



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 8. DIVISION OF WORKERS' COMPENSATION

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

NOTICE OF PROPOSED RULEMAKING

Workers' Compensation — Workers' Compensation Information System

NOTICE IS HEREBY GIVEN that the Acting Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in her by Labor Code sections 133, 138.6, and 138.7, proposes to modify existing regulations, by amending Article 1.1, Subchapter 1 to Chapter 4.5 of, California Code of Regulations, title 8, sections 9701 and 9702, relating to the Workers' Compensation Information System.

PROPOSED REGULATORY ACTION

The Division of Workers' Compensation, proposes to modify existing regulations, by amending Article 1.1, Subchapter 1 to Chapter 4.5 of California Code of Regulations, title 8, sections 9701 and 9702, relating to the Workers' Compensation Information System:

- Amended section 9701 Definitions
- Amended section 9702 Electronic Data Reporting

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

- Date:** December 15, 2009
- Time:** 10:00 a.m. to 5:00 p.m., or until conclusion of business

Place: Elihu Harris State Office Building —
Auditorium
1515 Clay Street
Oakland, California 94612

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Acting Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on December 15, 2009**. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 p.m. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 p.m., on December 15, 2009.**

AUTHORITY AND REFERENCE

The Acting Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 133, 138.6, and 138.7.

Reference is to Labor Code sections 129, 138.4, and 138.6.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Labor Code section 138.6 requires the Acting Administrative Director of the Division of Workers' Compensation to develop a cost efficient workers' compensation information system to accomplish the following purposes:

- Assist the Department of Industrial Relations to manage the workers' compensation system in an effective and efficient manner.
- Facilitate the evaluation of the effectiveness and efficiency of the benefit delivery system.
- Assist in measuring how adequately the system indemnifies injured workers and their dependents.
- Provide statistical data for research into specific aspects of the workers' compensation system.

The data collected electronically must be compatible with the International Association of Industrial Accident Boards and Commissions' Electronic Data Interchange (IAIABC EDI) system, and the data elements to be provided by claims administrators through the WCIS must be set forth in regulations.

The proposed regulations will update the two WCIS implementation guides (the California EDI Implementation Guide for First and Subsequent Reports of Injury and the California EDI Implementation Guide for Medical Bill Payment Records), refine the list of required data elements, and establish reporting procedures for disputed medical bills paid by a lump sum following the filing of a lien with the Workers' Compensation Appeals Board.

These proposed regulations implement, interpret, and make specific these two sections of the Labor Code as follows:

1. Section 9701

This section is amended to assign a lettered subdivision to each defined term; several regulatory citations have also been corrected. Additionally, the definitions for the two California implementation guides have been amended to reflect updated versions; the definitions for

the two IAIABC implementation guides have been amended to reflect a change in access to the document.

(b) "California EDI Implementation Guide for First and Subsequent Reports of Injury" is amended to be defined as the California specific reporting requirements and information excerpted from the IAIABC EDI Implementation Guide for First, Subsequent, Acknowledgment Detail, Header & Trailer Records, Release 1, issued February 15, 2002, by the International Association of Industrial Accident Boards and Commissions. The current version of the guide, Version 2.1 (dated February 2006), will continue to be used for reporting for six months following the effective date of the amended regulation. Version 3.0 (dated January 2010) is to be used for reporting six months after the effective date of the amended regulation. Both versions of the implementation guide, which are incorporated by reference, are posted on the Division's website at <http://www.dir.ca.gov/dwe/WCIS.htm>.

(c) "California EDI Implementation Guide for Medical Bill Payment Records" is amended to be defined as the California-specific protocols and excerpts from the IAIABC EDT Implementation Guide for Medical Bill Payment Records, which explains the technical design and functionality of the WCIS system, testing options for the trading partners, and instructions regarding the data elements for medical billing. The current version of the guide, Version 1.0 (dated February 2006), will continue to be used for reporting for six months following the effective date of the amended regulation. Version 1.1 (dated January 2010) is to be used for reporting six months after the effective date of the amended regulation. Both versions of the implementation guide, which are incorporated by reference, are posted on the Division's website at <http://www.dir.ca.gov/dwc/WCIS.htm>.

(d) "California Jurisdiction Code" is added to be defined as a California-specific code that identifies a procedure, service, or product billed that is not identified by a current HCPCS code. California Jurisdiction Codes are either set forth and/or incorporated by reference in California Code of Regulations, title 8, section 9795, regarding reasonable fees for medical-legal expenses, section 9789.11, regarding fees for physician services rendered on or after July 1, 2004, or in amended section 9702(e), footnote 13, regarding lump-sum settlements.

