthly mortgage payment. This might steer prospective homebuyers to new construction homes, therefore, increasing the construction of these homes. This increase could impact businesses in a positive way by increasing the manufacture of solar modules and inverters (could decrease the cost of these products and create new jobs), boost sales by retailers (could add new businesses and create new jobs), improve the workload of installers

(could reduce the cost of installations and add to the workforce) and possibly increase sales of new construction homes (possible job creation).

IMPACTS ON THE CREATION OR ELIMINATION OF JOBS WITHIN THE STATE, THE CREATION OF NEW BUSINESSES OR THE ELIMINATION OF EXISTING BUSINESSES, OR THE EXPANSION OF BUSINESSES IN CALIFORNIA

The proposed regulations will have no impact on the creation or elimination of jobs with the state, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

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

BUSINESS REPORTS

The proposed regulations would require mandatory data submittal for the purpose of identifying housing developments that will be offering the Homebuyer Solar Option to prospective home buyers, ensuring that the seller of production homes is providing solar as an option materials to the home buyer, verifying an offset solar energy system interconnection date, and managing a banking system and withdrawals from this banking system. The Energy Commission estimates that the annual reporting cost would be \$400 per developer/seller.

It is necessary for the health, safety or welfare of the people of the state that the proposed regulations apply to business. The Legislature has required the Energy Commission to develop these regulations, and the submittal of data is necessary to verify compliance.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

The proposed regulations do not duplicate or conflict with any federal regulations contained in the Code of Federal Regulations. Furthermore, the proposed regulations are not mandated by federal law or regulations.

ALTERNATIVES

Before it adopts the proposed regulations, the Energy Commission must determine that no reasonable alter-

native 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 amendments are proposed or would be as effective as and less burdensome to affected private persons than the proposed amendments. To date, the Energy Commission has found no alternatives to the proposed action that would be more effective, or as effective and less burdensome.

DESIGNATED CONTACT PERSONS

Please contact the following person, preferably by e-mail, for general information about the proceedings or to obtain any document relevant to the proceedings, including the Express Terms (45-Day Language), the Initial Statement of Reasons, the Form 399 (Economic and Fiscal Impact Statement), and any other document in the rulemaking file:

Sherrill Neidich
 California Energy Commission
 1516 Ninth Street, Mail Station 45
 Sacramento, California 95814-5512
 Telephone: 916-651-1463
 Fax: 916-653-8251
 E-mail address: sneidich@energy.state.ca.us

The backup contact person is:

Anthony Ng
 Telephone: (916) 654-4544
 E-mail address: ANg@energy.state.ca.us

PUBLIC PARTICIPATION

The Energy Commission's Public Adviser's Office provides the public assistance in participating in Energy Commission activities. If you want information on how to participate in these proceedings, please contact the Public Adviser's Office by phone at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by e-mail at [PublicAdviser@energy.state.ca.us]. If you have a disability and require assistance to participate, please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

Please direct all news media inquiries to the Media and Public Communications Office at (916) 654-4989, or by e-mail at [mediaoffice@energy.state.ca.us].

AVAILABILITY OF MODIFIED AMENDMENTS (15-DAY LANGUAGE)

At the **December 29, 2010** Adoption Hearing, the Energy Commission may adopt the proposed regula-

tions substantially as described in this NOPA. If the Renewables Committee decides to make modifications in response to public comments, this hearing will be continued to a subsequently noticed date and the full modified text with changes clearly indicated will be made available to the public at least 15 days before the subsequently noticed date when the Commission will consider adoption of the regulations. A notice of the availability of any such text will be placed on the Commission's website and will be mailed to all persons to whom this notice is being mailed, who submitted written or oral comments at any hearing, who submitted written comments during the public comment period, or who requested to receive such modifications. In addition, copies may be requested from the contact person named above and from the Docket Office. The Commission will accept written comments on any such modified text for at least 15 days after the text is made available to the public. Adoption of the 15-Day Language will be considered at a public hearing scheduled in the notice of availability

FINAL STATEMENT OF REASONS

The Energy Commission will prepare a Final Statement of Reasons on the regulations to respond to all relevant comments made during the proceeding. The Final Statement of Reasons will be available from Sherrill Neidich or the Docket Office noted above.

Mail Lists: Agendas, Renewable, Go Solar, NSHP Communities, PV Calculator

Note: The California Energy Commission's formal name is the State Energy Resources Conservation and Development Commission.

TITLE 20. PUBLIC UTILITIES AND ENERGY

DIVISION 1 PUBLIC UTILITIES COMMISSION

NOTICE OF PROPOSED REGULATORY ACTION

The California Public Utilities Commission (Commission) proposes to amend regulations described below after considering all comments, objections, or recommendations regarding the proposal.

At a duly noticed regularly scheduled meeting not earlier than December 16, 2010, at 10:00 a.m., in the Commission Auditorium, 505 Van Ness Avenue, San Francisco, the Commission will consider a proposal to amend the Rules of Practice and Procedure set forth in

Division 1, Chapter 1 of Title 20 of the California Code of Regulations. The proposed amended regulations will reflect changes in the Commission's administration, provide consistency between the rules, and provide greater clarity.

AUTHORITY TO ADOPT RULES

Article XII, Section 2 of the California Constitution and Section 1701 of the Public Utilities Code authorize the Commission to adopt Rules of Practice and Procedure.

INFORMATIVE DIGEST

The California Public Utilities Commission proposes amendments to its Rules of Practice and Procedure to reflect changes in the Commission's administration, provide consistency between the rules, and provide greater clarity. These amendments include:

- Modify the font and margin size and title page requirements for filed documents
- Eliminate the requirement that requests for changes to the official service list to be served on the official service list
- Require the certificate of service and official service list to be transmitted as a separate attachment from an electronically served document
- Allow for applicants to tender requisite copies of a Proponent's Environmental Assessment in CD-ROM format
- Clarify that an act must occur by 5:00 p.m. in order to be deemed performed on that day
- Eliminate requirement that protests, responses and replies to application be served on persons upon whom the application was served
- Modify time for applicants to comply with notice requirements with respect to applications for authority to increase rates, and consolidate the separate proofs of compliance with each notice requirement into a single proof of compliance
- Allow for applicants to provide electronic notice of requested rate increases to customers that receive their bills electronically
- Codify Pub. Util. Code § 625, which permits a public utility that offers competitive services to file a complaint for a Commission finding with respect to the public interest in its condemnation of a property for purposes of competing with another entity

- Clarify the time and circumstances for setting a prehearing conference
- Clarify circumstances under which a public hearing, workshop or other public forum does not give rise to ex parte communications
- Shorten time for filing notices of ex parte communication to one day
- Eliminate the requirement that comments on a draft resolution be served on all Commissioners, the Chief Administrative Law Judge, and the General Counsel
- Provide that procedural motions during the pendency of an application for rehearing will be directed to the Chief Administrative Law Judge
- Provide an e-mail address on which to serve the Administrative Law Judge Division with requests for extension of time to comply with a Commission decision, and require such requests to attach a certificate of service on the official service list

AVAILABILITY OF STATEMENT OF REASONS AND PROPOSED TEXT

The proposed rule amendments are set forth in Draft Resolution ALJ-260 and available on the Commission's web site, www.cpuc.ca.gov. The draft resolution includes a more detailed initial statement of the reasons for the rule amendments. Appendix A to the draft resolution sets forth the complete text of the proposed rule amendments.

COMMENTS AND INQUIRIES

Any interested person may submit written comments concerning the proposed rule amendments. The written comment period closes at 5:00 p.m. on December 6, 2010. All comments must be served on the following contact person:

Hallie Yacknin
Administrative Law Judge
California Public Utilities Commission
Division of Administrative Law Judges
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-1675
e-mail: hsy@cpuc.ca.gov

Inquiries concerning the substance of the proposed amendment, requests for copies of the text for the proposed amendment, or other questions should be directed to ALJ Yacknin at the above street or e-mail address or telephone number.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

Following the comment period, the Commission may adopt the proposed rule amendments substantially as described in this notice. If modifications are made that are sufficiently related to the originally proposed text, the modified text, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date on which the Commission adopts the rule amendments. Requests for copies of any modified rule amendments should be sent to the attention of ALJ Yacknin at either of the addresses indicated above. The Commission will accept written comments on the modified regulations, if any, for 15 days after the date on which the modifications are made.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO.
2080-2010-035-03**

Project: Altamont Landfill and Resource Recovery Facility Fill Area 2 Project
Location: Alameda County
Applicant: Waste Management of Alameda County, Inc.
Notifier: Richard Meredith, Padre and Associates, Inc.

Background

Waste Management of Alameda County, Inc. (Applicant) proposes to expand an existing landfill. The Altamont Landfill and Resource Recovery Facility is a permitted landfill that receives waste from Alameda County, the City of San Ramon in Contra Costa County and the City and County of San Francisco. The facility comprises about 2,240 acres in Eastern Alameda County, east of the City of Livermore, near the crest of the Altamont Hills and north of Altamont Pass and Interstate 580. The facility provides waste disposal, waste diversion, waste recovery, and recycling activities, including regulatory and environmental control activities. The currently-used 235-acre Fill Area at the facility began operations in 1978 and is projected to be filled to its design capacity in 2011.

The Altamont Landfill and Resource Recovery Facility Fill Area 2 Project (Project) will be constructed in

four phases of construction and expansion during a 40-year period and is tentatively scheduled to be completed on or about 2050. Over these four phases, a cumulative total area of approximately 324 acres of grasslands and waters of the United States will be converted or filled for landfill operations. The Project will be designed and constructed to meet Class 11 sanitary landfill standards, and will include leachate collection, removal, transmission, and treatment systems; a landfill gas collection and control system; and a composite liner. The Project also includes construction of stormwater channels, treatment/detention ponds, and soil stockpile areas for landfill cover and reclamation. The Project will result in the filling of portions of three channel segments.

The Project activities described above are expected to incidentally take San Joaquin kit fox (*Vulpes macrotis mutica*) (SJKF) and California tiger salamander (*Ambystoma californiense*) (CTS). In particular, SJKF and CTS could be incidentally taken as a result of crushing, loss of habitat, displacement and den abandonment from earth-moving operations, construction, vehicle traffic, foot traffic, and from capture and relocation operations. SJKF is designated as an endangered species and CTS is designated as a threatened species under the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.). SJKF and CTS are both designated as threatened species under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subs. (b)(6)(E) and (b)(3)(G).)

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

According to the Service, the Project will result in the permanent loss of about 323.48 acres of upland SJKF and CTS habitat and 0.52 acres of aquatic CTS habitat, totaling 324.00 acres of permanent habitat loss.

Because the Project is expected to result in take of species designated as endangered and threatened under ESA, the United States Army Corps of Engineers (USACE) consulted with the Service as required by ESA. On June 21, 2010, the Service issued a Biological Opinion (Service file No. 1-1-04-F-0488) (BO) to the USACE. In an e-mail from Mr. Jim Browning dated August 25, 2010, the Service made two modifications to the BO (Modifications). Together, the original BO

and Modifications constitute the BO for purposes of this Consistency Determination. The BO describes the Project, requires the Applicant to comply with terms of the BO and its Incidental Take Statement (ITS), and incorporates additional measures.

The BO also requires the Applicant to implement and adhere to measures contained within the *Waters/Wetlands Mitigation Plan, Fill Area 2 Landfill Expansion Project, Altamont Landfill and Resource Recovery Facility, Alameda County, California* (Wetlands Mitigation Plan) prepared by Padre Associates, Inc., September 2005; *Grazing Management Plan, Fill Area 2 Landfill Expansion Project, Altamont Landfill and Resource Recovery Facility* (Grazing Management Plan) prepared by Padre Associates, Inc., January 2006; *Pest Management Plan, Altamont Landfill and Resource Recovery Facility, Alameda County, California* (Pest Management Plan) prepared by Padre Associates, Inc., January 2006; and the *Conservation Management Plan, Fill Area 2 Landfill Expansion Project, Altamont Landfill and Resource Recovery Facility* (Conservation Management Plan) prepared by Padre Associates, Inc., August 2010.

On September 9, 2010, the Director of the Department of Fish and Game (DFG) received a notice from Richard Meredith, on behalf of the Applicant, requesting a determination, pursuant to Fish and Game Code section 2080.1, that the BO and its related ITS are consistent with CESA for purposes of the Project and SJKF and CTS. (Cal. Reg. Notice Register 2010, No. 39-Z, p. 1536.)

Determination

DFG has determined that the BO, including the ITS, is consistent with CESA as to the Project because the mitigation measures contained in the BO and ITS as well as the conditions in the Wetlands Mitigation Plan, Grazing Management Plan, Pest Management Plan, and Conservation Management Plan, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, DFG finds that: (1) take of SJKF and CTS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO and ITS, Wetlands Mitigation Plan, Grazing Management Plan, Pest Management Plan, and Conservation Management Plan will minimize and fully mitigate the impacts of the authorized take; (3) the Applicant has ensured adequate funding to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of SJKF and CTS. The mitigation measures in the BO and ITS and the Wetlands Mitigation Plan, Grazing Management Plan, Pest

Management Plan, and Conservation Management Plan include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- Applicant will set aside a total of 991.6 acres of suitable SJKF and CTS habitat located at the Altamont Landfill and Resource Recovery Facility Site (Conservation Plan Area). The Conservation Plan Area will be placed into a Conservation Easement to be held by the Wildlife Heritage Foundation (WHF), DFG, or another third party approved by the Service and DFG, and will be enhanced through implementation of the Grazing Management Plan, Pest Management Plan, and Wetlands Mitigation Plan to increase the habitat value and assist in the recovery of SJKF and CTS affected by the Project.
- Applicant will record the Conservation Easement before beginning Project activities. The final Conservation Easement will be subject to Service and DFG review and approval prior to being recorded.
- After Fill Area 2 is at capacity, Applicant will permanently close, cover, and revegetate the landfill, and conduct post-closure monitoring and management.
- Applicant will terminate the current wind easement on the Project site at the expiration of the lease in the year 2018. Applicant will assure that all turbines, turbine pads, turbine string access roads, and other above-ground features (except power lines) within the Conservation Plan Area are removed and the disturbed area restored.
- Applicant will implement the minimization and avoidance measures identified in the Conservation Management Plan, including: conducting pre-construction surveys, establishing avoidance buffers around dens, conducting an education program for all workers on the Project site, and ensuring a biologist is present on site during all construction activities
- Applicant will contribute as much as \$50,000 in funding to the Service and/or DFG or an approved third party to conduct a research study of wildlife passage at local over- and under-crossings.

Monitoring and Reporting Measures

- Applicant will provide post-construction monitoring reports to DFG and the Service for restoration of covered species habitat as required by the Wetlands Mitigation Plan, Grazing Management Plan, Pest Management Plan, and Conservation Management Plan. The reports will include photo documentation of all covered species habitat pre- and post-construction.

- Although not a condition of the BO, DFG requests copies of the annual and periodic monitoring reports, or other circulated materials relevant to the Project's affects on SJKF or CTS be submitted to DFG's Bay Delta Regional Office.

Financial Assurances

- For the first five years (Interim Management Period), Applicant will pay for all maintenance, monitoring, and management costs for the Conservation Plan Area from its operations and management budget.
- During the Interim Management Period, Applicant will provide payments to fund the Endowment Principal necessary to finance the monitoring and perpetual management and maintenance of the 991.6-acre Conservation Plan Area. The Endowment Principal is estimated to be \$1,068,516 based upon a Property Analysis Record (PAR) prepared by WHF utilizing a capitalization rate of 4 percent. Applicant has provided a first annual principal payment of \$320,555 to DFG.
- The final Endowment Principal provided by the Applicant shall be approved by the Service and DFG, and shall be in an amount sufficient to fully provide for the financial requirements of the long-term management of the Conservation Plan Area in accordance with the Conservation Management Plan and the PAR prepared by WHF with the capitalization rate adjusted if necessary by the final, approved endowment holder.
- Before the second annual principal payment is due, the final endowment holder will be determined. The final endowment holder will be either an entity approved by DFG, that the Applicant subsequently selects, or will be DFG if the Applicant does not select a new endowment holder or said proposed endowment holder is not approved by DFG. The final Endowment Principal will be calculated based on the capitalization rate identified by the final endowment holder at the time they receive the second annual principal payment and the remaining payment schedule will be adjusted to ensure that the final Endowment Principal is fully funded at or ahead of the schedule specified in the BO for the proposed action.
- The project proponent has provided to DFG an Irrevocable Letter of Credit (LOC) in the amount of \$1,068,516, to secure the endowment until it is fully funded. This LOC or other form of funding guaranty may be reduced following, each principal payment if requested by the project proponent.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of SJKF or CTS, provided the Applicant implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO and ITS and the Wetlands Mitigation Plan, Grazing Management Plan, Pest Management Plan, and Conservation Management Plan. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO and ITS or the Wetlands Mitigation Plan, Grazing Management Plan, Pest Management Plan, or Conservation Management Plan, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from DFG (see generally Fish & G. Code, §§ 2080.1, 2081, subs. (b) and (c)).

DEPARTMENT OF FISH AND GAME

**Department of Fish and Game —
Public Interest Notice**

For Publication October 22, 2010
**CESA CONSISTENCY DETERMINATION
 REQUEST FOR
 Boulder Avenue Bridge Over City Creek
 Replacement Project
 San Bernardino County
 2080-2010-053-06**

The Department of Fish and Game (Department) received a notice on October 7, 2010 that the City of Highland proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). The proposed action would consist of replacing the 2-lane Boulder Avenue Bridge with a 4-lane bridge and widening bridge approaches.

The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal biological opinion (File No. FWS-SB-08B0342-09F0799)(BO) and incidental take statement (ITS) to the Department of Transportation on January 21, 2010 which considered the effects of the project on the Federally and State endangered Santa Ana River woolly-star (*Eriastrum densifolium ssp. Sanctorum*).

Pursuant to California Fish and Game Code Section 2080.1, the City of Highland is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, the City of Highland will not be

required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

**DEPARTMENT OF TOXIC SUBSTANCES
CONTROL**

NOTICE OF PUBLIC COMMENT PERIOD

**GENERAL ENVIRONMENTAL
MANAGEMENT OF RANCHO CORDOVA,
LLC
CONSENT ORDER, DOCKET HWCA 20091998
Rancho Cordova, California**

**PUBLIC COMMENT PERIOD October 22, 2010
through November 21, 2010**

What is being proposed? The Department of Toxic Substances Control (DTSC) invites you to comment on an enforcement action settlement document, Consent Order HWCA 20091998. DTSC negotiated this Consent Order with General Environmental Management of Rancho Cordova, LLC (GEM), doing business as PSC Environmental Services of Rancho Cordova, LLC. This Consent Order addresses violations of the Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) determined during a DTSC Compliance Evaluation Inspection of GEM which began on March 11, 2009. The violations include: exceeding the permitted facility hazardous waste quantity limit, storing hazardous waste in unauthorized areas of the facility, storing hazardous waste outside the authorized facility; and storing hazardous waste without required secondary containment Under the Consent Order, GEM will pay a total settlement of \$600,000. \$574,000 is a penalty, and \$26,000 is reimbursement of DTSC costs. The final payment is due in April 2011.

GEM has returned to compliance on all violations. In addition, since the inspection, the GEM facility was purchased by PSC Environmental Services (PSC). DTSC has settled this case with PSC. PSC has made changes in both facility personnel and procedures at the facility.

Why is DTSC providing a public comment period for this settlement? DTSC is seeking public comment as part of its ongoing effort to provide transparency in all of its programs. DTSC wishes to ensure that this settlement has taken into account all relevant facts and considerations in settling this case. DTSC will only consider changes to this settlement if comments provide facts or considerations showing that this settlement is inappropriate, improper or inadequate.

Written comments on this Consent Order must be submitted **no later than November 21, 2010**. Comments sent by fax should also be mailed. Comments sent only by mail must be postmarked by November 23, 2010. All comments should refer to the General Environmental Management of Rancho Cordova Consent Order, and must be sent to: Mr. Paul S. Kewin, Enforcement and Emergency Response Program, Department of Toxic Substances Control, 8800 Cal Center Drive, Sacramento, CA 95826. Comments may be sent by fax to (916) 255-6446. DTSC will only consider changes to this settlement if comments provide facts or considerations showing that this settlement is inappropriate, improper or inadequate.

Where do I get more information? The Consent Order is available at DTSC's office located at 8800 Cal Center Drive, Sacramento, CA 95826, (916) 255-3545, and on DTSC's web site at: <http://www.dtsc.ca.gov/EnforcementOrders.cfm>, then scroll down to General Environmental Management of Rancho Cordova.

For additional information, questions or to discuss the Consent Order, please contact Mr. Paul S. Kewin, Enforcement and Emergency Response Program, at (916) 255-3718, e-mail pkewin@dtsc.ca.gov.

**NOTICE TO HEARING IMPAIRED
INDIVIDUALS**

TDD users may use the California Relay Service at 1-888-877-5378 (TDD) and ask to speak to Paul Kewin at (916) 255-3718.

**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

In the Matter of:

General Environmental Management of
Rancho Cordova, LLC, dba PSC
Environmental Services of Rancho
Cordova, LLC

11855 White Rock Road
Rancho Cordova, CA 95742

EPA ID: CAD980884183

Respondent.

Docket HWCA 20091998
Consent Order

Health and Safety Code Section 25187

1. INTRODUCTION

1.1. Parties. The California Department of Toxic Substances Control (Department) and General Environmental Management of Rancho Cordova, LLC, dba PSC Environmental Services of Rancho Cordova, LLC (Respondent) enter into this Consent Order (Order) and agree as follows:

1.2. Site. Respondent generates, handles, treats, stores, and/or disposes of hazardous waste at the following site: 11855 White Rock Road, Rancho Cordova, CA 95742 (Site).

1.3. Inspection. The Department inspected the Site on March 11, 19, and 23, 2009.

1.4. Authorization Status. The Department authorized Respondent to manage hazardous waste by a Hazardous Waste Facility Permit (HWFP) issued on March 21, 2007.

1.5. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and to assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.6. Full Settlement. By their respective signatures below, the Parties, and each of them, agree that this Order, and all of the terms contained herein, are fair, reasonable, and in the public interest. This Order shall constitute full settlement of the violations alleged below. By agreeing to this Order, the Department does not waive any right to take further enforcement actions within its jurisdiction and involving either the Respondent(s) or the Site, except to the extent provided in this Order.

1.7. Hearing. Respondent waives any and all rights to a hearing in this matter.

1.8. Admissions. Respondent admits the violations described below.

2. VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1. Respondent violated Health & Safety Code, section 25202, subdivision (a), and section 25200.19, subdivision (c)(3); California Code of Regulations section 66270.30, subdivision (a); and, HWFP, Part V, subsection II, in that on numerous occasions Respondent exceeded the permitted facility limit of 82,302 gallons of waste in containers (other than roll-off bins). Respondent also stored hazardous waste on transport vehicles which, if unloaded, would exceed the permitted capacity of the originating unit at the hazardous waste facility.

2.2. Respondent violated Health & Safety Code, section 25202, subdivision (a); California Code of Regula-

tions, title 22, section 66270.30, subdivision (a); and, HWFP Operations Plan Section VI(C), in that on multiple occasions Respondent stored hazardous waste in the Loading and Unloading Areas overnight. Respondent's Operation Plan specifies that waste will not be left in the Loading and Unloading Area, outside of a truck, overnight.

2.3. Respondent violated Health & Safety Code, section 25201, subdivision (a); section 25202, subdivision (a); and, California Code of Regulations, title 22, 66270.30, subdivision (a); and, HWFP Operation Plan Section VIII(F)(1), in that on multiple occasions Respondent stored hazardous waste in loaded trailers outside the boundary of the permitted facility. Respondent also moved loaded transport vehicles out of the Loading and Unloading Areas before the generator or transporter signed the manifests.

2.4. Respondent violated Health & Safety Code, section 25200.19, subdivision (c)(1), in that on numerous occasions hazardous waste moved into the Loading and Unloading Area was not moved directly between trucks and the authorized units and was left in the Loading and Unloading Area for more than that incidental period of time that is necessary to safely and effectively move the waste between the transport vehicle and the authorized unit. The area was used for more than just the loading and unloading of trucks. Containers in the Loading and Unloading Area were generally sampled, fingerprinted, marked and labeled, and then placed into the appropriate hazardous waste management unit for storage.

2.5. Respondent violated California Code of Regulations, title 22, section 66264.177, subdivision (c), in that a drum labeled as "oxidizer" was stored on a wooden pallet without secondary containment in Unit C while Respondent staff were consolidating flammable hazardous waste nearby.

3. SCHEDULE FOR COMPLIANCE

3. Respondent shall comply with the following:

3.1.1. Respondent has returned to compliance in regard to violations alleged.

3.1.2. Respondent shall maintain records documenting the volumes of hazardous waste within the facility and shall maintain the ability to provide documentation of the volume of hazardous waste at the facility from the effective date of the Order to present day of operation as part of the facility's operating record pursuant to California Code of Regulations, title 22, 66264.73 until closure of the facility. The hazardous waste volume may be substantiated either by maintaining daily hard copy reports or by maintaining the ability to generate and print a report from the electronic operating record for any date. The report shall list the volume of waste in each individual permitted unit, the loading and unload-

ing area, inbound trailers, outbound trailers, and the total facility, each separately. The report shall assume all containers are full for the purpose of calculating compliance with permitted unit and total facility capacity. The total volume of waste at the facility shall include waste loaded on inbound or outbound trailers that are at the facility, and listed on a Hazardous Waste Manifest specifying the facility as the Generator or Designated Facility. Respondent shall, within sixty days of the effective date of this Order, submit a permit modification request to include the above as part of the operating record requirement of its hazardous waste facility permit.

3.1.3. Respondent shall, at all times, comply with its Operation Plan, Sections VIII.E.1.b and VI.D.6.b, which state that incoming waste will be moved into Area A for processing and outgoing waste will be moved into Area A for staging. These hazardous waste handling processes shall not take place in the Loading and Unloading Area. Respondent shall conduct hazardous waste unloading and loading operations in accordance with Section VI-4 of the Operations Plan and California Health & Safety Code Section 25200.19.

3.1.4. Respondent shall make all payments at the time(s) and in accord with any other conditions set forth in Section 5 (Penalty) below.

3.2. Submittals. All submittals from Respondent pursuant to this Order shall be sent to:

Paul S. Kewin
 Supervising Hazardous Substances Scientist I
 Department of Toxic Substances Control
 8800 Cal Center Drive
 Sacramento, California 95826-3200

3.3. Communications. All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by the appropriate Branch Chief, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department shall relieve Respondent of its obligation to obtain required formal approvals.

3.4. Department Review and Approval. If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Order fails to comply with this Order or fails to protect public health or safety or the environment, the Department may:

- (a) Modify the document and approve the document as modified, or
- (b) Return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

3.5. Compliance with Applicable Laws. Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.6. Endangerment during Implementation. In the event that the Department determines that any circumstance or activity (whether or not pursued in compliance with this Order) is creating an imminent or substantial endangerment to the health or welfare of people on the Site, in the surrounding area, or to the environment, the Department may order Respondent to stop further implementation of this Order for such period of time as is needed to abate the endangerment. Any deadline in this Order directly affected by a Stop Work Order under this section shall be extended by the term of such Stop Work Order.

3.7. Liability. Nothing in this Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of Respondent's operations, except as provided in this Order. Notwithstanding compliance with the terms of this Order, Respondent may be required to take such further actions as are necessary to protect public health or welfare, or the environment.

3.8. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. The Department and its authorized representatives shall have the authority to enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Order; and conducting such tests as the Department may deem necessary. Nothing in this Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law.

3.9. Sampling, Data, and Document Availability.

3.9.1. Respondent shall permit the Department and/or its authorized representatives to inspect and copy all sampling, testing, monitoring, and/or other data (including, without limitation, the results of any such sampling, testing and monitoring) generated by Respondent, or on Respondent's behalf, in any way pertaining to work undertaken pursuant to this Order.

3.9.2. Respondent shall allow the Department and/or its authorized representatives to take duplicates or splits of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a mini-

num of six years after the conclusion of all activities under this Order.

3.9.3. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either:

- (a) comply with that request,
- (b) deliver the documents to the Department, or
- (c) notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order and permit the Department to copy the documents prior to destruction.

3.10. Government Liabilities. Neither the State of California nor the Department shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties, in carrying out activities pursuant to this Order. Neither the State of California nor the Department shall be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Incorporation of Plans and Reports. All plans, schedules, and reports that were submitted by Respondent pursuant to the violations set forth above, and/or this schedule for compliance, and were approved by the Department are hereby incorporated into this Order.

3.12. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.13. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

4. OTHER PROVISIONS

4.1. Penalties for Noncompliance. Failure to comply with the terms of this Order may subject Respondent to costs, penalties and/or damages, as provided by Health and Safety Code, section 25188, and other applicable provisions of law.

4.2. Parties Bound. This Order shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Order.

4.3. Privileges. Nothing in this Agreement shall be construed to require any party to waive any privilege.

However, the assertion of any privilege shall not relieve any party of its obligations under this Order.

4.4. Time Periods. "Days" for the purpose of this Order means calendar days.

4.5. Captions and Headings. Captions and headings used herein are for convenience only and shall not be used in construing this Order.

4.6. Severability. If any provision of this Order is found by a court of competent jurisdiction to be illegal, invalid, unlawful, void or unenforceable, then such provision shall be enforced to the extent that it is not illegal, invalid, unlawful, void, or unenforceable, and the remainder of this Order shall continue in full force and effect.

4.7. Entire Agreement. This Order contains the entire and only understanding between the Parties regarding the subject matter contained herein and shall supercede any and all prior and/or contemporaneous oral or written negotiations, agreements, representations and understandings and may not be amended, supplemented, or modified, except as provided in this Order. The Parties understand and agree that in entering into this Order, the Parties are not relying on any representations not expressly contained in this Order.

4.8. Counterparts. This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

4.9. Non-Waiver. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Contract constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

5. PENALTY

5.1. Respondent shall pay the Department the total sum of \$600,000 which includes \$26,000 as reimbursement of the Department's costs incurred in connection with this matter.

5.2. Payment is due as follows:

- a. \$200,000, of which \$174,000 is penalty and \$26,000 is reimbursement, is due and payable within 30 days from the effective date of this order.
- b. \$200,000 is due and payable on December 31, 2010.
- c. \$200,000 is due and payable on April 8, 2011.

5.3. Respondent's check(s) shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806

Print: Deborah S. Huston, General Counsel and Secretary
General Environmental Management of
Rancho Cordova, LLC
Respondent

Dated: October 12, 2010

A photocopy of the check(s) shall be sent to:

Paul S. Kewin
Unit Chief
Enforcement & Emergency Response Program
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826-3200

Original signed by Gale Filter
Gale Filter
Deputy Director
Enforcement and Emergency Response Program
Department of Toxic Substances Control

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT**

and

Joseph F. Smith
Senior Staff Counsel
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, MS 23A
P.O. Box 806
Sacramento, California 95812-0806

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

5.4. If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

**REQUEST FOR RELEVANT INFORMATION
ON CHEMICALS BEING CONSIDERED FOR
LISTING BY THE AUTHORITATIVE
BODIES MECHANISM:**

6. PUBLIC COMMENT

6. This Order shall be subject to a public comment period for not less than 30 days after execution by the parties. DTSC may modify or withdraw its consent to the Order if comments received disclose facts or considerations that indicate that the Order is inappropriate, improper, or inadequate.

**COCAMIDE DIETHANOLAMINE,
KRESOXIM-METHYL, MON 4660, MON 13900,
PYMETROZINE, AND TETRACONAZOLE**

October 22, 2010

7. EFFECTIVE DATE

7. The Effective Date of the Order shall be the last day of the public comment period set forth in Section 6 above, unless the Department notifies the Respondent within five days of the end of the public comment period of its intent to modify or withdraw its consent to the Order.

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is requesting information as to whether the chemicals identified in the table below meet the criteria for listing under the Safe Drinking Water and Toxic Enforcement Act of 1986.¹ This action is being proposed under the authoritative bodies listing mechanism.²

Dated: September 29, 2010

Signature: Original signed by Deborah S. Huston

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

² See Health and Safety Code section 25249.8(b) and Title 27, Cal. Code of Regs., section 25306.

Chemical	CAS No.	Endpoint	Reference	Chemical Use
<i>Cocamide diethanolamine (coconut oil acid diethanolamine condensate)</i>	68603-42-9	Cancer	U.S. EPA (2001), NTP (2001)	Biopesticide composed of diethanolamides of fatty acids found in coconut oil; used in consumer products including cosmetics, soaps and shampoos; active ingredient in pet shampoo.
<i>Kresoxim-methyl</i>	143390-89-0	Cancer	U.S. EPA (1999a)	Fungicide used on apples, cherries, grapes, pears, pome fruits and pecans.
<i>MON 4660 (dichloroacetyl-1-oxa-4-azaspiro(4.5)decane)</i>	71526-07-3	Cancer	U.S. EPA (1999b)	Herbicide safener used in formulations with acetanilide herbicides (such as alachlor and/or acetochlor).
<i>MON 13900 (furalazole)</i>	121776-33-8	Cancer	U.S. EPA (1999c)	Herbicide safener used in formulations with the acetanilide herbicide acetochlor.
<i>Pymetrozine</i>	123312-89-0	Cancer	U.S. EPA (1999d)	Anti-feeding insecticide used on lettuce, broccoli, celery, and other vegetables and fruits
<i>Tetraconazole</i>	112281-77-3	Cancer	U.S. EPA (2000)	Triazole fungicide used to control leafspot and powdery mildew on sugar beets

Background on listing via the authoritative bodies mechanism: A chemical must be listed under the Proposition 65 regulations when two conditions are met:

- 1) An authoritative body formally identifies the chemical as causing cancer (Section 25306(d)³).
- 2) The evidence considered by the authoritative body meets the sufficiency criteria contained in the regulations (Section 25306(e)).