(k) "IAIABC EDI Implementation Guide, Release 1" is amended to reflect that the guide can no longer be accessed through the Division's website. The definition now provides that the guide can be obtained for a fee at either the IAIABC website at <http://www.iaiaabc.org>, or the IAIABC office located at 5610 Medical Circle, Suite 24, Madison, WI, 53719-1295; Telephone: (608) 663-6355.

(l) “HCPCS” is added to be defined as Healthcare Common Procedure Coding System.

(m) “IAIABC EDI Implementation Guide, Release 1” is amended to reflect that the guide, which is incorporated by reference, can be obtained for a fee at either the IAIABC website at <http://www.iaiabc.org>, or the IAIABC office located at 5610 Medical Circle, Suite 24, Madison, WI, 53719–1295; Telephone: (608) 663–6355. IAIABC EDI Implementation Guide, Release 1 cannot be accessed through the Division’s website.

(n) “IAIABC EDI Implementation Guide for Medical Bill Payment Records” is amended to reflect a new, updated release. The current version of the guide, Release 1 (approved July 1, 2002), will continue to be used for reporting for six months following the effective date of the amended regulation. Release 1.1 (approved July 1, 2009) is to be used for reporting six months after the effective date of the amended regulation. Both versions of the implementation guide, which are incorporated by reference, can be obtained for a fee at either the IAIABC website at <http://www.iaiabc.org>, or the IAIABC office located at 5610 Medical Circle, Suite 24, Madison, WI, 53719–1295; Telephone: (608) 663–6355. The guides cannot be accessed through the Division’s website.

(q) “International Association of Industrial Accident Boards and Commissions (“IAIABC”)” is amended to reflect the correct address for the association: 5610 Medical Circle, Suite 24, Madison, Wisconsin 53719–1295.

2. Section 9702

Subdivision (b) is amended by increasing the period for reporting from five (5) business days to ten (10) business days. The subdivision is further amended by placing Data Element No. 11, “Claim Administrator Address Line 2” in its correct position in the alphabetical listing of data elements. The subdivision is also amended by adding IAIABC Data Element Nos. 39 (“Initial Treatment Code”); 26 (“Insured Report Number”); 29 (“Policy Effective Date”); and 30 (“Policy Expiration Date”); 28 (“Policy Number”); 33 (“Postal Code of Injury Site”); and 32 (“Time of Injury”). The subdivision is further amended by deleting Data Element No. 42’s (“Social Security Number”) reference to footnote 1 and adding footnote 4. Footnote 4 provides that if the Social Security Number is not known by the claims administrator, either: (a) a string of eight zeros followed by a six; (b) a string of eight zeros followed by a seven; or (c) a string of nine consecutive nines, should be used.

Subdivision (c) is amended by correcting the name of Data Element No. 5 (“Agency/Jurisdiction Claim Number”) and adding Data Element Nos. 1 (“Transaction Set ID”) and 4 (“Jurisdiction”). The erroneous refer-

ence to footnote 2 in Data Elements Nos. 31 (“Date of Injury”) and 42 (“Social Security Number”) is deleted; the correct reference to footnote 3 is added. The footnotes in subdivision (c) are amended to reflect the new and corrected data elements. Footnote No. 3 is amended by the addition of sentence providing that if Data Element No. 42 (“Social Security Number”) is not known, either: (a) a string of eight zeros followed by a six; (b) a string of eight zeros followed by a seven; or (c) a string of nine consecutive nines, should be used.

Subdivision (d) is amended by the addition of the following IAIABC data elements: Nos. 92 (“Benefit Adjustment Code”); 94 (“Benefit Adjustment Start Date”); 93 (“Benefit Adjustment Weekly Amount”); 14 (“Claim Administrator Postal Code”); 74 (“Claim Type”); 57 (“Employee Date of Death”); 26 (“Insured Report Number”); 80 (“Number of Benefit Adjustments”); 82 (“Number of Death Dependent/Payee Relationships”); 55 (“Number of Dependents”); 81 (“Number of Paid To Date/Reduced Earnings/Recoveries”); 79 (“Number of Payments/Adjustments”); 78 (“Number of Permanent Impairments”); 71 (“Return to Work Qualifier”); and 67 (“Salary Continued Indicator”). The subdivision is further amended by the deletion of the following data elements: Nos. 68 (“Date of Return to Work”); and 58 (“Employment Status Code”).

Subdivision (e) is first amended by providing that data shall be submitted within ninety (90) calendar days of the medical bill payment or the date of the final determination that payment for billed medical services will be denied. The subdivision is then amended by requiring that each claims administrator shall submit all lump sum payments following the filing of a lien claim for the payment of such medical services pursuant to Labor Code sections 4903 and 4903.1 within ninety (90) calendar days of the medical lien payment. Subdivision (e) is further amended by the addition of the following IAIABC data elements: 634 (“Billing Provider National Provider ID”); 682 (“Facility National Provider ID”); 699 (“Referring Provider National Provider ID”); 647 (“Rendering Bill Provider National Provider ID”); and 667 (“Supervising Provider National Provider ID”).

Footnote 7 in subdivision (e), applicable to data elements 647 (“Rendering Bill Provider National Provider ID”); 630 (“Facility State License Number”); 649 (“Rendering Bill Provider Specialty License Number”); 643 (“Rendering Bill Provider State License Number”); and 599 (“Rendering Line Provider State License Number”), is amended by providing that the applicable data elements should be provided if available. If not available, a string of nine consecutive nines should be used. Footnote 8, applicable to data elements 718 (“Jurisdiction Modifier Billed Code”), 730 (“Juris-

diction Modifier Paid Code”), 715 (“Jurisdiction Procedure Billed Code”), and 729 (“Jurisdiction Paid Code”), has been amended to provide that the codes to be used for the data elements are those either set forth and/or incorporated by reference in California Code of Regulations, title 8, section 9795, regarding reasonable fees for medical–legal expenses, and section 9789.11, regarding fees for physician services rendered after January 1, 2004. Footnote 9, applicable to data element Nos. 512 (“Date Insurer Paid Bill”) and 605 (“Service Line Date(s) Range”), has been added to provided that for payments made pursuant to California Code of Regulations, title 8, section 10536, the data edit date the insurer paid the bill (DN 512) must be \geq date the insurer received the bill (Error Code 073 is waived to allow payment of services); the data edit service line date(s) range (DN 605) must be \leq the current date (Error Code 041 is waived to allow payment of services). Footnote 10, applicable to data element No. 42, (“Employee Social Security Number”), is added to provide that if an employee is not a United States Citizen and has no other form of identification (a visa, green card, or passport number), either: (a) a string of eight zeros followed by a six; (b) a string of eight zeros followed by a seven; or (c) a string of nine consecutive nines, should be used.

Footnotes 11–17 are added to assist claims administrator in reporting medical services, whether reflected in one or more medical bills, that are fully satisfied by a single lump sum payment following the filing of a lien claim for the payment of such medical services pursuant to Labor Code sections 4903 and 4903.1. Footnote 11, applicable to data elements No. 512 (“Date Insurer Paid Bill”), provides that for medical lien bills the date the final payment was made should be used. Footnote 12, applicable to data element No. 511 (“Date Insurer Received Bill”), provides that for medical lien lump sum payment the date on the first medical bill received should be used. Footnote 13, applicable to data element Nos. 715 (“Jurisdiction Procedure Billed Code”) and 729 (“Jurisdiction Procedure Paid Code”), provides that the following codes should be used for reporting a medical lien lump sum payment:

- MDS10 Lump sum settlement for multiple bills where the amount of reimbursement is in dispute between the claims payer and the healthcare provider.
- MDO10 Final order or award of the Workers’ Compensation Appeals Board requires a lump sum payment for multiple bills where the amount of reimbursement is in dispute between the claims payer and the healthcare provider.

- MDS11 Lump sum settlement for multiple bills where liability for a claim was denied but finally accepted by the claims payer.
- MDO11 Final order or award of the Workers’ Compensation Appeals Board requires a lump sum payment for multiple bills where claims payer is found to be liable for a claim which it had denied liability.
- MDS21 Lump sum settlement for a single medical bill where the amount of reimbursement is in dispute between the claims payer and the healthcare provider.
- MDO21 Final order or award of the Workers’ Compensation Appeals Board requires a lump sum payment for a single medical bill where the amount of reimbursement is in dispute between the claims payer and the healthcare provider.

Footnote 14, applicable to data element No. 509 (“Service Bill Date(s) Range”), provides that for a medical lien lump sum payment the date of lien filing should be used. Footnote 15, applicable to data element No. 516 (“Total Amount Paid Per Bill”), provides that for a medical lien lump sum payment the settled or ordered amount should be used. Footnote 16, applicable to data element No. 501 (“Total Charge Per Bill”), provides that for a medical lien lump sum payment the amount in dispute should be used. Footnote 17, applicable to data element Nos. 513 (“Admission Date”); 545 (“Bill Adjustment Amount”); 543 (“Bill Adjustment Group Code”); 544 (“Bill Adjustment Reason Code”); 546 (“Bill Adjustment Units”); 502 (“Billing Type Code”); 510 (“Date of Bill”); 554 (“Days/Units Billed”); 553 (“Days/Units Code”); 514 (“Discharge Date”); 678 (“Facility Name”); 688 (“Facility Postal Code”); 715 (“Jurisdiction Procedure Billed Code”); 704 (“Managed Care Organization FEIN”); 721 (“NDC Billed Code”); 555 (“Place of Service Billed Code”); 600 (“Place of Service Line Code”); 521 (“Principle Diagnosis Code”); 699 (“Referring Provider National Provider ID”); 526 (“Release of Information Code”); 647 (“Rendering Bill Provider National Provider ID”); 651 (“Rendering Bill Provider Primary Specialty Code”); 643 (“Rendering Bill Provider State License Number”); 592 (“Rendering Line Provider National Provider ID”); 733 (“Service Adjustment Amount”); 731 (“Service Adjustment Group Code”); 732 (“Service Adjustment Reason Code”); 605 (“Service Line Date(s) Range”); 574 (“Total Amount Paid Per Line”); and 552 (“Total Charge Per Line”), provides that the referenced data elements are not required for a mixed medical lien lump sum payment. Footnote 18, applica-