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

The U.S. Environmental Protection Agency (U.S. EPA) and the National Toxicology Program (NTP) are two of several institutions designated as authoritative for the identification of chemicals as causing cancer (Section 25306(m)).

OEHHA is the lead agency for Proposition 65 implementation. After an authoritative body has made a determination about a chemical, OEHHA evaluates whether listing under Proposition 65 is required using the criteria contained in the regulations.

OEHHA's determination: *Cocamide diethanolamine*, *kresoxim-methyl*, *MON 4660*, *MON 13900*, *pymetrozine*, and *tetraconazole* appear to meet the criteria for listing as known to the State to cause cancer under Proposition 65, based on findings of the U.S. EPA and the NTP.

Formal identification and sufficiency of evidence for cocamide diethanolamine (coconut oil acid diethanolamine condensate): In 2001, the U.S. EPA and the NTP each published reports on cocamide diethanolamine, entitled *Cancer Assessment Document, Evaluation of the Carcinogenic Potential of Cocamide Diethanolamine (DEA)* and *Toxicology and Carcinogene-*

sis Studies of Coconut Oil Acid Diethanolamine Condensate (CAS No. 68603-42-9) in F344/N Rats and B6C3F1 Mice (Dermal Studies), respectively, that conclude that the chemical causes cancer (NTP, 2001; U.S. EPA, 2001). These reports appear to satisfy the formal identification and sufficiency of evidence criteria in the Proposition 65 regulations.

OEHHA is relying on the U.S. EPA's discussion of data and conclusions in its report that cocamide diethanolamine causes cancer. The U.S. EPA report concludes cocamide diethanolamine is "likely to be carcinogenic to humans" based on the occurrence of liver and kidney tumors in male and liver tumors in female B6C3F1 mice." The tumors were observed in studies conducted by the National Toxicology Program (also described below). Specifically, the U.S. EPA described a study of male mice treated with cocamide diethanolamine showing significant increases in the incidences of combined renal tubule carcinomas and adenomas, hepatoblastomas, and combined hepatocellular adenomas, carcinomas, and hepatoblastomas. The U.S. EPA also described a study of female mice treated with cocamide diethanolamine showing significant increases in the incidences of hepatocellular carcinomas and combined hepatocellular adenomas, carcinomas, and hepatoblastomas.

OEHHA is also relying on the NTP's discussion of data and conclusions in its report that coconut oil acid diethanolamine condensate causes cancer. In its report, the NTP described the studies of male and female mice treated with cocamide diethanolamine as showing increases in the incidences of combined hepatocellular adenomas, hepatocellular carcinomas, and hepatoblastomas in both sexes. The NTP also reported an increase in combined renal tubule adenomas and carcinomas among treated male mice. The NTP (2001) report concludes:

³ All referenced sections are from Title 27 of the Cal. Code of Regulations.

“Under the conditions of these 2-year dermal studies, there was *no evidence of carcinogenic activity* of coconut oil acid diethanolamine condensate in male F344/N rats administered 50 or 100 mg/kg. There was *equivocal evidence of carcinogenic activity* in female F344/N rats based on a marginal increase in the incidences of renal tubule neoplasms. There was *clear evidence of carcinogenic activity* in male B6C3F1 mice based on increased incidences of hepatic and renal tubule neoplasms and in female B6C3F1 mice based on increased incidences of hepatic neoplasms. These increases were associated with the concentration of free diethanolamine present as a contaminant in the diethanolamine condensate.” (Emphasis in original)

Thus, the U.S. EPA (2001) found that cocamide diethanolamine causes increased incidences of combined malignant and benign liver tumors and rare combined malignant and benign kidney tumors in male mice, and malignant and combined malignant and benign liver tumors in female mice. The NTP (2001) also found that cocamide diethanolamine causes increased incidences of combined malignant and benign liver and kidney tumors in male mice and increased incidences of combined malignant and benign liver tumors in female mice.

Formal identification and sufficiency of evidence for kresoxim-methyl: In 1999, the U.S. EPA published a report on kresoxim-methyl entitled *Cancer Assessment Document, Evaluation of the Carcinogenic Potential of Kresoxim-Methyl* that concludes that the chemical causes cancer (U.S. EPA, 1999a). This report appears to satisfy the formal identification and sufficiency of evidence criteria in the Proposition 65 regulations.

OEHHA is relying on the U.S. EPA’s discussion of data and conclusions in the report that kresoxim-methyl causes cancer. The U.S. EPA report concludes that kresoxim-methyl is “‘likely to be carcinogenic to humans’ by the oral route.” Evidence described in report includes studies showing that kresoxim-methyl increased the incidences of hepatocellular carcinoma in male and female rats in two experiments in each sex.

Thus, the U.S. EPA (1999a) has found that kresoxim-methyl causes increased incidence of malignant liver tumors in two experiments in male rats and in two experiments in female rats.

Formal identification and sufficiency of evidence for MON 4660 (dichloroacetyl-1-oxa-4-azaspiro(4.5)decane): In 1999, the U.S. EPA published a report on MON 4660, entitled *Cancer Assessment Document, Evaluation of the Carcinogenic Potential of MON 4660*, that concludes that the chemical causes cancer (U.S. EPA, 1999b). This report appears to satisfy the

formal identification and sufficiency of evidence criteria in the Proposition 65 regulations.

OEHHA is relying on the U.S. EPA’s discussion of data and conclusions in the report that MON 4660 causes cancer. The U.S. EPA report concludes that MON 4660 is “‘likely to be carcinogenic to humans’ by the oral route.” Evidence described in the report includes studies showing that MON 4660 increased the incidences of tumors as follows:

Male rats:

- Hepatocellular carcinomas and combined hepatocellular adenomas and carcinomas
- Combined squamous cell papillomas and carcinomas of the stomach

Female rats:

- Combined hepatocellular adenomas and carcinomas

Male mice:

- Hepatocellular carcinomas and combined hepatocellular adenomas and carcinomas
- Squamous cell carcinomas and combined squamous cell papillomas and carcinomas of the stomach

Female mice:

- Squamous cell carcinomas and combined papillomas and carcinomas of the stomach

Thus, the U.S. EPA (1999b) has found that MON 4660 causes an increased incidence of malignant tumors or combined malignant and benign tumors in male rats and male and female mice, with tumors at multiple sites in male rats and mice.

Formal identification and sufficiency of evidence for MON 13900 (furilazole): In 1999, the U.S. EPA published a report on MON 13900 (furilazole), entitled *Cancer Assessment Document, Evaluation of the Carcinogenic Potential of MON 13900*, that concludes that the chemical causes cancer (U.S. EPA, 1999c). This report appears to satisfy the formal identification and sufficiency of evidence criteria in the Proposition 65 regulations.

OEHHA is relying on the U.S. EPA’s discussion of data and conclusions in the report that MON 13900 causes cancer. The U.S. EPA report concludes that MON 13900 is “‘likely to be carcinogenic to humans’ by the oral route.” Evidence described in the report includes studies showing that MON 13900 increased the incidences of tumors as follows:

Male rats:

- Combined hepatocellular adenomas and carcinomas
- Combined squamous cell papillomas and carcinomas of the stomach
- Testicular interstitial cell tumors of the testes

Female rats:

- Hepatocellular carcinomas and combined hepatocellular adenomas and carcinomas

Female mice:

- Hepatocellular carcinomas and combined hepatocellular adenomas and carcinomas
- Bronchio–alveolar carcinomas and combined bronchio–alveolar adenomas and carcinomas

Thus, the U.S. EPA (1999c) has found that MON 13900 causes increased incidences of malignant or combined malignant and benign tumors in male rats, female rats, and female mice, including rare stomach tumors in male rats and an increased incidence of tumors at multiple sites in male rats and female mice.

Formal identification and sufficiency of evidence for pymetrozine: In 1999, the U.S. EPA published a report on pymetrozine, entitled *Cancer Assessment Document, Evaluation of the Carcinogenic Potential of Pymetrozine*, that concludes that the chemical causes cancer (U.S. EPA, 1999d). This report appears to satisfy the formal identification and sufficiency of evidence criteria in the Proposition 65 regulations.

OEHHA is relying on the U.S. EPA’s discussion of data and conclusions in the report that pymetrozine causes cancer. The U.S. EPA report concludes pymetrozine is “‘likely to be a human carcinogen’ by the oral route.” Evidence described in the report includes studies showing that pymetrozine increased the incidences of hepatocellular carcinomas in male mice and combined benign hepatomas and hepatocellular carcinomas in male and female mice.

Thus, the U.S. EPA (1999d) has found that pymetrozine causes increased incidences of malignant liver tumors in male mice, and combined malignant and benign liver tumors in male and female mice.

Formal identification and sufficiency of evidence for tetraconazole: In 2000, the U.S. EPA published a report on tetraconazole, entitled *Cancer Assessment Document, Evaluation of the Carcinogenic Potential of Tetraconazole*, that concludes that the chemical causes cancer (U.S. EPA, 2000). This report appears to satisfy the formal identification and sufficiency of evidence criteria in the Proposition 65 regulations.

OEHHA is relying on the U.S. EPA’s discussion of data and conclusions in the report that tetraconazole causes cancer. The U.S. EPA report concludes tetraconazole is “‘likely to be carcinogenic to humans’ by the oral route.” Evidence described in the report includes studies showing that tetraconazole causes increases in the incidences of hepatocellular carcinomas and combined hepatocellular carcinomas and adenomas in male and female mice.

Thus, the U.S. EPA (2000) has found that tetraconazole causes increased incidences of malignant and com-

bined malignant and benign liver tumors in male and female mice.

Request for relevant information: OEHHA is committed to public participation in its implementation of Proposition 65. OEHHA wants to ensure that its regulatory decisions are based on a thorough consideration of all relevant information. OEHHA is requesting public comment concerning whether these chemicals meet the criteria set forth in the Proposition 65 regulations for authoritative bodies listings.

After reviewing all comments received, OEHHA will determine whether the identified chemicals meet the regulatory criteria for administrative listing. For chemicals determined to meet the listing criteria, OEHHA will proceed with the listing process and publish a Notice of Intent to List.

In order to be considered, **OEHHA must receive comments by 5:00 p.m. on Tuesday, December 21, 2010.** We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to coshita@oehha.ca.gov. Comments submitted in paper form may be mailed, faxed, or delivered in person to the addresses below:

Mailing Address: Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
P.O. Box 4010, MS-19B
Sacramento, California
95812-4010
Fax: (916) 323-8803
Street Address: 1001 I Street
Sacramento, California 95814

Optional public forum: Upon request, OEHHA will schedule a public forum to provide individuals an opportunity to present oral comments on the possible listing of these chemicals. At the forum, the public may discuss the scientific data and other relevant information related to whether these chemicals meet the criteria for listing in the regulations.

Requests for a public forum must be submitted in writing no later than Friday, November 19, 2010. The written request must be sent to OEHHA at the mailing address above. If a public forum is requested, a notice will be posted on the OEHHA web site at least ten days before the forum date. The notice will provide the date, time, location and subject matter to be heard. Notices will also be sent to those individuals requesting such notification.

If you have any questions, please contact Ms. Oshita at coshita@oehha.ca.gov or at (916) 445-6900.

References

National Toxicology Program (NTP, 2001). *Toxicology and Carcinogenesis Studies of Coconut Oil Acid*

Diethanolamine Condensate (CAS No. 68603-42-9) in F344/N Rats And B6C3F1 Mice (Dermal Studies). NTP Technical Report Series No. 479. NIH Publication No. 01-3969. U.S. Department of Health and Human Services, NTP, Research Triangle Park, NC.

U.S. Environmental Protection Agency (U.S. EPA, 1999a). Cancer Assessment Document, Evaluation of the Carcinogenic Potential of Kresoxim-methyl. Final Report. Health Effects Division, Office of Pesticide Programs. August 19, 1999.

U.S. Environmental Protection Agency (U.S. EPA, 1999b). Cancer Assessment Document, Evaluation of the Carcinogenic Potential of MON 4660. Final Report. Cancer Health Effects Division, Office of Pesticide Programs. December 9, 1999.

U.S. Environmental Protection Agency (U.S. EPA, 1999c). Cancer Assessment Document, Evaluation of the Carcinogenic Potential of MON 13900. Health Effects Division, Office of Pesticides Programs. September 21, 1999.

U.S. Environmental Protection Agency (U.S. EPA, 1999d). Cancer Assessment Document, Evaluation of the Carcinogenic Potential of Pymetrozine. Health Effects Division, Office of Pesticide Programs. August 24, 1999.

U.S. Environmental Protection Agency (U.S. EPA, 2000). Cancer Assessment Document, Evaluation of the Carcinogenic Potential of Tetraconazole. Final Report. Health Effects Division, Office of Pesticide Programs. January 11, 2000.

U.S. Environmental Protection Agency (U.S. EPA, 2001). Cancer Assessment Document, Evaluation of the Carcinogenic Potential of Cocamide Diethanolamine (DEA). Final Report. Health Effects Division, Office of Pesticide Programs. October 17, 2001.

**OAL REGULATORY
DETERMINATIONS**

OFFICE OF ADMINISTRATIVE LAW

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

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

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

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Date: October 6, 2010
 To: Samuel Banda
 From: Chapter Two Compliance Unit
 Subject: **2010 OAL DETERMINATION NO. 19 (S)
 (CTU2010-0823-01)**
 (Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation a new yard schedule at California State Prison, Los Angeles

On August 23, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether the new yard schedule at California State Prison, Los Angeles County constitutes an underground regulation. The rule is mentioned in the minutes of the Inmate Advisory Council meeting held on January 25, 2010. The minutes are attached hereto as Exhibit A.¹

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,² which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).³ Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

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

¹ The notations on Exhibit A were made by the petitioner.

² “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

³ Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

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

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

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

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

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

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

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

. . . .

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

Similarly, the rule challenged by your petition applies solely to the inmates of the California State Prison, Los Angeles County. Inmates housed at other institutions are governed by those other institutions’ yard schedules. The rule you challenged was issued by the California State Prison, Los Angeles, and applies only to inmates at California State Prison, Los Angeles. Therefore, the rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.⁴

⁴ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

- (f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.
- (2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:
 - (A) The challenged rule has been superseded.
 - (B) The challenged rule is contained in a California statute.
 - (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
 - (D) The challenged rule has expired by its own terms.
 - (E) **An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.** (Emphasis added.)

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

/s/
SUSAN LAPSLEY
Director

/s/
Kathleen Eddy
Senior Counsel

Copy: Matthew Cate
Tim Lockwood

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: October 6, 2010
To: Robert Erbe
From: Chapter Two Compliance Unit
Subject: **2010 OAL DETERMINATION NO. 18(S)**
(CTU2010-0809-01)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation DOM Supplement section 14010.21.2

On August 9, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether Department Operations Manual (DOM) Supplement section 14101.21.2, titled Copying Services, at California Rehabilitation Center constitutes an underground regulation. DOM Supplement section 14101.21.2 establishes the procedures for requesting photocopies of legal and non-legal documents. The DOM Supplement was issued by the Associate Warden at California Rehabilitation Center and is attached hereto as Exhibit A.¹

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,² which should have been, but was not adopted pursuant

¹ Notations on Exhibit A were made by petitioner.

² “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

to the Administrative Procedure Act (APA).³ Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

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

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

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

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

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

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

. . . .

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

Similarly, the rule challenged by your petition applies solely to the inmates of the California Rehabilitation Center. It was issued by the Associate Warden of Program A at California Rehabilitation Center. Inmates housed at other institutions are governed by those other institutions’ criteria for copying services. The rule you

³ Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

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

challenged was issued by the California Rehabilitation Center, and applies only to inmates at the California Rehabilitation Center. Therefore, the rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.⁴

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

/s/
SUSAN LAPSLEY
Director

/s/
Kathleen Eddy
Senior Counsel

Copy: Matthew Cate
Tim Lockwood

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: October 6, 2010
To: L. Porter
From: Chapter Two Compliance Unit
Subject: **2010 OAL DETERMINATION NO. 20 (S) (CTU2010-0901-01)**
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

⁴ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

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

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

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

Petition challenging as an underground regulation the limitation to one-half bar of soap per week for inmates in the Security Housing Unit and Administrative Segregation Unit at California Correctional Institute.

On September 1, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether the limitation to one-half bar of soap per week for inmates in the Security Housing Unit and Administrative Segregation Unit at California Correctional Institute constitutes an underground regulation. The rule is found in a letter to you from California Correctional Institute Chief Deputy Warden K. Holland, dated August 15, 2010. This letter is attached hereto as Exhibit A.