ble to data element No. 547 (“Line Number”), provides that for a mixed bill medical lien lump sum payment a value = 00 should be assigned.

Subdivision (g) is amended by removing obsolete and redundant terms. The phrase “commencing in 2001” is deleted as the date qualifier is no longer relevant. The phrase “for each claim with a date of injury on or after July 1, 2000 and with any payment in any benefit category in the previous calendar year” is deleted as unnecessary; subsequent minor corrections to the text of the subdivision show the phrase to be redundant.

Subdivisions (i) and (j) are revised to correct legal citations.

3. California EDI Implementation Guide for First and Subsequent Reports of Injury

The California EDI Implementation Guide for First and Subsequent Reports of Injury, Version 2.1 (dated February 2006), will now be replaced by a new version, Version 3.0 (dated January 2010). Use of Version 3.0 by claims administrators will become required six months after the effective date of the regulation. The major changes between Version 2.1 and 3.0 are as follows:

- Introduction. Update text. Include new table of contents for entire guide.
- Section A. Remove section table of contents. Update text to remove obsolete references and reflect changes in regulations. Corrected previous error: Subsequent Reports of Injury (SROI) must be submitted within 15 business days following specific events. Update the First Report of Occupational Injury FROI reporting requirement from 5 to 10 business days. Remove references to VAN and e-mail transmission options. Provide that the WCIS can support two different file formats, known as ANSIX12 and “flat-file” formats.
- Section B. Remove section table of contents. Update WCIS contact information. EDI Service Provider information in Section B expanded to include information from the deleted Section J. Listings of EDI Service Providers now available online.
- Section C. Remove section table of contents. Update references to new Sections (J, K, L, M, N, O, and P) and to listing of EDI Service Providers, which is now provided online. Remove refer-

ences to VAN and e-mail transmission options.

- Section D. Remove section table of contents. No substantial changes.
- Section E. Remove section table of contents. No substantial changes.
- Section F. Remove section table of contents. Update text regarding importance of reporting the correct claims administrator FEIN (Federal Employer Identification Number) and postal code for physical adjusting location. Update Electronic Data Interchange Trading Partner Profile (DWC WCIS TP01 — Revised 1/10). Update Part C2 and C3 of the Trading Partner Profile to use a WCIS-hosted FTP as the sole transmission mode. Remove references to VAN and e-mail transmission options. Update contact information in Part D. Add Part E — California EDI Trading Partner Insurer/Claims Administrator ID List. Update WCIS zip code to 94612-1491. Update instructions.
- Section G. Remove section table of contents. Remove or correct redundant or unnecessary phrases and sentences. Remove references to VAN and e-mail transmission options. Clarify codes used for rejected transmissions or transmissions accepted with errors. Remove Crosswalk of Employer’s First Report of Occupational Injury or Illness (Form 5020), Doctor’s Report of Occupational Injury or Illness (Form 5021), and EDI First Report.
- Section H. Remove section table of contents. Remove reference to Release 3 format.
- Section I. Remove section table of contents. Update information for File Transfer Protocol (FTP) transmission mode, including security provisions. Remove references to VAN and e-mail transmission options.
- Section J. Section is deleted. Information regarding EDI Service Providers is available online so it can be updated more easily.