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

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

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

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

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

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

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

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

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

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

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

Similarly, the rule challenged by your petition applies solely to the inmates of the California Correctional Institution. It was issued by the Chief Deputy Warden at the California Correctional Institution. Inmates housed at other institutions are governed by those other institutions’ criteria for limitations on supplies. The rule you challenged was issued by Chief Deputy Warden K. Holland at California Correctional Institute and applies only to inmates at the California Correctional Institute. Therefore, the rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.³

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

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

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

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

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

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

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

/s/
SUSAN LAPSLEY
Director

/s/
Kathleen Eddy
Senior Counsel

Copy: Matthew Cate
Tim Lockwood

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATION**

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

DEPARTMENT OF INSURANCE

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

**2010 OAL DETERMINATION NO. 21
(OAL FILE NO. CTU2010-0329-02)**

**REQUESTED BY: THE AMERICAN COUNCIL
OF LIFE INSURERS, THE
AMERICAN INSURANCE
ASSOCIATION, THE ASS-
OCIATION OF CALIFOR-
NIA INSURANCE COM-
PANIES, ASSOCIATION OF
CALIFORNIA LIFE AND
HEALTH INSURANCE
COMPANIES AND PER-
SONAL INSURANCE FED-
ERATION OF CALIFORNIA**
**CONCERNING: THE DEPARTMENT OF IN-
SURANCE'S TREATMENT
OF IRAN-RELATED IN-
VESTMENTS BY INSURERS**

**DETERMINATION ISSUED
PURSUANT TO GOVERN-
MENT CODE SECTION
11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment

by a state agency complies with California administrative law governing how state agencies adopt regulations. Our review is limited to the sole issue of whether the challenged rule meets the definition of "regulation" as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of "regulation," but was not adopted pursuant to the APA and should have been, it is an "underground regulation" as defined in California Code of Regulations, title 1, section 250. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this Determination.

CHALLENGED RULES

On March 29, 2010, the American Council of Life Insurers, the American Insurance Association, the Association of California Insurance Companies, the Association of California Life and Health Insurance Companies and the Personal Insurance Federation of California (hereafter collectively referred to as "Petitioners"), submitted a Petition for Determination pursuant to Government Code section 11340.5 as to alleged underground regulations of the Department of Insurance.¹ On May 27, 2010, after reviewing the petition and the accompanying documentation, OAL accepted the petition for consideration as to the following alleged underground regulations:²

- A. The rule, expressed in a letter dated February 10, 2010, stating that effective March 31, 2010, the Department will treat all investments by insurers holding a certificate of authority to transact insurance in California in companies on the List³ (which is incorporated by reference in the letter) and affiliates owned 50% or more by companies

¹ The California Insurance Commissioner "controls" the Department of Insurance and is responsible for the actions taken herein which are carried out by the Department. (Insurance Code section 12906.) This determination will refer to the "Department" and the "Commissioner" interchangeably.

² Prior to responding to the petition on its merits, the Department requested that OAL exercise its discretion to decline the petition pursuant to California Code of Regulations, title 1, section 270(c), due to allegations of ethical violations of the attorney who was at the time representing the Petitioners. OAL, in accepting the petition for consideration, indicated that it would not decline to consider a petition due to allegations of ethics violations of an attorney and that those allegations are best addressed by the State Bar or a court.

³ The List is a document attached to the Department's February 10, 2010 letter which contains the names of fifty companies and is titled: "CALIFORNIA DEPARTMENT OF INSURANCE LIST OF COMPANIES DOING BUSINESS WITH THE IRANIAN PETROLEUM/NATURAL GAS, NUCLEAR, AND DEFENSE SECTORS (AS OF FEBRUARY 9, 2010)."

on the List, as non-admitted on the insurer's financial statements in that they are subject to financial risk as a result of doing business with the Iranian oil and natural gas, nuclear, and defense sectors. It further states that for all financial statements filed with the Department for periods ending on or after March 31, 2010, each insurer is required to report all of its investment holdings in companies on the List as not admitted assets. The February 10, 2010, letter is attached as Exhibit A. [Referred to as the "Non-admitted Asset Determination" herein.]⁴

- B. A document titled "Response Form" that requires insurers to agree or not to agree by March 12, 2010, that they will refrain from investing in companies on the List or affiliates owned 50% or more by companies on the List until either: (a) Iran is removed from the United States State Department's list of state sponsors of terrorism, or (b) the company and its affiliates cease to do business with Iran's oil and natural gas, nuclear, and defense sectors and is removed from the List. The Response Form is attached as Exhibit B. [Referred to as the "Mandatory Response Form" herein.]

Please note, in accepting this matter for review, OAL renders an opinion solely as to whether the alleged challenged rules are "regulations" as defined in Government Code section 11342.600, which should have been, but were not adopted pursuant to the Administrative Procedure Act. This Determination does not evaluate whether the agency has the authority to take the actions alleged. This Determination evaluates only whether the actions are, or are not, underground regulations.

DETERMINATION

OAL determines that each of the rules articulated above, the Non-admitted Asset Determination and the Mandatory Response Form, meet the definition of "regulation" in Government Code section 11342.600, that should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

On March 29, 2010, OAL received the petition submitted on behalf of the Petitioners alleging that the De-

⁴ OAL's letter accepting the petition expressed the challenged rules as three separate rules similar to those submitted by Petitioners. Upon additional research and study, we concluded that the challenged rules are (1) the February 10, 2010 letter, including the incorporated by reference List of companies alleged to be doing business with the Iranian Petroleum/Natural Gas, Nuclear and Defense Sectors and, (2) the Mandatory Response Form. We will be treating them as two challenged rules herein.

partment of Insurance (Department) has issued, used, enforced, or attempted to enforce underground regulations. The petition concerns the Department's requirements for insurers relative to investments in companies that the Commissioner designated as doing business with the Iranian oil and natural gas, nuclear, and defense sectors. The Commissioner stated that no investments that an insurer holds in certain companies on a list would be recognized for statement credit on financial statements filed with the Department and must be listed as "non-admitted" assets for financial statement purposes, as follows:

The elimination of statement credit for investments in companies on the list will mean that insurers will be required to reduce the capital and surplus reported on their financial statements by the amount of investments in these 50 [now 51] companies. California law requires insurers to carry a minimum level of capital and surplus in order to continue to be licensed to sell insurance in this state.⁵

According to the Department, the Commissioner has responsibility for ensuring that the assets held by insurance companies are financially sound.⁶ In light of this obligation, the Legislature provided the Commissioner with broad authority to take prompt action against **individual** insurers who the Commissioner finds to have inadequate levels of "risk based capital" (commencing with Ins. Code sec. 739). If corrective action needs to be taken, and the insurer is so notified by the Department, the insurer has the right to request a hearing (Ins. Code sec. 739.7). Similarly, if the Commissioner finds that a company is conducting its business and affairs in such a manner as to threaten to render it insolvent, or conducting affairs in a manner which is hazardous to its policyholders, creditors or the public, the Commissioner may make any order reasonably necessary to correct, eliminate or remedy such conduct or condition after a public hearing (Ins. Code sec. 1065.1). The Commissioner also has authority to assess penalties after holding public hearings concerning certain matters (see for instance Ins. Code sec. 1068.2) as well as other powers of enforcement and protection. Also, the Commissioner may, after a hearing, require the disposal of any investments made in violation of the provisions of Article 4 (Property Authorized for Excess Funds Investments) (Ins. Code sec. 1202).

In 2008, the California Legislature enacted legislation which further defines the scope and limits of foreign investments by insurers (Assem. Bill No. 2203

⁵ Attached as Exhibit C to this determination is the Commissioner's February 10, 2010 press release.

⁶ Attached as Exhibit D to this determination is the Department's Response to the Petition (hereafter "Response"), at p. 1.

(2007–2008 Reg. Sess.)). Among other things, it prohibits insurers from acquiring investments from, or located in, foreign jurisdictions designated as state sponsors of terrorism by the United States.⁷ The new legislation, which details the types and amounts of investments allowed by insurers in foreign investments, was codified in Insurance Code sections 1240, 1241, 1241.1 and 1242.

The Commissioner contends that “Iran’s pursuit of nuclear weapons, its support of international terrorism, and its despotic rule not only render *it* unstable politically and economically, but put at risk **any company** that does business with the Iranian nuclear, defense, and energy sectors. [Emphasis in original.]”⁸

In June 2009, the Commissioner commenced a Terror Financing Probe, “an effort to monitor and evaluate Iran-related investments by insurers doing business in California.”⁹ The Commissioner issued a “data call” to all insurers requesting information about Iran-related holdings in their portfolios pursuant to his authority to “‘examine the business and affairs’ of **an insurer** whenever the Commissioner ‘deems [it] necessary’.” [Emphasis added.]”¹⁰ In July 2009, the Commissioner required insurers to identify companies in their portfolio that “do business with the Iranian nuclear, defense, energy, and banking sectors.”¹¹ The Commissioner then hired experts who spent months evaluating the investments on a “security-by-security” basis.

Although no insurer was found to be in violation of the law, the Department indicated in a press release dated December 2, 2009, that the Commissioner called for a “complete divestment” of all investments having an **indirect** relationship with Iran. In the press release, he further indicated that he launched an effort “six months ago” to determine the level of investments in Iran. The press release states that the Commissioner was calling “upon the insurance industry to do what’s right and divest themselves of these investments. If they do not do it voluntarily, [he] will use every tool at [his] disposal to force divestment.”¹² It further states that the companies will be given 30 days to notify the Department in writing that they will comply with divestment and 90 days to eliminate those holdings from their portfolios. It states that if companies do not voluntarily agree to divest, the Commissioner will make public the list of those who refuse; “subpoena high-ranking

executives of these insurance companies to testify under oath and ask them why they believe it is in the interest of California policyholders for their premium dollars to be invested in companies propping up Iran’s energy, nuclear, defense and banking sectors” and, after this hearing, if an insurer still refuses to divest, the Commissioner “will take all legal action available to him to effectuate divestment.”¹³

As a result of the Department’s uncovering of billions of dollars in indirect investments in Iran, the Department distributed multiple documents related to insurer investments in Iran. One is Exhibit A, the February 10, 2010 letter to insurance companies notifying them that the Department has compiled a “List of Companies Doing Business in Specified Iranian Economic Sectors.” The letter indicates that the Insurance Commissioner “has determined that companies on the List are subject to financial risk as a result of doing business with the Iranian oil and natural gas, nuclear, and defense sectors.” The letter further states that “[e]ffective **March 31, 2010, the Department will treat all investments by insurers holding a certificate of authority to transact insurance in California in companies on the List and affiliates owned 50% or more by companies on the List as non-admitted on the insurer’s financial statements. For all financial statements filed with the Department for periods ending on or after March 31, 2010, each insurer must report all of its investment holdings on the List as not admitted assets.** [Emphasis in original.]” The letter then makes a “request” for a moratorium on specified future Iran-related investments and requires a response to the request. The letter ends with “[i]f your company does not respond to or declines the Department’s request for a moratorium on future investments in companies on the List and affiliates owned 50% or more by those companies, the Department may publish your company’s name on the Department’s website.” A response form was provided to the insurers upon which they are required to indicate whether they would agree, or not agree, to a moratorium on Iranian-related investments. The response was mandatory as is reflected in the Commissioner’s February 10, 2010 press release,¹⁴ which states: “Attached is the Department’s form which all insurers must complete and return to the Department by March 12, 2010 indicating whether they will agree not to invest in the future in companies on the list.”

In March, 2010, “. . . the Department announced that insurers reported no direct investments in Iran and, therefore [they] are in **full compliance with state law** prohibiting those investments. But the Department uncovered billions of dollars of indirect investments in

⁷ According to the Assembly Bill Analysis, during the pending of the vote on the legislation, Cuba, Iran, North Korea, Sudan and Syria were designated.

⁸ Response, at p. 1

⁹ Ibid, at p. 5.

¹⁰ Ibid.

¹¹ Ibid.

¹² Attached as Exhibit F to this determination is a copy of the December 2, 2009 press release making this announcement.

¹³ Ibid.

¹⁴ Exhibit C.

companies doing business with the Iranian oil and natural gas, nuclear and defense sectors. [Emphasis added]¹⁵ The Department does not assert that any of the investments which are the subject of this Determination are outside the statutory mandates.

According to another press release by the Department, “[a]s of March 31, 2010, the [Department] disqualified an estimated \$6 billion in holdings in the 50 Iran-related companies. [Emphasis in original.]”¹⁶

On April 16, 2010, the Department provided insurers with a supplemental financial filing on Iran related investments to be included in quarterly and annual reporting. The letter indicates that the Department has developed an Iran Related Investments Supplemental Filing Workbook and that the Workbook was to be completed and returned by May 31, 2010.¹⁷ The letter further provides that the Department was modifying its position on these investments and that they will not be “disqualified” but will be treated as non-admitted. At the end of the letter, it states that “[c]ompanies that fail to submit a completed IRI-2010 Supplemental Filing by the due date requested will be considered in non-compliance and will be referred to the Department of Insurance’s Legal Division for further action. [Emphasis added.]” The Department’s website under the title “Insurers: Supplemental Financial Filing On Iran Related Investments (IRI-2010)” states that “ALL CALIFORNIA ADMITTED INSURERS” are required to report on the Iran-related assets via the IRI-2010 Supplemental Financial Filing.¹⁸

On April 16, 2010, the Department also added one additional company to the List.¹⁹

“All but a handful of the 1,300 insurers admitted to do business in California responded”²⁰ to the Commissioner’s letter regarding future investments in Iran. More than 1,000 insurers returned the form or a letter indicating that they do not intend to make future investments in companies on the List. According to the Department, “[t]he Commissioner has not entered orders against any insurers in connection with Iran investment matters.”²¹

¹⁵ Attached as Exhibit E to this determination is a copy of the March 26, 2010 press release.

¹⁶ Attached as Exhibit G is the Department’s May 13, 2010 press release.

¹⁷ Attached as Exhibit H to this determination is a copy of the Department’s April 16, 2010 letter. This Determination does not address whether the April 16, 2010, letter and its attachments, are underground regulations.

¹⁸ Attached as Exhibit I to this determination is a copy of the page taken from the Department’s website, <http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/IRI-2010/inde...> (as of September 14, 2010)

¹⁹ Response, p. 7.

²⁰ Ibid, p. 3.

²¹ Ibid.

On July 27, 2010, OAL received a response to the petition from the Department. On August 10, 2010, OAL received the Petitioner’s reply. No comments were received from the public on this matter.

UNDERGROUND REGULATIONS

Government Code section 11342.600 defines “regulation” as “every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.” Any regulation adopted by a state agency through its exercise of quasi-legislative power delegated to it by statute to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a **statute expressly exempts** the regulation from APA review (Gov. Code, secs. 11340.5 and 11346). Government Code section 11340.5, subdivision (a), provides:

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

Government Code section 11346(a) states:

It is the purpose of this chapter to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations. Except as provided in Section 11346.1, the provisions of this chapter are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this chapter repeals or diminishes additional requirements imposed by any statute. **This chapter shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.** [Emphasis added.]

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

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section

11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

OAL may issue a determination as to whether or not an agency has issued, utilized, enforced, or attempted to enforce a rule that meets the definition of “regulation” as defined in section 11342.600 and should have been adopted pursuant to the APA. (Gov. Code sec.11340.5.) An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is — entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].²²

OAL’s legislative mandate was summarized by the court in *State Water Resources Control Board vs. The Office of Administrative Law* (1993) 12 Cal.App.4th 697, 702 [16 Cal.Rptr.2d 25], (hereafter *State Water Resources Control Board*), as follows:

The Legislature established the OAL as a central office with the power and duty to review administrative regulations. The Legislature expressed its reasons in no uncertain terms stating, in essence, that it was concerned with the confusion and uncertainty generated by the proliferation of regulations by various state agencies, and that it sought to alleviate these problems by establishing a central agency with the power and duty to review regulations to ensure that they are written in a comprehensible manner, are authorized by statute and are consistent with other law. (Gov. Code, §§ 11340, subd. (e), and 11340.1.) In order to further that function, the relevant Government Code sections are careful to provide OAL authority over regulatory measures whether or not they are designated “regulations” by the relevant agency. In other words, if it looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated as a regulation whether or not the agency in question so labeled it.

Any doubt as to the applicability of the APA, should be resolved in favor of the APA. As *Grier v. Kizer, supra*, 219 Cal.App.3d 422, 438 states:

Further, because the Legislature adopted the APA to give interested persons the opportunity to provide input on proposed regulatory action (*Armistead, supra*, 22 Cal.3d at p. 204, 149 Cal.Rptr.1, 583 P.2d 744), we are of the view that any doubt as to the applicability of the APA’s requirements should be resolved in favor of the APA.

Therefore, we are mindful of this admonition when analyzing whether the challenged actions constitute underground regulations.

ANALYSIS

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

As previously stated, a regulation is defined in Government Code section 11342.600 as:

. . . **every rule, regulation, order, or standard of general application** or the amendment, supplement, or revision of any rule, regulation, order, or standard **adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.** [Emphasis added.]

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

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, §11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, §11342, subd. (g)).²³

As stated in *Tidewater, supra*, 14 Cal.4th 557, the first element used to identify a “regulation” is **whether the rule applies generally**. The court in *Tidewater, supra*, 14 Cal.4th 557, pointed out that a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations.

With respect to the first element of *Tidewater, supra*, 14 Cal.4th 557, each challenged rule will be addressed individually.

A. The Non–admitted Asset Determination and the List incorporated by reference.

The Non–admitted Asset Determination is a requirement in the February 10, 2010 letter (Exhibit A) that all

²² *Grier v. Kizer, supra*, 219 Cal.App.3d 422, was disapproved as to an unrelated issue. It is still good law for the purposes stated.

²³ Section 11342(g) was re–numbered in 2000 to section 11342.600 without substantive change.

insurers who hold a certificate of authority to transact insurance in California and who hold investments in companies on the List, which is incorporated by reference, are prohibited from listing those assets as admitted assets on their California financial statements. The letter determines that the 50 companies on the List are “subject to financial risk” and are “doing business with the Iranian Petroleum/Natural gas, nuclear, and defense sectors.” The class that is affected by the determination is **all insurers holding certificates of authority to transact insurance in California** in that the challenged rule affects what assets the insurers may list as admitted on the financial statements. Ultimately, none of the admitted insurers may list the assets of the companies on the List as admitted assets. As such, the clearly defined class is all insurers who hold a certificate of authority to transact insurance in California.

The challenged rule also affects all those companies who cannot be considered “admitted assets” for the purpose of investment in their companies in that they are on the List as subject to financial risk. The Commissioner has designated all companies on the List as doing business with Iran’s oil and natural gas, nuclear and defense sectors through a process enlisting the aid of experts of the Commissioner’s choosing apparently without public participation in the process.

The Department asserts that the companies on the List were selected on a case-by-case basis and “[n]o single criterion or methodology applies uniformly to each company on the List.”²⁴ However, the List states at the top that it is a “List of Companies Doing Business with the Iranian Petroleum/Natural Gas, Nuclear and Defense Sectors.” Therefore, the single criterion used appears to be the Commissioner’s evaluation of whether or not the company is “doing business with” the Iranian petroleum/natural gas, nuclear and defense sectors. However, the specific criteria used to determine whether a particular company was “doing business with” the designated sectors of Iran is unknown.

The Non-admitted Asset Determination and the List of companies incorporated by reference apply generally to a clearly defined class: all insurers who hold a certificate of authority to transact insurance in California. All the insurers are affected in that each of them is precluded from listing those assets as admitted on their California financial statements filed with the Department. All insurers who hold California certificates must list these investments as “non-admitted,” regardless of their state of domicile or any other factor. Any insurer who is licensed in California may not have holdings in the companies on the List as admitted assets. Therefore, the first prong of *Tidewater, supra, 14 Cal.4th 557*, is met with respect to the Non-admitted Asset Determina-

tion and the List of companies incorporated by reference.

B. The Mandatory Response Form.

The “Mandatory Response Form” attached as Exhibit B, **requires** all California insurers to agree or not to agree by March 12, 2010, that they will refrain from investing in companies on the List or affiliates owned 50% or more by companies on the List until either (a) Iran is removed from the United States State Department’s list of state sponsors of terrorism or (b) the company **and its affiliates** cease to do business with Iran’s oil and natural gas, nuclear, and defense sectors and is removed from the List. It is a mandatory response form in that all insurers must respond by stating they agree not to invest in companies on the List or that they do not agree to the moratorium on investments by March 12, 2010, otherwise they will be subject to whatever consequences the Commissioner delineates. This Mandatory Response Form applies to the clearly defined class of **all insurers who hold a certificate of authority to transact insurance in California**. Therefore, the first prong of *Tidewater, supra, 14 Cal.4th 557*, is met with respect to the Mandatory Response Form.

The second element used to identify a “regulation” as stated in *Tidewater, supra, 14 Cal.4th 557*, is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure.

Again, with respect to the second prong, each challenged rule will be addressed individually.

A. The Non-admitted Asset Determination and the List incorporated by reference.

The Department asserts that “Insurance Code Section 923 gives the Commissioner broad authority to specify the use of forms and methods of financial reporting without undertaking rulemaking.”²⁵ Insurance Code section 923 states:

The commissioner shall require every insurer which is required to file an annual or quarterly statement to use the statement blanks and instructions thereto for the appropriate year adopted by the National Association of Insurance Commissioners. **The statements shall be completed in conformity with the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners**, to the extent that the practices and procedures contained in the manual do not conflict with any other provision of this code. **The commissioner may make changes from time to time in the form of the statements and the number and method of filing reports as seem to**

²⁴ Response, p. 11.

²⁵ Response, p. 4.

him or her best adapted to elicit from the insurers a true exhibit of their condition. The commissioner shall notify each insurer of any changes from the National Association of Insurance Commissioners' statement blanks which the commissioner has determined pursuant to this section to be appropriate. [Emphasis added.]

The Department asserts that it is implementing Insurance Code section 923 as to the requirements for filing annual and quarterly statements by insurers when imposing the challenged rules. We agree that when the Commissioner states in Exhibit A that "effective March 31, 2010, the Department will treat all investments by insurers holding a certificate of authority to transact insurance in California in companies on the List and affiliates owned 50% or more by companies on the List as non-admitted on the insurer's financial statements," the Department is intending to implement, interpret or make specific Insurance Code section 923. The Department further indicates in its Response that the Commissioner was implementing his duties under other statutes as well when he took the challenged actions. The Department refers to the Commissioner's statutory duties under Insurance Code sections 739, 739.12, 939, 956 and 1069.2.²⁶ In particular, the Department invokes the Commissioner's authority under Insurance Code section 730 with respect to his powers to "examine" the business and affairs of an insurer.²⁷ The Department indicates that it was implementing the Commissioner's authority over insurers when compiling the List. In referring to Insurance Code sections 717(b), 706.5, 1196(a), 1215.5(f)(6) and 12921.3(d), the Department states: "The Commissioner's duty to safeguard insurer portfolios by making determinations about investment soundness, quality, liquidity and diversification (see, e.g., Ins. Code sections 717(b), 706.5, 1196(a) and 1215.5(f)(6)) and his authority to disseminate accurate information to insurers and the public ([Id.] Section 12921.3(d)) require the Commissioner to perform research and do studies from time to time."²⁸ We agree that the Department was intending to implement, interpret or make specific various provisions of the Insurance Code when issuing the challenged rules.

Thus, with respect to the Non-admitted Asset Determination and its incorporated List, the second prong of the two prong *Tidewater*, *supra*, 14 Cal.4th 557, test, is met.

B. The Mandatory Response Form.

The Mandatory Response Form (Exhibit B) requires insurers to agree or not to agree by March 12, 2010, that they will refrain from investing in companies on the

List or affiliates owned 50% or more by companies on the List until either: (a) Iran is removed from the United States State Department's list of state sponsors of terrorism, or (b) the company and its affiliates cease to do business with Iran's oil and natural gas, nuclear, and defense sectors and is removed from the List.

The Department indicates that the request for information from insurers about investment activities was voluntary and "a lawful exercise of the Commissioner's power to 'examine the business and affairs' of insurers" pursuant to Insurance Code section 730(a).²⁹ Although the insurers were allowed to agree or not agree to the moratorium, they were required to respond or suffer the consequences. The Department is therefore implementing, interpreting or making specific Insurance Code section 730(a) when it required the response via the Mandatory Response Form (Exhibit B). Thus, with respect to The Mandatory Response Form, the second prong of the two prong *Tidewater*, *supra*, 14 Cal.4th 557, test, is met.

Because both prongs of *Tidewater*, *supra*, 14 Cal.4th 557, have been met, the Non-admitted Asset Determination and the List incorporated by reference, as well as the Mandatory Response Form, meet the definition of "regulation" in Government Code section 11342.600.

The final issue to examine is whether a challenged rule falls within an express statutory exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies. Exemptions may also be specific to a particular rulemaking agency or a specific program.

EXEMPTION

Any regulation adopted by a state agency through its exercise of quasi-legislative power delegated to it by statute to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute *expressly exempts* the regulation from APA review. (Government Code sections 11340.5 and 11346.) In *United Systems of Arkansas v. Stamison* (1998) 63 Cal.App.4th 1001, [74 Cal.Rptr.2d 407], the court indicated that "[w]hen the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language." OAL, therefore, cannot recognize an "implied" exemption when the Legislature and the courts have clearly stated to the contrary.

The Department contends that the challenged rules are not subject to the APA for a number of reasons. However, the forms exemption found in Government Code section 11340.9(c), is the only express statutory exemption asserted by the Department.

²⁶ *Ibid.*, p. 1.

²⁷ *Ibid.*, p. 13.

²⁸ Response, p. 11.

²⁹ *Ibid.*, p. 4.

Forms Exemption

With respect to the Mandatory Response Form and the List,³⁰ the Department asserts that they are exempt from the rulemaking requirements of the APA pursuant to Government Code section 11340.9(c). Section 11340.9(c) states that the APA does not apply to any of the following:

A form prescribed by a state agency or any instructions relating to the use of the form, **but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.** [Emphasis added.]

The forms exemption contained in Government Code section 11340.9(c) is a limited statutory exemption. According to the case of *Stoneham v. Rushen* (1982) 137 Cal.App.3d 729, 736 [188 Cal.Rptr.130] (hereafter *Stoneham*), the exemption is a “statutory exemption relating to **operational** forms.[Emphasis added.]” *Stoneham, supra*, involved primarily the question of whether the Corrections agency was required to comply with the notice and hearing requirements of the APA before issuing “administrative bulletins” implementing a new standardized classification system for prisoners. The agency pointed to the directors’ “statutorily empowered” authority to “examine each prisoner and thereupon to classify the prisoner to determine the prison in which he will be confined.” The agency indicated that the administrative bulletin was merely a “form” to be completed and therefore exempt from the APA. The court disagreed, stating at 737:

The Director of Corrections was required to follow the notice and hearing requirements of the Administrative Procedure Act (Gov. Code, § 11342 et seq.) before she issued “administrative bulletins” implementing a new standardized inmate classification system. Although the act does not apply to a rule relating “only to the internal management of [a] state agency” or to “any form prescribed by a state agency or any instructions relating to the use of the form” (Gov. Code, § 11342, subd. (b)), the classification scheme employed by the director and the Department of Corrections extended well beyond matters relating solely to the management of the internal affairs of the agency itself, embodying as it did a rule of general application significantly affecting the male prison population in the custody of the department. **Nor did the standardized**

scoring system for inmates fall within the statutory exemption relating to operational forms. The use of a standardized score sheet to achieve a classification formerly determined on a subjective basis brought about a wholly new and different scheme affecting the placement and transfer of prisoners. [Emphasis added.]

A form which simply provides for the operational convenience of capturing information which existing law already requires to be furnished falls within the forms exemption. If the requirements are already in statute or regulation, then merely requesting the required information to be submitted to the agency on a specific form does not subject the form to the APA. However, requiring **additional** information that is not in existing law would not fall within the forms exemption. Government Code section 11340.9(c) specifically states such when it provides: “**but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.**” [Emphasis added.]”

The Mandatory Response Form does not merely reflect the capturing of information that is required by statute or regulation, it imposes a new requirement. The significant new requirement is that all insurers must indicate whether or not they will agree to the moratorium on Iranian related investments. Such a requirement is regulatory and merely adding the regulatory requirement to a form does not relieve the Department from the obligation of adopting the regulation pursuant to the APA. The forms exemption does not apply to the Mandatory Response Form.

Likewise, the List attached to the February 10, 2010 letter does not fall under the forms exemption to the APA. It is not even a form. It is a grouping of companies on a list with a designation of them as “doing business with the Iranian oil and natural gas, nuclear, and defense sectors.” The List is not an operational form which provides for operational convenience of capturing information which existing law already requires to be furnished to the Department.

AGENCY RESPONSE

In addition to the Department’s contention that the above express, statutory exemption to the APA applies to the Mandatory Response Form and the List, the Department also asserts that:

- the challenged rules are not regulations;
- the actions are not subject to the APA in that they are not quasi-legislative action;
- Insurance Code section 923 does not require rulemaking;

³⁰ The Department does not claim that the Non-Admitted Asset Determination falls within the forms exemption.

- rulemaking would be inconsistent with and “effectively eviscerate” Insurance Code section 923;
- time constraints do not make rulemaking an option;
- statutory construction requires the specific provisions of Insurance Code section 923 to prevail over the general provisions of the APA;
- the challenged action is merely an accounting technique which is exempt from the APA; and,
- the investments were selected on a case-by-case basis and therefore do not come within the confines of the APA.

This Determination has already addressed the issue of whether or not the challenged actions are regulations as well as the express statutory exemption proposed by the Department. This section will address the other contentions raised in the Department’s Response.

1. The Department contends that the challenged rules are not quasi-legislative action.

The Department asserts that it was not acting in a quasi-legislative manner when it took the action against Iran related assets and that the Commissioner was merely applying his existing statutory authority to oversee insurers. The Insurance Commissioner has very broad authority as discussed in the Factual Background, *supra*, with respect to examining the financial viability of individual insurers. Such authority appears to often, if not always, come with procedural safeguards, such as hearings. The challenged action was not taken against individual insurers, but was taken against all California insurers. When a regulatory action is taken against a specific class, the APA (unless an express statutory exemption exists) provides for procedural safeguards so that those being regulated have an opportunity to participate.

Since the term “quasi-legislative” is not defined in the California APA, we look to the judicial definition of the term to determine whether the challenged action reflects the exercise of quasi-legislative power. *Tidewater, supra*, 14 Cal.4th 557, 574–575, states that “[a] written statement of policy that an agency intends to apply generally, that is unrelated to a specific case, and that predicts how the agency will decide future cases is essentially legislative in nature even if it merely interprets applicable law.” Using this definition of quasi-legislative, the challenged rules are a written statement of policy as demonstrated in the attached exhibits, that the Department intends to apply generally to all current and future insurers and investments. Therefore, the challenged rules constitute quasi-legislative action on the part of the Department and is subject to the APA.

2. The Department contends that Insurance Code section 923, on which the Commissioner based his actions, does not require rulemaking.³¹

The Department contends that “the Commissioner was not required to undertake a rulemaking to require insurers to file financial reports on their Iran-related holdings and to safeguard insurers’ portfolios by treating investments in companies on the List as ‘non-admitted’ on insurers’ financial statements” because Insurance Code section 923 gives the Commissioner “broad authority to specify the use of forms and methods of financial reporting **without undertaking rulemaking.** [Emphasis added.]”³²

The Department asserts that rulemaking is inconsistent with Insurance Code section 923. Section 923 states:

The commissioner shall require every insurer which is required to file an annual or quarterly statement to use the statement blanks and instructions thereto for the appropriate year adopted by the National Association of Insurance Commissioners. The statements shall be completed in conformity with the Accounting Practices and Procedures Manual adopted by the National Association of Insurance Commissioners, to the extent that the practices and procedures contained in the manual do not conflict with any other provision of this code. **The commissioner may make changes from time to time in the form of the statements and the number and method of filing reports as seem to him or her best adapted to elicit from the insurers a true exhibit of their condition. The commissioner shall notify each insurer of any changes from the National Association of Insurance Commissioners’ statement blanks which the commissioner has determined pursuant to this section to be appropriate.** [Emphasis added.]

OAL agrees that Insurance Code section 923 provides authority for the Commissioner to “make changes from time to time in the form of the statements and the number and method of filing reports as seem to him or her best adapted to elicit from the insurers a true exhibit of their condition.” However, Insurance Code section 923 does not state “without compliance with the APA” or “such changes will be exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.”³³ As stated pre-

³¹ Response, p. 16.

³² *Ibid.*, p. 4.

³³ An example of typical exemption is contained in footnote 34, below.

viously, when the Legislature intends to exempt actions from the APA, it does so expressly. OAL does not find language adequate to exempt the Department's actions from complying with the APA in Insurance Code section 923.

The Department relies upon *Paleski v. State Dep't of Health Services* (2006) 144 Cal.App.4th 713 [51 Cal.Rptr.3d 28] for the proposition that "the existence of specific statutory provisions for notifying licensees of agency requirements meant that APA procedures do not apply."³⁴ The court did find that the APA didn't apply in that case. However, Welfare & Institutions Code section 14105.395, upon which the decision is based, **expressly** exempted the criteria from the APA and said that the criteria was only to be published in the provider manuals.³⁵ The Department has not pointed out any express exemption in the Insurance Code with respect to the challenged actions.