- Section K. Renamed Section J. Remove section table of contents. Update Maintenance Type Codes for FROI, SROI, and Annual Report. Update the First Report of Occupational Injury FROI reporting requirement from 5 to 10 business days. Corrected previous error: Subsequent Reports of Injury (SROI) are submitted within 15 business days. Clarify reporting requirements for settlements. Clarify reporting requirements for the Annual Summary.
 - Section L. Renamed Section K. Remove section table of contents. Update WCIS Data Requirements Codes List for required data elements. Update Data Requirements for First Reports of Injury table (include filling in existing blanks with “optional”). Update FROI Conditional Rules and Implementation Notes. Update Data Requirements for Subsequent Report of Injury table (include filling in existing blanks with “optional”). Update SROI Conditional Rules and Implementation Notes.
 - Section M. Renamed Section L. Remove section table of contents. Update California–Specific Data Edits table. Add or update California–specific data edits for IAIABC Data Elements Nos. 4 (“Jurisdiction Code”); 6 (“Insurer FEIN”); 8 (“Third Party Administrator FEIN”); 15 (“Claims Administrator Claims Number”); 5 (“Agency/Jurisdiction Claim Number”); 59 (“Class Code”); 68 (“Date of Return to Work”); 72 (“Date of Return/Release to Work”); 85 (“Payment Adjustment Code”); 86 (“Payment Adjustment Paid to Date”); 88 (“Payment Adjustment Start Date”); 89 (“Payment Adjustment End Date”); 93 (“Benefit Adjustment Amount”); 94 (“Benefit Adjustment Start Date”); and 96 (“Paid to Date/Reduced Earnings/Recoveries Code”). Add California–adopted IAIABC Data Elements tables, sorted by data element number and alphabetically.
 - Section N. Renamed Section M. Remove section table of contents. Clarify transaction processing for partial denials (MTC Code 4P), annual transaction (MTC Code AN), and final transactions (MTC Code FN). Clarify the reporting of advances and settlements. Clarify sequencing requirements for subsequent reports. Update WCIS secondary matching rules. Corrected Acquired Claims diagram.
 - Section O. Renamed Section N. Remove section table of contents. Update and correct code lists: Nature of Injury Codes (DN 35); Part of Body Codes (DN 36 and DN 83); Cause of Injury Codes (DN 37); Late Reason Codes (DN 77); and Class Codes (DN 59); Payment/Adjustment and Paid to Date (DN 85 and DN 95) Benefit Type Codes; and Industry Codes (DN 25). Add note about bilateral body part reporting. Add web links for code lists. Restructure table for Part of Body Codes to make easier to read. Replace Workers’ Compensation Insurance Rating Bureau’s Class Code list with link to website.
 - Section P. Deleted.
 - Section Q. Renamed Section O. Remove section table of contents.
 - Appendix A. Add clarification of issues and update differences between versions of implementation guide.
 - Appendix B. Add principal changes made by Version 3.0.
- 4. California EDI Implementation Guide for Medical Bill Payment Records**
- The California EDI Implementation Guide for Medical Bill Payment Records, Version 1.0.1 (dated February 2006) will now be replaced by a new version, Version 1.1 (dated January 2010). Use of Version 1.1 by claims administrators will be required six months after the effective date of the regulations. Version 1.1. The significant changes between Version 1.0.1 and Version 1.1, by section, are as follows:
- Introduction. Update text. Include new table of contents for entire guide.

- Section A. Remove section table of contents. Delete paragraph outlining WCIS components. Revise California EDI requirements to reflect changes in the regulations. The WCIS testing procedure for medical data has been expanded from a general four-stage testing procedure to a more comprehensive five-step testing procedure. New testing procedures include the cancellation of a medical bill and the replacement of a claim number.
- Section B. Remove section table of contents. Update WCIS contact person information. EDI Service Provider information in Section B expanded to include information from the deleted Section J. (The listing of EDI Service Providers is now available online.) Delete User Groups.
- Section C. Remove section table of contents. Remove unnecessary language and update section to reflect changes in the regulations. Update references to amended sections and to listing of EDI Service Providers, which is now provided online. Remove references to VAN transmission option. Update language regarding testing and production. Remove references to the optional matching of medical data on paper bills to electronic reports.
- Section D. Remove section table of contents. No significant change.
- Section E. Remove section table of contents. No significant change.
- Section F. Remove section table of contents. Update of the Trading Partner Profile form to use a WCIS-hosted FTP as the sole transmission mode. Remove references to Value Added Network (VAN) as a WCIS transmission mode. Update the Trading Partner Profile, including WCIS receiver information (Form DWC WCIS TP01 Revised 01/10).
- Section G. Remove section table of contents. The four-step testing procedure has been expanded to a more comprehensive five-step testing procedure. New testing procedures include the cancellation of a medical bill and the replacement of a claim number. Remove unnecessary language. Remove references to VAN transmission option. Remove references to parallel pilot procedure and the WCTS paper pilot identification form.
- Section H. Remove section table of contents. Update California ANSI 837 loop, segment, and data element summary. Added two national provider loops and segments to 837 file structure. Added five new national provider identification data elements.
- Section I. Remove section table of contents. Update new File Transfer Protocol (FTP) process. Remove the Value Added Network (VAN) as a WCIS transmission mode.
- Section J. Delete section. Information regarding EDI Service Providers is available online so it can be updated more easily.
- Section K. Renamed Section J. Remove section table of contents. No significant change.
- Section L. Renamed Section K. Remove section table of contents. Update California Medical Data Elements by Source table. Addition of five new national provider identification data elements: IAIABC Data Elements Nos. 634 (“Billing Provider National Provider ID”); 682 (“Facility National Provider ID”); 699 (“Referring Provider National Provider ID”); 647 (“Rendering Bill Provider National Provider ID”)’ and 667 (“Supervising Provider National Provider ID”) with applicable bill submission reason codes. Delete existing medical data element requirement table and replace with new, updated medical data element requirement table that is sorted alphabetically by data element name. (Changes made to deleted table are indicated by underline/strikeout text.)
- Section M. Renamed Section L. Remove section table of contents. Update California-Adopted IAIABC Data Edits and Error Messages table for addition of new national provider identification