The Department further contends that the "notice" requirements of Insurance Code section 923 are evidence of the Legislature's recognition for an evolving financial statement reporting process that can quickly adapt to the complexities of the financial market. Thus, the APA is inapplicable. The Department indicates that the Legislature was "[c]ognizant of the importance of providing insurers with advance warning of changes to financial reporting requirements."³⁶ However, the "advance warning" is not evident in the statute and, as stated by the Department at page 19 of the Response, "at the point when insurers are notified, the Commissioner, *already will have made* the decision to change the reporting requirements." Insurance Code section 923 states that "[t]he commissioner shall notify each insurer of any changes from the National Association of Insurance Commissioners' statement blanks which the commissioner **has determined** pursuant to this section to be appropriate." The past tense of "has determined" does not seem to indicate "advance warning." The Commis-

sioner must inform **all** insurers that a change is being required in the financial reporting.

A requirement to **notify** each insurer *after* the fact is not comparable to the procedural due process of notice and public participation provided by the APA in the development of regulations, including the opportunity to suggest changes and make comments. As *Tidewater, supra*, 14 Cal.4th 557, at p. 568 states:

The APA establishes the procedures by which state agencies may adopt regulations. The agency must give the public notice of its proposed regulatory action (Gov. Code, §§ 11346.4, 11346.5); issue a complete text of the proposed regulation with a statement of the reasons for it (Gov. Code, § 11346.2, subs.(a), (b)); give interested parties an opportunity to comment on the proposed regulation (Gov. Code, § 11346.8); respond in writing to public comments (Gov. Code, §§ 11346.8, subd. (a), 11346.9); and forward a file of all materials on which the agency relied in the regulatory process to the Office of Administrative Law (Gov. Code, § 11347.3, subd. (b)), which reviews the regulation for consistency with the law, clarity, and necessity (Gov. Code, §§ 11349.1, 11349.3).

The Department did not comply with the rulemaking procedures established by the APA. The mere issuance of notification **after** the fact would not provide the notice required by sections 11346.4 and 11346.5 of the Government Code, nor does it afford the public the opportunity to request a hearing pursuant to Government Code section 11346.8(a). The Department did not satisfy the requirements of an APA rulemaking when it issued the rules discussed herein.

A duty to notify every insurer once the Commissioner has made changes is a requirement **in addition to**, the APA requirements. The State Water Resources Control Board, seeking to overturn a determination by OAL, made an argument very similar to the Department's assertion regarding the notice in this matter in *State Water Resources Control Board vs. The Office of Administrative Law* (1993) 12 Cal.App.4th 697, 702 [16 Cal.Rptr.2d 25]. The State Water Resources Control Board argued that the Porter Cologne Act did not require rulemaking in that the Porter Cologne Act provided for noticed proceedings that created an "irreconcilable conflict [with] the APA's notice requirements." The Porter Cologne Act has far more stringent requirements for notice than does Insurance Code section 923. However, the court did not find the notice requirements to be inconsistent with the APA and stated:

The Legislature has conferred upon the OAL the power to determine if administrative directives are in fact regulations. (Gov. Code, § 11347.5.) The

³⁴ Response, p. 19.

³⁵ Welfare & Institutions Code section 14105.395(c) states:

Changes made pursuant to this section are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law. The department shall consult with interested parties and appropriate stakeholders in implementing this section with respect to all of the following:

- (1) Notifying the provider representatives of the proposed change.
- (2) Scheduling at least one meeting to discuss the change.
- (3) Allowing for written input regarding the change.
- (4) Providing advance notice on the implementation and effective date of the change. [Emphasis added.]

³⁶ Response, p. 18.

OAL has made such a determination as to the portions of the water quality control program at issue here.

The Boards, however, find an irreconcilable conflict in the APA's notice requirements and the Porter-Cologne Act's approval requirements.

Moreover, we do not see the kind of "irreconcilable conflict" here that might support a finding of implied exemption. That the Porter-Cologne Act establishes similar procedures is not persuasive. The APA was enacted to establish basic minimum procedural requirements. (*Grier v. Kizer, supra*, 219 Cal.App.3d at p. 431, 268 Cal.Rptr. 244.) Agencies are free to adopt additional procedural requirements (Gov.Code, § 11346). **Therefore, the mere fact that the Porter-Cologne Act has its own procedural requirements does not, in and of itself, create a conflict.** [Emphasis added.] (*State Water Resources Control Board, supra*, 12 Cal.App.4th 697, at p. 705.)

The same is true in the present case. The notice requirements of Insurance Code section 923 are in addition to the APA requirements and the APA requirements do not irreconcilably conflict with the Insurance Code.

3. The Department contends that "rulemaking is not required when it would 'effectively eviscerate' a statute calling for streamlined agency action."³⁷

The Department contends that rulemaking pursuant to the APA would "effectively eviscerate" Insurance Code section 923. In support of the Department's contention, they refer to *Alta Bates Hospital v. Lackner* (1981) 118 Cal.App.3d 614 [175 Cal.Rptr. 196] (*Alta Bates Hospital* hereafter), and the proposition that "[c]ourts recognize that [APA] rulemaking is not required when it would 'effectively eviscerate' a statute calling for streamlined agency action."³⁸

Alta Bates Hospital, supra, 118 Cal.App.3d 614, involved a class action suit by hospitals against a directive by the Director of the Department of Health that reduced by 10 percent Medi-Cal reimbursements for hospital outpatient services. The relevant statute specifically stated that: "[a]t any time during the fiscal year, if the director has reason to believe that the total cost of the program will exceed available funds, he may, first modify the method or amount of payment for services, provided that no amount shall be reduced more than 10 percent and no modification will conflict with federal law."³⁹ The statute in *Alta Bates Hospital* requires far

less interpreting than does Insurance Code section 923. Insurance Code section 923 provides for discretion of the Commissioner in requiring the filing of the financial statements. An interpretation of Insurance Code section 923 to allow the Commissioner the discretion to unilaterally disallow a class of assets from financial statements would not be similar to the duties of the Director of the Department of Health to ensure that costs do not override expenses in a program. In addition, the court put great weight on the fact that the statute called for consultation with "concerned provider groups" before the Director took any action.

The *Alta Bates Hospital supra*, 118 Cal.App.3d 614, case was specifically discussed in *State Water Resources Control Board, supra*, 12 Cal.App.4th 697, when it found *Alta Bates Hospital* to be an "unusual circumstance." The court in *State Water Resources Control Board*, in finding that the Water Board's actions were underground regulations, notes that the "otherwise applicable rule that a special statute controls a general statute" is overcome by the express language of the Legislature that Government Code section 11346 "shall not be superseded or modified by any subsequent legislation except to the extent that such legislation shall do so expressly." The Water Board claimed that the Legislature never intended the water quality control plans to be considered regulations and that they are impliedly exempt. The court in *State Water Resources Control Board supra*, 12 Cal.App.4th 697, stated at p. 704:

The provisions of this article shall not be superseded or modified by any subsequent legislation *except to the extent that such legislation shall do so expressly.*" (Italics added.) Although section 11346 was added in 1980, after the adoption of the Porter-Cologne Act, it simply restates the provisions of Government Code former section 11420, which predated the act. **The statutory language could hardly be clearer. It therefore overcomes the otherwise applicable rule that a special statute controls a general statute.** (*Engelmann v. State Bd. of Education* (1991) 2 Cal.App.4th 47, 59 [3 Cal.Rptr.2d 264].) We do not agree with the Boards' argument that section 11346 somehow impermissibly limits or restricts the power of the Legislature. **If the Legislature desires to permit implied exemptions, it can amend section 11346 to so provide. Nor are we persuaded that section 11346 means something other than what it says because other courts may have recognized implied exemptions to the APA in unusual circumstances, or because the Legislature has not expressly stated otherwise. As to the last of these arguments, the Legislature has settled the issue by stating that unless expressly exempted, all administrative regulations must comply**

³⁷ Response, p. 21.

³⁸ Ibid, at p. 1.

³⁹ Welfare & Institutions Code section 14120.

with the APA. Therefore, the mere fact that the Porter–Cologne Act has its own procedural requirements does not, in and of itself, create a conflict. [Emphasis added.]

In addition, the Department’s contention that rule-making would “effectively eviscerate” Insurance Code section 923, does not appear to be the case. OAL notes there have been numerous rulemakings conducted previously by the Department that implement, interpret, or make specific Insurance Code section 923. Insurance Code section 923 is the subject of many rulemakings as evidenced by the numerous citations after Insurance Code section 923 in West’s Annotated California Codes. (See, for instance, California Code of Regulations, title 10, section 2300 (Ins. Code sec. 923 is cited as Authority), section 2302 (Ins. Code sec. 923 is cited as Authority), section 2303 (Ins. Code sec. 923 is cited as an Authority and as a Reference), section 2303.1 (Ins. Code sec. 923 is cited as Authority and as a Reference) and section 2303.10 (Ins. Code sec. 923 is cited as Authority and as a Reference).)⁴⁰ There are many more.

Accordingly, rulemaking would not “effectively eviscerate” Insurance Code section 923.

4. The Department contends that it does not have time to conduct rulemakings when establishing the requirements for annual and quarterly financial statements.⁴¹

The Department indicates that the challenged actions require such prompt action that even an emergency rulemaking is “not an option.”⁴² However, the Department’s Response indicates that the Department hired a number of experts and spent “months of study” in determining what investments should be non–admitted.⁴³ Considering that an emergency rulemaking may be completed in less than twenty days, there appears to be adequate time to conduct a rulemaking that affords those being regulated the opportunity of input. In addition, the issue as to whether or not the agency has adequate time to conduct a rulemaking should be addressed to the Legislature. It is not a factor in determining whether the challenged action is an underground regulation and whether there is an exemption, which are the factors to which a determination is restricted.

⁴⁰ Government Code section 11349 defines Authority and Reference as follows:

(b) “Authority” means the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation.

(e) “Reference” means the statute, court decision, or other provision of law which the agency implements, interprets, or makes specific by adopting, amending, or repealing a regulation.

⁴¹ Response, p. 18.

⁴² Ibid., p. 18 (Footnote 7).

⁴³ Ibid., p. 2.

5. The Department contends that the challenged actions are merely accounting techniques which are exempt from the APA.

The Department contends that “the Commissioner’s directive for Iran–related financial reporting under Insurance Code section 923 involves an accounting method, the purpose of which is to ascertain the extent of insurers’ Iran–related investments and the impact of those investments on insurers’ surplus.”⁴⁴ The Department contends that the challenged rules are therefore exempt pursuant to *Pacific Gas & Electric Co. v. Dept. of Water Resources* (2003) 112 Cal.App.4th 477, (*Pacific Gas & Electric Co.* hereafter) as merely an accounting technique. *Pacific Gas & Electric Co., supra*, 112 Cal.App.4th 477, held that a formula developed by the Department of Water Resources to determine the amount utilities had to reimburse for power contracts was not a regulation subject to the APA. The Department of Water Resources **entered into contracts** for the purchase and sale of electric power pursuant to statutory mandate. The court found that the individual contracts between the Department of Water Resources and each utility company did not constitute a standard of general application, and therefore, was not subject to the APA. The court in *Pacific Gas & Electric Co., supra*, 112 Cal.App.4th 477, 507, stated:

DWR’s revenue requirement is an accounting exercise to calculate the amount of DWR’s reimbursable costs for a finite period of time, for categories specified by the Legislature, including (as stated in § 80134, fn. 6, *ante*) amounts necessary to cover the principal and interest on bonds, DWR’s costs to purchase and deliver electric power, reserves and administrative costs, the pooled money investment rate on advanced funds, and repayment to the General Fund for appropriations made to the Electric Power Fund.

Thus, the determination did not constitute a standard of general application, but rather was the calculation of an amount of specific, reimbursable costs for a finite period of time pursuant to contracts. The court compared the Department of Water Resources’ action to actions by the California Toll Bridge Authority concerning one particular bridge. The “general applicability” for the future wasn’t there.

Similarly, in *City of San Joaquin vs. Bd. of Equalization* (1970) 9 Cal.App.3d 365 [88 Cal.Rptr. 12] (*City of San Joaquin* hereafter), the city was objecting to the manner in which the State Board of Equalization allocated sales taxes imposed by cities and counties on retail sales of deep well agricultural pumps. They entered into negotiated contracts on the subject. The court in

⁴⁴ Ibid., p. 20.

City of San Joaquin, supra, 9 Cal.App.3d 365, at 375 stated:

San Joaquin first contends that the Board’s pooling procedure is a regulation within the meaning of the Administrative Procedure Act (ch. 4.5, part 1, div. 3, title 2, Gov. Code), and is invalid because it was not adopted in the manner prescribed by that act.

We do not agree. The challenged pooling practice is not a regulation, order or standard of general application which was adopted by the Board “to implement, interpret or make specific the law enforced or administered by it, or to govern its procedure” (Gov. Code, § 11371.) According to the evidence, it is merely a statistical accounting technique to enable the Board to allocate, as expediently and economically as possible, to each city which has joined the uniform sales and use tax program, its fair share of sales taxes collected by the Board on that city’s behalf. **Moreover, this accounting technique was worked out by the Board and the representatives of interested cities and counties and was made a part of the “standard” contract which San Joaquin ultimately signed, without protest or objection of any kind.** [Emphasis added.]

Cases finding no rule of “general application” in matters dealing with individual negotiated contracts and determining allocation of tax revenue for individual cities, are distinguishable from the challenged rules in this matter where 1) those being affected did not participate in the creation of the rules, and 2) the challenged actions amount to a mandatory denial of a class of assets on financial statements (i.e., applies generally). Cases such as those cited by the Department fall outside the definition of a regulation in that the rules do not apply generally. In this matter, the challenged actions apply against all current and future California insurers.

6. The Department contends that the challenged rules fall outside the APA in that the decision of what security to exclude was done on a case-by-case basis.

Even though the securities themselves may have been examined on a case-by-case basis, the rule of exclusion is being generally applied as against all California insurers. All 1300 or so insurance companies must classify the assets in the same way. They all must list them in the column “Non-admitted” on the financial statements. No insurer licensed in California can claim any of the companies on the List as an admitted asset. The rule applies generally to all California insurers. Therefore, the case-by-case claim does not apply with respect to the challenged rules.

7. The Department contends that the moratorium on investments in companies on the List was not regulatory in that it was voluntary.

The Department also contends that the request not to invest in companies on the List was voluntary and that it was a permissible use of the Commissioner’s “bully pulpit” to encourage this behavior.⁴⁵ OAL will find rules of general application that implement, interpret or make specific the law enforced or administered by the Department that have not complied with the APA to be underground regulations if the rule looks like a regulation, reads like a regulation, and acts like a regulation . . . whether or not the agency in question so labeled it. (See *State Water Resources Control Board, supra*, 12 Cal.App.4th 697.) As previously stated, all insurers were “required” to respond and were “required” to inform the Commissioner as to whether or not they would agree to the moratorium under pressure or repercussions. Compliance with the challenged rules was mandatory, not voluntary.

PETITIONERS’ REPLY

The Petitioners provided a Reply to the Department’s Response which refutes the Department’s contention that the decision by the Commissioner to exclude Iran-related assets from California financial statements was done on a case-by-case basis. They indicate that if the Commissioner sought to exclude investments and give them “no value” in the financial statements, then the statutory safeguards of a hearing on the issues presented would have been provided to each insurer according to the requirements in Insurance Code section 1202, which states:

The commissioner may, in his discretion and after hearing, by written order require the disposal of any investments made in violation of the provisions of this article, pending which disposal pursuant to such order no value shall be allowed for such investment in any statement, required by any provision of this code, purporting to show the financial condition of the owner thereof, or in measuring the financial condition of the owner thereof for the purpose of determining whether such owner is solvent or insolvent. The commissioner may also, for good cause, require the disposal of any excess funds investments.

According to the Petitioners, no hearing was provided to any of the insurers subject to the exclusion of the Iran-related assets. The designation of the assets on the financial statements as “non-admitted” applies to

⁴⁵ Response, p. 4.

all the insurers licensed to do business in California. The Petitioners also contend that the forms exemption was inapplicable and that whether the Commissioner has the authority to take the challenged action, with or without the applicability of the APA, has not been demonstrated.

CONCLUSION

As previously indicated, OAL does not address in this Determination whether a challenged rule would meet the "Authority" standard of Government Code section 11349(b) when determining whether the rules are underground regulations. However, in accordance with the above analysis, we agree with the Petitioners that the challenged rules meet the definition of a regulation pursuant to Government Code section 11342.600 that should have been, but were not, adopted pursuant to the APA.

Date: October 11, 2010

/s/
SUSAN LAPSLEY
Director

/s/
Kathleen Eddy
Senior Counsel

<p>SUMMARY OF REGULATORY ACTIONS</p>

**REGULATIONS FILED WITH
SECRETARY OF STATE**

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

File# 2010-0929-02
BOARD OF PILOT COMMISSIONERS
Conflict-of-Interest Code

The Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun is amending its conflict of interest code found at title 7, section 212.5, California Code of Regulations. The changes were ap-

proved for filing by the Fair Political Practices Commission on September 1, 2010.