- data elements (named above). Delete California-specific data edits.
- Section N. Renamed Section M. Remove section table of contents. Update procedures regarding the submission of the jurisdiction claim number; transaction processing and sequencing (including bill submission reason codes and acknowledgement codes); corrections and updates of data elements; replacing a claims administrator claim number; the submission of duplicate medical bills; and matching medical bill data to FROI claims.
- Section O. Deleted. IAIABC information is available online.
- Section P. Renamed Section N. Remove section table of contents. Update addresses and web links for code lists. Delete listed facility/place of service codes; add reference to Centers for Medicare and Medicaid Services with contact information. Delete listed revenue billed/paid codes. Delete listed claim adjustment group codes; add reference and link to IAIABC and Washington Publishing Company. Add reference and link to the Washington Publishing Company for claim adjustment reason codes. Add reference and link to national plan and provider enumeration system.
- Section O. New section to add numerically-sorted list of California-adopted IAIABC data elements.
- Section P. New section to implement proposed regulation requiring the reporting of lump sum medical lien payments. See proposed amendments to California Code of Regulations, title 8, section 9702(e). Includes new jurisdictional codes, data elements, and data edits.
- Section Q. Delete Section.
- Section R. Delete Section.
- Appendix A. Added to clarify differences between current and proposed versions of implementation guide.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Acting Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. Costs will be incurred by workers' compensation insurers, self-insured self-administered employers and third party claims administrators to expand the Electronic Data Interchange structure of the Workers' Compensation Information System (WCIS) to report lump sum payments of medical bill liens. Costs will further be incurred to modify EDI systems to conform to changes in the California EDI implementation guides. Insurance companies who report directly to WCIS and use their own systems will need to upgrade their programming for the reporting of lien data may incur an initial cost of approximately \$20,000. These costs, which may include payments for programming and reporting additional medical transactions data to the WCIS, are not anticipated to have a significant, statewide adverse economic impact directly affecting business.
- Adoption of these regulations will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Acting Administrative Director has determined that the proposed regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The entities directly affected by the regulations are three types of private businesses: (1) employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (2) private insurance companies which are authorized to transact workers' compensation insurance in California; and (3) third party administrators which are retained to administer claims on behalf of self-insured employers or insurers.

EFFECT ON SMALL BUSINESS

The Acting Administrative Director has determined that the proposed regulations may affect small busi-

nesses. However, claims administrators have been required to report to WCIS since November 1, 1999. Therefore, the reporting to WCIS is not a new requirement. Additionally, small businesses are generally not self-insured, insurers, or third party administrators. Finally, subdivision (e), which requires medical data reporting, will not affect small business, as only claims administrators handling one hundred and fifty or more total claims per year are required to report.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- Local Mandate: None. The Acting Administrative Director has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See "Local Mandate" section above.)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Acting Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Acting Administrative Director's attention 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.

The Acting Administrative Director invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public comment from October 17, 2007 through October 31, 2007 through the Division's Internet website (the "DWC Forum"), as required by Government Code section 11346.45. Amendments to the California EDI Implementation Guides were also provided on the Division's Internet website for public comment at the Division's annual WCIS Advisory Committee meeting on June 1, 2009.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, proposed text of the regulations, pre-rulemaking comments and the Economic Impact Statement (Form STD 399). Also included are studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of the regulations being proposed may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations — Rulemaking" link and scroll down the list of rulemaking proceedings to find the WCIS link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rule-making notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

**CONTACT PERSON FOR
SUBSTANTIVE QUESTIONS**

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

George P. Parisotto
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: gparisotto@dir.ca.gov

The telephone number of this contact person is (510) 286-7100.

**AVAILABILITY OF CHANGES FOLLOWING
PUBLIC HEARING**

If the Acting Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, the final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Acting Administrative Director's mailing list.

If adopted, the regulations as amended will appear in California Code of Regulations, title 8, commencing with section 9701. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.

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

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

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **December 17, 2009**, at 10:00 a.m.
in the Auditorium of the State Resources Building,
1416 9th Street, Sacramento,
California.

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

PUBLIC HEARING: On **December 17, 2009**, following the Public Meeting,
in the Auditorium of the State Resources Building,
1416 9th Street, Sacramento,
California.