Title 7
California Code of Regulations
AMEND: 212.5
Filed 10/13/2010
Effective 11/12/2010
Agency Contact: Gabor Morocz (916) 324-7505

File# 2010-0902-01
CALIFORNIA HIGHWAY PATROL
Motor Carrier Safety — Carrier Identification

The California Highway Patrol (CHP) amended sections 1200, 1235.1, 1235.2, 1235.4, and 1256 in title 13 of the California Code of Regulations concerning the assignment of carrier identification numbers pursuant to Vehicle Code section 34507.5. The CHP also adopted section 1235.7 in title 13 concerning the leasing of motor vehicles by intrastate motor carriers. The original submission of this regulatory action was disapproved by the Office of Administrative Law on May 3, 2010.

Title 13
California Code of Regulations
ADOPT: 1235.7 AMEND: 1200, 1235.1, 1235.2, 1235.4, 1256
Filed 10/12/2010
Effective 11/11/2010
Agency Contact: Gary Ritz (916) 445-1865

File# 2010-0923-07
CALIFORNIA UNIFORM CONSTRUCTION COST
ACCOUNTING COMMISSION
Conflict-of-Interest Code

The California Uniform Construction Cost Accounting Commission is amending their conflict of interest code found at title 2, div. 8, ch. 46, sec. 53500, California Code of Regulations. The changes were approved for filing by the Fair Political Practices Commission on August 11, 2010.

Title 2
California Code of Regulations
AMEND: div. 8, ch. 46, sec. 53500
Filed 10/07/2010
Effective 11/06/2010
Agency Contact: Scott Taylor (916) 327-2289

File# 2010-0826-02
COMMISSION ON PEACE OFFICER STANDARDS
AND TRAINING
Notice of Appointment/Termination

The Commission on Peace Officer Standards and Training amended sections 9040 and 9041 of title 11 of the California Code of Regulations to separately provide for reserve peace officers, add peace officer and re-

serve peace officer for clarity, and to specify which law enforcement agency notifies POST when a peace officer or former peace officer is adjudged guilty of a felony offense.

Title 11
California Code of Regulations
AMEND: 9040, 9041
Filed 10/06/2010
Effective 11/05/2010
Agency Contact: Kelli Dugranrut (916) 227-4854

File# 2010-0826-03
DELTA PROTECTION COMMISSION
Amend Regs Governing Land Use & Resource Management in Primary Zone of Delta

This rulemaking actions amends regulations governing the Land Use and Resource Management Plan for the Primary Zone of the Sacramento-San Joaquin Delta. The rulemaking updates these regulations to reflect recent changes in various aspects of the Delta, such as newly identified endangered species, effects of climate change, flood control issues, increased recreational use, water quality changes, habitat loss, road and utility construction, and urbanization. The rulemaking adds specific overview, goals, and policies subsections and a glossary of terms to address components of the Delta system, such as: natural resources, utilities, infrastructure, land use, agriculture, water, recreation, and levees.

Title 14
California Code of Regulations
AMEND: 20030, 20040, 20050, 20060, 20070, 20080, 20090, 20100, 20110
Filed 10/07/2010
Effective 11/06/2010
Agency Contact: Linda Fiack (916) 776-2290

File# 2010-1005-03
DEPARTMENT OF CORRECTIONS AND REHABILITATION
HOPE Pilot Program

This pilot program will allow the California Department of Corrections and Rehabilitation to implement and evaluate an "immediate sanction" process to address substance abuse and other violations of parole by California parolees. This program is intended to assess whether or not frequent drug testing and immediate short-term incarceration for drug use and/or other violations reduces the recurrence of drug use and/or other violation behaviors by parolees assigned to the study group.

Title 15
California Code of Regulations
ADOPT: 3999.10
Filed 10/11/2010
Effective 10/11/2010
Agency Contact: Josh Jugum (916) 445-2228

File# 2010-0928-02
DEPARTMENT OF FOOD AND AGRICULTURE
Insects Which May Be Imported or Shipped Within CA W/O a Permit

The Department of Food and Agriculture submitted this amendment to title 3, California Code of Regulations, section 3558(a) to add 26 additional types of beneficial or useful insects that do not require a permit authorized by DFA or by the U.S. Dept. of Agriculture to move into or within California.

Title 3
California Code of Regulations
AMEND: 3558(a)
Filed 10/11/2010
Effective 11/10/2010
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2010-0930-01
DEPARTMENT OF FOOD AND AGRICULTURE
Restricted Noxious Weed Seed

The Department of Food and Agriculture submitted this action to amend title 3, California Code of Regulations, section 3855. The amendment removes two weed species from the section 3855 list of noxious weed seeds that seed labelers are required to list on their labels in California.

Title 3
California Code of Regulations
AMEND: 3855
Filed 10/11/2010
Effective 11/10/2010
Agency Contact:
Susan McCarthy (916) 654-1017

File# 2010-0824-02
DEPARTMENT OF FOOD AND AGRICULTURE
State Organic Program

This regulatory action establishes procedures for spot inspections, investigations and sampling to determine compliance with the provisions of the California Organic Products Act of 2003, the federal Organic Foods Production Act of 1990, National Organic Program regulations and other state regulations. It also includes procedures for complaints of suspected non-compliance with these laws.

Title 3
 California Code of Regulations
 ADOPT: 1391, 1391.1, 1391.2, 1391.3, 1391.4
 AMEND: 1391 (renumbered to 1391.5), 1391.1 (renumbered to 1391.6)
 Filed 10/06/2010
 Effective 11/05/2010
 Agency Contact: Steve Patton (916) 445-2180

File# 2010-0830-01
 DEPARTMENT OF INSURANCE
 Standards for Approval of Insurer Names

This rulemaking action implements the provisions of California Insurance Code Section 880 et seq., to ensure that entities in the business of selling insurance do not use entity names that are misleading to the public or which are too similar to names of existing business entities and would, therefore, interfere with the business activities of those existing business entities.

Title 10
 California Code of Regulations
 ADOPT: 2278.50, 2278.51, 2278.52, 2278.53, 2278.54, 2278.55, 2278.56, 2278.57, 2278.58, 2278.59
 Filed 10/11/2010
 Effective 11/10/2010
 Agency Contact: Harry LeVine (415) 538-4109

File# 2010-0826-01
 DEPARTMENT OF JUSTICE
 Amendments to the Fingerprint Rolling Certification Program

This regulatory action amends several sections in Title 11 of the California Code of Regulations. This rulemaking updates, clarifies and simplifies the requirements for individuals who are applying to become certified to provide fingerprinting services. Pursuant to SB 174, Chapter 35, Statutes of 2009 this rulemaking also removes the requirement that applicants have their application notarized. Other changes include substituting DOJ for "Department."

Title 11
 California Code of Regulations
 ADOPT: 994.9, 994.10, 994.11, 994.12, 994.13, 994.14, 994.15 AMEND: 994.1, 994.2, 994.4, 994.5, 994.6 REPEAL: 994.9, 994.10, 994.11, 994.12, 994.13, 994.14, 994.15, 994.16
 Filed 10/07/2010
 Effective 11/06/2010
 Agency Contact: Erica Goerzen (916) 322-0908

File# 2010-1007-05
 DEPARTMENT OF PERSONNEL
 ADMINISTRATION
 Mandatory Personnel Leave—Excluded Employees
 This file and print only action adopts the Department of Personnel Administration's (DPA) latest regulation governing mandatory personal leave for excluded employees. This action is exempt from review and approval by the Office of Administrative Law pursuant to Government Code section 3539.

Title 2
 California Code of Regulations
 ADOPT: 599.937.4
 Filed 10/11/2010
 Effective 10/11/2010
 Agency Contact:
 Trisha Z. Bauman (916) 324-0447

File# 2010-0831-04
 DEPARTMENT OF PUBLIC HEALTH
 Medical Use of Radioactive Material

This action amends the Department of Public Health's regulations concerning the possession and use of radioactive materials in medicine to maintain continuing compatibility with the Nuclear Regulatory Commission's regulations and update the authority and reference citations, including the change from the Department of Health Services to the CDPH.

Title 17
 California Code of Regulations
 AMEND: 30100, 30195 REPEAL: 30321, 30321.1, 30322
 Filed 10/13/2010
 Effective 01/01/2011
 Agency Contact: Linda M. Cortez (916) 440-7683

File# 2010-0903-05
 DEPARTMENT OF SOCIAL SERVICES
 Certified Family Homes Regulations

The Department of Social Services submitted this rulemaking action to amend title 22, California Code of Regulations, section 88030 and MPP section 88030 to require certified family homes to conform to the same standards as foster family homes when providing care and supervision to foster youth.

Title 22/MPP
 California Code of Regulations
 AMEND: 88030
 Filed 10/11/2010
 Effective 11/10/2010
 Agency Contact:
 Zaid Dominguez (916) 657-2586

File# 2010-0826-04
EMERGENCY MEDICAL SERVICES
AUTHORITY
Emergency Medical Technician

This action revises an incorporated by reference form to reflect the previously approved regulatory requirement and also updates the version date of the form.

Title 22
California Code of Regulations
AMEND: 100080
Filed 10/06/2010
Effective
Agency Contact: Laura Little (916) 322-4336

File# 2010-0930-03
FISH AND GAME COMMISSION
Incidental Take of Mountain Yellow-legged Frog During Candidacy

The Fish and Game Commission adopts as an emergency action section 749.6 of title 14 of the California Code of Regulations. The purpose of this action is to allow the incidental take of Mountain yellow-legged frog during its candidacy for listing as an endangered or threatened species under the California Endangered Species Act (CESA), in accordance with Fish and Game Code section 2084.

Title 14
California Code of Regulations
ADOPT: 749.6
Filed 10/11/2010
Effective 10/11/2010
Agency Contact:
Sherrie Fonbuena (916) 654-9866

File# 2010-0831-02
PHYSICIAN ASSISTANT COMMITTEE
Technical Clean up (Section 100 changes)

This Section 100 change without regulatory effect rulemaking makes a variety of changes to the existing regulations of the Physician Assistant Committee including:

1. Correcting the committee's address.
2. Deleting references to interim approval of applicants for licensure as a Physicians Assistant per statutory deletion of this option in SB 819 (Stats. 2009, Chap. 308).
3. Changing the minimum sample of medical records to be reviewed by a supervising physician from 10% to 5% of the medical records of the patients treated by a Physician Assistant within 30 days of treatment per statutory change of this percentage in AB 3 (Stats. 2007, Chap. 376).

4. Elimination of initial licensing and renewal fees and initial Physician Assistant training program application and renewal fees which have sunsetted under the terms of the existing regulations.

5. Correction of a numbering sequence error and spelling of "curriculum vitae".

Title 16
California Code of Regulations
AMEND: 1399.501, 1399. 511, 1399.520, 1399.525, 1399.526, 1399.527, 1399.545, 1399.550, 1399.556, 1399.573, 1399.612 REPEAL: 1399.508
Filed 10/12/2010
Agency Contact:
Glenn L. Mitchell (916) 561-8783

File# 2010-0913-01
STATE PERSONNEL BOARD
Hearings and Appeals

This action is to correct a cross-reference that became inaccurate when the agency revised the formatting hierarchy as a change without regulatory effect in OAL #2010-0901-01 N.

Title 2
California Code of Regulations
AMEND: 51.1
Filed 10/07/2010
Agency Contact: John D. Smith (916) 651-1041

File# 2010-0915-01
STATE PERSONNEL BOARD
Hearings and Appeals

This action corrects the currently printed version of T2 CCR section 51.2(u) by inserting the missing word "designee" as follows:

"(u) 'Investigatory Hearing' means an evidentiary hearing conducted by the Chief ALJ's designee in accordance with the provisions of section 55.2."

Title 2
California Code of Regulations
AMEND: 51.2(u)
Filed 10/07/2010
Effective 10/07/2010
Agency Contact: John D. Smith (916) 651-1041

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN May 12, 2010 TO
October 13, 2010**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with

the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

- 10/11/10 ADOPT: 599.937.4
- 10/07/10 AMEND: 51.1
- 10/07/10 AMEND: 51.2(u)
- 10/07/10 AMEND: div. 8, ch. 46, sec. 53500
- 10/05/10 AMEND: div. 8, ch. 79, sec. 56800
- 10/05/10 ADOPT: 1859.172 AMEND: 1859.162.3, 1859.171
- 10/04/10 AMEND: 1859.2, 1859.81
- 10/04/10 ADOPT: 642, 643, 644, 645 AMEND: 640, 641
- 09/27/10 AMEND: 18942, 18944.1
- 09/07/10 AMEND: Renaming of headings only, as follows: Article 4 of Chapter 1 to new Subchapter 1.2; Subarticles 1–10 of nes Subchapter 1.2 to new Articles 1–10; and Chapters 1–5 of new Article 6 to new Subarticles 1–5.
- 09/02/10 ADOPT: 60804.1, 60815.1, 60820.1, 60855, 60856, 60857, 60858, 60859, 60860, 60861, 60862, 60863 AMEND: 60841, 60846, 60853 REPEAL: 60855
- 09/01/10 AMEND: 234, 548.70
- 09/01/10 AMEND: 234, 548.70
- 08/18/10 ADOPT: 51.3, 52.1, 52.2, 52.3, 52.5, 52.8, 52.10, 53.1, 53.2, 53.3, 53.4, 54.1, 55.1, 56.1, 56.2, 56.3, 56.4, 57.1, 57.2, 58.1, 58.2, 58.6, 58.7, 58.9, 58.10, 58.11, 59.2, 59.3, 59.4, 60.1, 63.1, 64.1, 64.2, 64.3, 64.4, 64.5, 64.6 AMEND: 51 (renumbered to 51.1), 51.1 (renumbered to 51.2), 51.2 (renumbered to 52.4), 52.3 (renumbered to 52.6), 51.9 (renumbered to 52.7), 51.5 (renumbered to 52.9), 52.6 (renumbered to 55.2), 52.2 (renumbered to 58.3), 51.4 (renumbered to 58.4), 52.1 (renumbered to 58.5), 57.2 (renumbered to 59.1), 52.5 (renumbered to 60.2), 57.3 (renumbered to 60.3), 53.1 (renumbered to 66.1), 56 (renumbered to 67.1), 56.1 (renumbered to 67.2), 56.2 (renumbered to 67.3), 56.3 (renumbered to 67.4), 56.4 (renumbered to 67.5), 56.5 (renumbered to 67.6), 56.6 (renumbered to 67.7), 56.7 (renumbered to 67.8) REPEAL: 51.3, 52, 52.4, 53, 53.2, 54, 54.2, 56.8, 57.1, 57.4, 60, 60.1, 60.2, 60.3, 60.4, 60.5, 60.6, 60.7, 60.8, 60.9, 60.10, 65, 547, 547.1

- 08/13/10 AMEND: 18707
- 07/08/10 AMEND: 18313.5(c)
- 07/06/10 AMEND: 51000
- 07/01/10 AMEND: 1859.90.1
- 06/24/10 ADOPT: 1859.90.1 AMEND: 1859.90.1 renumbered as 1859.90.2, 1859.129, 1859.197
- 06/24/10 AMEND: 47000, 47001, 47002
- 06/23/10 AMEND: 1859.184
- 06/17/10 AMEND: 18703.3
- 06/17/10 ADOPT: 18313.5
- 06/09/10 AMEND: Div. 8, Ch. 64, Sec. 55300
- 05/25/10 AMEND: div. 8, ch. 65, sec. 55400

Title 3

- 10/11/10 AMEND: 3558(a)
- 10/11/10 AMEND: 3855
- 10/06/10 ADOPT: 1391, 1391.1, 1391.2, 1391.3, 1391.4 AMEND: 1391 (renumbered to 1391.5), 1391.1 (renumbered to 1391.6)
- 10/01/10 AMEND: 3434(b)
- 09/27/10 AMEND: 3
- 09/27/10 AMEND: 3437
- 09/22/10 AMEND: 3591.20(a)
- 09/14/10 AMEND: 3434(b)
- 09/13/10 ADOPT: 3437
- 09/09/10 AMEND: 3434(b)
- 09/02/10 AMEND: 3425(b)
- 08/26/10 AMEND: 3406(b)
- 08/26/10 AMEND: 3406(b)
- 08/26/10 AMEND: 3434(b) & (c)
- 08/26/10 ADOPT: 6531 AMEND: 6502, 6511, 6530
- 08/24/10 AMEND: 3700(c)
- 08/19/10 AMEND: 3423(b)
- 08/17/10 AMEND: 3437
- 08/16/10 AMEND: 3425(b) and (c)
- 08/13/10 AMEND: 3591.15(a) and (b)
- 08/11/10 AMEND: 3437
- 08/05/10 AMEND: 3423(b)
- 07/26/10 AMEND: 3435(c)
- 07/20/10 AMEND: 3437
- 07/16/10 AMEND: 3434(b) and (c)
- 07/13/10 AMEND: 3591.20(a)
- 07/07/10 ADOPT: 3591.24
- 07/01/10 AMEND: 3437
- 06/30/10 AMEND: 3423(b)
- 06/18/10 AMEND: 6448, 6448.1, 6449, 6449.1, 6450, 6450.1, 6450.2, 6451, 6451.1
- 06/10/10 ADOPT: 429, 430 AMEND: 441
- 06/10/10 ADOPT: 3024.5, 3024.6, 3024.7, and 3024.8 AMEND: 3024, 3024.1, 3024.2, 3024.3, 3024.4, and 4603
- 06/09/10 AMEND: 3434(b), (c), (d), and (e)
- 06/07/10 AMEND: 4500