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

BUSINESS

MEETING: On **December 17, 2009**, following the Public Hearing, in the Auditorium of the State Resources Building, 1416 9th Street, Sacramento, California.

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

DISABILITY ACCOMMODATION NOTICE

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

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

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

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **December 17, 2009**.

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 22
Section 1648; and Article 25
Sections 1675 and 1678

GENERAL INDUSTRY SAFETY ORDERS

Division 1, Chapter 4, Subchapter 7, Article 4
Sections 3276, 3277, 3278, 3279, and 3280; Article 5, Section 3287, and Article 11, Section 3413

Portable Ladders

2. **TITLE 8:** **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 20
Section 3563 and Article 25, Section 3651

Rollover Protective Structures for Ride-On Power Lawn Mowers

Descriptions of the proposed changes are as follows:

1. **TITLE 8:** **CONSTRUCTION SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 4, Article 22
Section 1648; and Article 25
Sections 1675 and 1678

GENERAL INDUSTRY SAFETY ORDERS

Division 1, Chapter 4, Subchapter 7, Article 4
Sections 3276, 3277, 3278, 3279, and 3280; Article 5, Section 3287; and Article 11, Section 3413

Portable Ladders

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

This proposed rulemaking is the result of a Division of Occupational Safety and Health (Division) Form 9, Request for Change in Existing Safety Order. Currently, Sections 3278, 3279 and 3280 of the General Industry Safety Orders (GISO) apply to portable ladders constructed from wood, metal and reinforced plastic, respectively. There are significant differences in the safety requirements referenced in each section. In addition, Section 3276 of the GISO and Section 1675 of the Construction Safety Orders (CSO) relate to the use of all portable ladders but the standards are not consistent or complete. The safety hazards associated with the use of portable ladders in construction and general indus-

tries, whether they are wood, metal, or reinforced plastic, are essentially the same, and therefore, the proposed amendments would consolidate the existing provisions pertaining to portable ladders into a single standard. The proposal would also add selection, care and use provisions from American National Standards Institute (ANSI) portable ladder standards to provide additional safety for workers and guidance to the regulated public.

SPECIFIC PURPOSE AND FACTUAL BASIS
OF PROPOSED ACTION

Section 1648. Ladder–Jack Scaffolds.

Subsection (d) requires in part that ladders used with ladder jack scaffolds be heavy duty ladders and be designed and constructed in accordance with Sections 3278 and 3279.

The proposal would replace “heavy duty ladders” with “Type I, IA, or IAA duty rated ladders”. This amendment is consistent with ANSI labeling requirements for portable ladders and proposed Section 3276(d). The effect of this amendment would be to allow the use of Type IA (extra–heavy duty) and Type IAA (special duty) ladders which are designed to support a working load greater than Type (heavy duty) ladders.

In addition, the proposal would replace the reference to the design and construction provisions in Sections 3278 and 3279 with a reference to proposed Section 3276(c). The effect of this amendment would be to require that wood, metal and reinforced plastic ladders be designed and constructed in accordance with the most recent applicable ANSI ladder standard or the applicable ANSI ladder standard in effect at the time the ladder is placed in service. The proposal would also add a NOTE following subsection (d) to refer the reader to proposed Section 3276(d) which would contain a table that compares the ladder duty rating with the ladder type and working load. The effect of this amendment would be to provide guidance on ladder selection.

Section 1675. General

Subsection (b) prohibits the use of ladders with missing rungs or steps, broken or split side rails, or other faulty or defective construction; requires that when such defects are discovered the ladder be immediately withdrawn from service; and requires that the inspection of metal ladders include checking for corrosion of interiors of open end hollow rungs.

These provisions would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(1), (e)(2) and (e)(3), which would require ladders to be maintained in good condition, be inspected for defects, and be immediately removed from service if defective. Proposed subsection (b) would require that

all portable ladders used in construction comply with the provisions of proposed Section 3276 of the GISO. The effect of this amendment would be to consolidate the requirements for the maintenance and inspection of portable ladders in proposed Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (c) requires portable wood ladders to be labeled as being designed and manufactured in accordance with ANSI A14.1–1982.

This provision would be deleted to avoid duplication and inconsistency with proposed Section 3276(c)(1) which would require portable wood ladders to meet the design and construction standards of applicable ANSI A14.1 standards which would be incorporated by reference. Subsection (m) would be renumbered to subsection (c) and subsections (d) through (n) would be deleted. This amendment would have no effect other than to retain the sequential numbering of the subsections and avoid duplication and inconsistency with proposed Section 3276.

Subsection (d) requires portable metal ladders to be labeled as being designed and manufactured in accordance with ANSI A14.2–1982.