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06/02/10 AMEND: 3435
 06/01/10 AMEND: 3437(b)
 05/24/10 AMEND: 3434(b)
 05/17/10 AMEND: 3591.5(a)
 05/17/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3,
 3701.4, 3701.5, 3701.6, 3701.7, 3701.8
 AMEND: 3407(e), 3407(f)
 REPEAL: 3000, 3001, 3002, 3003, 3004
 05/13/10 AMEND: 3437

Title 4

10/04/10 ADOPT: 10030, 10031, 10032, 10033,
 10034, 10035, 10036
 09/29/10 AMEND: 8070, 8072, 8073, 8074
 09/15/10 AMEND: 10323
 09/09/10 AMEND: 1766
 09/09/10 AMEND: 10152, 10153, 10154, 10155,
 10156, 10157, 10158, 10159, 10160,
 10161, 10162, 10164
 08/30/10 ADOPT: 213.2 AMEND: 211, 213, 293,
 405
 08/20/10 AMEND: 130
 08/16/10 AMEND: 1689
 07/29/10 ADOPT: 5170, 5180, 5181, 5182, 5183,
 5190, 5191, 5192, 5193, 5194, 5200,
 5210, 5211, 5212, 5220, 5230, 5231,
 5232, 5240, 5250, 5260, 5265, 5266,
 5267, 5268, 5269, 5270, 5275, 5280,
 5281, 5282, 5283, 5290, 5291, 5300,
 5310, 5311, 5312, 5313, 5314, 5315,
 5320, 5321, 5330, 5340, 5350, 5360,
 5370, 5371, 5372, 5380, 5381, 5382,
 5383, 5384, 5400, 5410, 5411, 5420,
 5421, 5422, 5423, 5430, 5431, 5432,
 5433, 5434, 5435, 5440, 5450, 5460,
 5461, 5470, 5560, 5570, 5571, 5572,
 5573, 5580, 5590
 07/22/10 AMEND: 10300, 10302, 10305, 10310,
 10315, 10317, 10320, 10322, 10323,
 10325, 10326, 10327, 10328, 10330,
 10335, 10337
 07/13/10 AMEND: 8034, 8035, 8042, 8043
 07/12/10 ADOPT: 5000, 5010, 5020, 5021, 5030,
 5031, 5032, 5033, 5034, 5035, 5036,
 5037, 5038, 5039, 5050, 5051, 5052,
 5053, 5054, 5055, 5056, 5060, 5061,
 5062, 5063, 5064, 5080, 5081, 5082,
 5100, 5101, 5102, 5103, 5104, 5105,
 5106, 5107, 5120, 5130, 5131, 5132,
 5140, 5141, 5142, 5143, 5150, 5151,
 5152, 5153, 5154, 5155, 5480, 5490,
 5491, 5492, 5493, 5494, 5500, 5510,
 5520, 5530, 5531, 5532, 5533, 5534,
 5540, and 5550
 06/21/10 AMEND: 8070, 8072, 8073, 8074

06/09/10 AMEND: 1689.1
 06/01/10 AMEND: 10020
 05/17/10 ADOPT: 12590 REPEAL: 12590

Title 5

10/01/10 AMEND: 57020 REPEAL: 50721,
 50722, 50723, 50724, 50725, 50727,
 50728, 50729, 50730, 57031, 50732
 09/13/10 ADOPT: 4800, 4801, 4802, 4803, 4804,
 4805, 4806, 4807
 08/30/10 ADOPT: 30960, 30961, 30962, 30963,
 30964
 08/24/10 REPEAL: 18015
 08/20/10 AMEND: 80001
 08/19/10 ADOPT: 59204.1
 08/19/10 ADOPT: 11967.6.1 AMEND: 11967.6
 08/09/10 ADOPT: 30010, 30011, 30012, 30013,
 30014, 30015, 30016, 30017, 30018,
 30019, 30034, 30035, 30036, 30037,
 30038, 30039, 30040, 30041, 30042,
 30043, 30044, 30045, 30046 AMEND:
 30000, 30001, 30002, 30005, 30020,
 30021, 30022, 30023, 30030, 30032,
 30033
 08/02/10 ADOPT: 4700, 4701, 4702
 07/30/10 ADOPT: 70030, 70040, 71135, 71320,
 71390, 71395, 71400.5, 71401, 71475,
 71480, 71485, 71640, 71650, 71655,
 71716, 71750, 71760, 74110, 74115,
 76020, 76140, 76212, 76240 AMEND:
 70000, 70010, 70020, 71100, 71110,
 71120, 71130, 71140, 71150, 71160,
 71170, 71180, 71190, 71200, 71210,
 71220, 71230, 71240, 71250, 71260,
 71270, 71280, 71290, 71300, 71310,
 71340, 71380, 71400, 71405, 71450,
 71455, 71460, 71465, 71470, 71500,
 71550, 71600, 71630, 71700, 71705,
 71710, 71715, 71720, 71730, 71735,
 71740, 71745, 71770, 71810, 71850,
 71865, 71920, 71930, 74000, 74002,
 74004, 74006, 74120, 74130, 74140,
 74150, 74160, 74170, 74190, 74200,
 76000, 76120, 76130, 76200, 76210,
 76215 REPEAL: 70030, 71000, 71005,
 71010, 71020, 71330, 71360, 71410,
 71415, 71420, 71490, 71495, 71505,
 71510, 71515, 71520, 71555, 71560,
 71565, 71605, 71610, 71615, 71650,
 71655, 71725, 71775, 71800, 71805,
 71830, 71855, 71860, 71870, 71875,
 71880, 71885, 71890, 71900, 71905,
 71910, 72000, 72005, 72010, 72020,
 72101, 72105, 72110, 72120, 72130,
 72140, 72150, 72160, 72170, 72180,

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72190, 72200, 72210, 72220, 72230,	09/14/10	AMEND: 10253.1
72240, 72250, 72260, 72270, 72280,	09/13/10	AMEND: 5206(d)(4)(a),
72290, 72300, 72310, 72330, 72340,		1532.2(d)(4)(a), 8359(d)(4)(a)
72360, 72380, 72400, 72405, 72410,	09/01/10	AMEND: 1502
72415, 72420, 72450, 72455, 72460,	08/30/10	AMEND: 4848
72465, 72470, 72500, 72505, 72515,	08/30/10	AMEND: 5158
72520, 72550, 72555, 72560, 72565,	08/25/10	AMEND: Appendix B following section
72570, 72600, 72605, 72610, 72615,		5207
72650, 72655, 72700, 72701, 72705,	08/17/10	AMEND: 4885
72710, 72715, 72720, 72725, 72730,	08/09/10	AMEND: 9767.3, 9767.6, 9767.8,
72735, 72740, 72745, 72770, 72775,		9767.12, 9767.16, 9880, 9881, 9881.1,
72800, 72805, 72810, 72830, 72850,		10139
72855, 72860, 72865, 72870, 72875,	08/03/10	AMEND: 3563, 3651
72880, 72885, 72890, 72900, 72905,	07/22/10	AMEND: 5278
72910, 72915, 72920, 72930, 73000,	07/13/10	AMEND: 9789.70
73010, 73100, 73110, 73120, 73130,	07/01/10	AMEND: 4650, 4797, 4823
73140, 73150, 73160, 73165, 73170,	06/30/10	AMEND: 10232.1, 10232.2, 10250.1
73180, 73190, 73200, 73210, 73220,	06/30/10	ADOPT: 17300
73230, 73240, 73260, 73270, 73280,	06/29/10	ADOPT: 16450, 16451, 16452, 16453,
73290, 73300, 73310, 73320, 73330,		16454, 16455, 16460, 16461, 16462,
73340, 73350, 73360, 73380, 73390,		16463, 16464 AMEND: 16421, 16423,
73400, 73410, 73420, 73430, 73440,		16427, 16428, 16431, 16433, 16500
73470, 73480, 73500, 73520, 73530,	06/21/10	AMEND: 344.30
73540, 73550, 73600, 73610, 73620,	06/02/10	AMEND: 1590
73630, 73640, 73650, 73660, 73670,	05/25/10	AMEND: 1599
73680, 73690, 73700, 73710, 73720,		
73730, 73740, 73750, 73760, 73765,	Title 9	
73770, 73780, 73790, 73800, 73820,	09/20/10	ADOPT: 7212.1, 7212.2, 7212.3, 7212.4
73830, 73831, 73832, 73850, 73860,		AMEND: 7210, 7211, 7212
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74180, 74300, 74310, 74320, 75000,		7214.8, 7215, 7215.1, 7216, 7216.1,
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75120, 75130, 76010, 76240		7220.7, 7221, 7225 AMEND: 7213.3,
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		1850.350(c) AMEND: 1810.203.5(d)
	07/07/10	ADOPT: 1850.350(a), 1850.350(b),
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		2278.57, 2278.58, 2278.59
	09/28/10	ADOPT: 1409.1, 1414, 1422.4, 1422.4.1,
		1422.5, 1422.6, 1422.6.1, 1422.6.2,
		1422.6.3, 1422.7, 1422.7.1, 1422.9,
		1422.10, 1422.11, 1422.12, 1424, 1437,
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 1950.122.5.4, 1950.122.6, 1950.122.7,
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09/23/10 AMEND: 2274.70, 2274.71, 2274.72,
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08/05/10 AMEND: 2646.6

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 2548.30, 2548.31 REPEAL: 2548.1,
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07/01/10 AMEND: 2699.200, 2699.201

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06/01/10 AMEND: 2498.6

05/26/10 AMEND: 2699.6809

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10/07/10 AMEND: 20030, 20040, 20050, 20060,
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10/05/10 ADOPT: 700.3 AMEND: 105, 105.1,
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05/26/10	AMEND: 7.50	08/25/10	AMEND: 427.10, 427.30
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09/09/10	AMEND: 3605	07/21/10	REPEAL: 1569
08/19/10	ADOPT: 3268.3 AMEND: 3000, 3268, 3268.1, 3268.2	07/21/10	ADOPT: 2262.1 AMEND: 2262, 2276
08/13/10	ADOPT: 3540, 3541, 3542, 3543, 3544, 3545, 3546, 3547, 3548, 3560, 3561, 3562, 3563, 3564, 3565	07/09/10	AMEND: 3000, 3003, 3005, 3065 REPEAL: 3006
08/11/10	AMEND: 3350.2, 3352.2, 3356, 3358, 3390	07/09/10	AMEND: 411
08/05/10	REPEAL: 3999.3	07/09/10	AMEND: 3340.42
08/05/10	REPEAL: 3999.4	07/07/10	AMEND: 3028, 3061
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07/30/10	ADOPT: 3349.1.1, 3349.1.2, 3349.1.3, 3349.1.4, 3349.2.1, 3349.2.2, 3349.2.3, 3349.2.4, 3349.3, 3349.3.1, 3349.3.2, 3349.3.3, 3349.3.4, 3349.3.5, 3349.3.6, 3349.3.7, 3349.4.1, 3349.4.2, 3349.4.3, 3349.4.4, 3349.4.5, 3349.4.6 AMEND: 3349	06/18/10	ADOPT: 39, 40, 41, 42, 43, 44, 45, 46, 48, 48.1, 48.2, 48.3, 48.5, 48.6
07/27/10	REPEAL: 3999.2	06/07/10	ADOPT: 1702
07/22/10	ADOPT: 3768, 3768.1, 3768.2, 3768.3 REPEAL: 3999.6	06/03/10	AMEND: 4180
07/13/10	ADOPT: 3505 AMEND: 3000, 3075.2, 3075.3, 3502, 3504	05/27/10	AMEND: 314
07/02/10	ADOPT: 8000, 8001, 8002	05/20/10	AMEND: 1996.3, 1997
05/25/10	AMEND: 3170.1(g), 3173.2(d)	05/19/10	AMEND: 3340.1
05/25/10	AMEND: 3090, 3091, 3093, 3095	05/13/10	ADOPT: 1399.615, 1399.616, 1399.617, 1399.618, 1399.619 AMEND: 1399.571
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10/12/10	AMEND: 1399.501, 1399.511, 1399.520, 1399.525, 1399.526, 1399.527, 1399.545, 1399.550, 1399.556, 1399.573, 1399.612 REPEAL: 1399.508	10/13/10	AMEND: 30100, 30195 REPEAL: 30321, 30321.1, 30322
09/30/10	AMEND: 4200, 4202, 4204, 4206, 4208, 4210, 4212, 4214, 4216, 4218, 4220, 4226, 4228, 4230, 4234, 4236, 4240, 4242, 4244, 4246, 4248, 4250, 4252, 4254, 4258, 4264	09/20/10	AMEND: 94508, 94509, 94510, 94511, 94512, 94513, 94515
09/29/10	AMEND: 109(b)(2), 109(b)(7), 117(e)(2), 121(a)(2)	09/09/10	AMEND: 94801, 94804, 94805, 94806
09/23/10	AMEND: 1391.1	09/02/10	AMEND: 94700, 94701
09/23/10	ADOPT: 1399.419.1, 1399.419.2	08/30/10	ADOPT: 95550
09/22/10	ADOPT: 39, 40, 41, 42, 43, 44, 45, 46, 48, 48.1, 48.2, 48.3, 48.5, 48.6	08/26/10	AMEND: 60201, 60203, 60207, 60210, 70300, 70301, 70302, 70303, 70303.1, 70303.5, 70304, 70305, 70306
		06/29/10	AMEND: 100070, 100090
		06/17/10	ADOPT: 95460, 95461, 95462, 95463, 95464, 95465, 95466, 95467, 95468, 95469, 95470, 95471, 95472, 95473, 95474, 95475, 95476, Appendix 1
		06/17/10	ADOPT: 95200, 95201, 95202, 95203, 95204, 95205, 95206, 95207 AMEND: 95104
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		08/26/10	AMEND: 1598
		07/19/10	ADOPT: 1698.5
		06/17/10	AMEND: 25136

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05/18/10	ADOPT: 1004, 1032, 1124.1, 1249, 1336, 1422.1, 2251, 2303.1, 2433, 2571, 3022, 3302.1, 3502.1, 4106, 4903	97300.75,	97300.77,	97300.79,
05/13/10	AMEND: 1584	97300.81,	97300.83,	97300.85,
05/13/10	AMEND: 1602.5, 1700	97300.87,	97300.89,	97300.91,
Title 19		97300.93,	97300.95,	97300.97,
07/13/10	AMEND: 2729.7 and Appendix B of Article 4	97300.99,	97300.103,	97300.105,
06/17/10	ADOPT: 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067	97300.107,	97300.109,	97300.111,
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05/12/10	AMEND: Title 19: 2402, 2407, 2411, 2413, 2415, 2425, 2443, 2444, 2450, 2501, 2510, 2520, 2530, 2540, 2570.2, 2571, 2573.1, 2573.2, 2573.3, 2575.1, 2575.2, 2576, 2576.1, 2577.2, 2577.3, 2577.5, 2577.6, 2577.7, 2577.8, 2578.1, 2578.2, 2578.3, 2703, 2705, 2724, 2729.2, 2731, 2735.1, 2735.3, 2735.4, 2735.5, 2745.1, 2745.10, 2750.2, 2750.3, 2765.2, 2775.6, 2780.1, 2780.2, 2780.3, 2780.4, 2780.6, 2780.7, 2800, 2810, 2815, 2820, 2825, 2830, 2835, 2850, 2855, 2900, 2910, 2915, 2925, 2930, 2940, 2945, 2955, 2965, 2966, 2970, 2980, 2990, Title 26: 19-2510, 19-2520, 19-2530, 19-2540, 19-2703, 19-2705, 19-2724, 19-2731	97300.119,	97300.121,	97300.123,
		97300.125,	97300.127,	97300.129,
		97300.131,	97300.133,	97300.135,
		97300.137,	97300.139,	97300.141,
		97300.143,	97300.145,	97300.147,
		97300.149,	97300.151,	97300.153,
		97300.155,	97300.157,	97300.159,
		97300.161,	97300.163,	97300.165,
		97300.167,	97300.169,	97300.171,
		97300.173,	97300.175,	97300.177,
		97300.179,	97300.181,	97300.183,
		97300.185,	97300.187,	97300.189,
		97300.191,	97300.193,	97300.195,
		97300.197,	97300.199,	97300.203,
		97300.205,	97300.207,	97300.209,
		97300.211,	97300.213,	97300.215,
		97300.217,	97300.219,	97300.221,
		7300.223,	97300.225,	97300.227,
		97300.229,	97300.231,	97320.1,
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100106.1, 100106.2, 100107.1 AMEND:
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100063, 100063.1, 100064, 100064.1,
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