Subsection (d) would be deleted to avoid duplication and inconsistency with proposed Section 3276(c)(2) which would require portable metal ladders to meet the design and construction standards of applicable ANSI A14.2 standards which would be incorporated by reference. The effect of this amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (e) requires portable ladder feet to be placed on a substantial base, and the area around the top and bottom of the ladder to be kept clear.

Subsection (e) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(7) and (e)(20), which would require, in part, the ladder base section of surface supported ladders to be placed on a secure and level footing, and the area around the top and bottom of the ladder to be kept clear. The effect of this amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (f) prohibits the use of planks on the top step of stepladders.

Subsection (f) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(16)(B), which would prohibit the use of planks on the top step or topcap of step ladders.

The effect of this amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (g) requires ladders to be used at pitch of four to one, and prohibits using ladders in a horizontal position as platforms, runways, or scaffolds.

Subsection (g) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(9), which would require non-self-supporting ladders, where possible, be used at such a pitch that the horizontal distance from the top support to the foot of the ladder is one-quarter of the working length of the ladder; and prohibit using ladders in a horizontal position as platforms, runways, or scaffolds unless designed for such use. The effect of this amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (h) prohibits placing ladders in locations where they may be displaced by activities being conducted on any other work, unless protected by guards.

Subsection (h) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(14), which prohibits placing ladders in passageways, doorways, driveways, or any location where they may be displaced by activities being conducted on any other work, unless protected by barricades or guards. The effect of his amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (i) requires that side rails extend at least 36 inches above the landing, unless this is not practical in which case grab rails be installed.

Subsection (i) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(11), which would require that side rails extend at least 36 inches above the landing, unless this is not practical, in which case grab rails be installed. The effect of this amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (j) requires that portable ladders in use be tied, blocked, or otherwise secured to prevent their being displaced.

Subsection (j) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(9), which would require, in part, portable ladders to be placed to prevent slipping or tied, blocked, held, or otherwise secured to prevent slipping. The effect of this amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (k) prohibits standing on the top 3 rungs of a ladder unless there are members of the structure that provide a firm handhold or the employee is protected by a personal fall protection system in accordance with the requirements of Article 24.

Subsection (k) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(15)(D), which would prohibit standing and working on the top 3 rungs of a single or extension ladder unless there are members of the structure that pro-

vide a firm handhold or the employee is protected by a personal fall protection system. The effect of this amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (l) prohibits the use of portable metal ladders for electrical work or where they may contact electrical conductors.

Subsection (l) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(18), which would require the use of a non-conductive ladders in locations where the ladder or user may contact unprotected energized electrical conductors or equipment. The effect of this amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Subsection (m) requires all fixed ladders used in construction comply with the provisions of Section 3277 of the GISO.

This subsection is proposed to be renumbered to Section 1675(c). This amendment would have no effect other than to retain the sequential numbering of the subsections.

Subsection (n) prohibits employees standing on the topcap or the step below the topcap of a stepladder.

Subsection (n) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(15)(E), which would prohibit employees standing on the topcap or the step below the topcap of a stepladder. The effect of this amendment would be to consolidate the requirements for portable ladders in Section 3276, thereby, avoiding duplication and inconsistency.

Section 1678. Extension Ladders.

Subsection (a) specifies that the maximum length of extension ladders not exceed 44 feet.

Since proposed Section 1675(b) would require all portable ladders used in construction to comply with the provisions of proposed Section 3276, subsection (a) would be deleted to avoid duplication and conflict with proposed Section 3276(e)(16)(D), which would prohibit the use of two-section extension ladders exceeding 60 feet, which is the maximum length of two-section extension ladders permitted by ANSI A14.1-2007, ANSI A14.2-2007, and ANSI A14.5-2007. The effect of this amendment would be to provide consistency and to consolidate the requirements for portable ladders in proposed Section 3276.

Subsection (b) specifies the minimum overlap for two-section and three-section extension ladders based on the working length of the ladder.

Since proposed Section 1675(b) would require all portable ladders used in construction to comply with the provisions of proposed Section 3276, subsection (b)

would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(16)(E), which would specify a minimum overlap for two-section extension ladders that is consistent with ANSI A14 ladder standards. The effect of this amendment would be to provide consistency with ANSI provisions that relate to the design and construction of portable ladders, and to consolidate the requirements for portable ladders in proposed Section 3276.

Section 3276. Use of Ladders.

Section 3276 pertains to the use of both fixed and portable ladders. Except for subsection (b), which pertains to portable step ladders, each of the subsections applies to both fixed and portable ladders.

The proposal would renumber this section to Section 3278 and amend the title to “Use of Fixed Ladders” to avoid duplication and inconsistency with proposed Section 3276(e)(15) which would pertain to the use of portable ladders. The effect of these amendments would be to consolidate the requirements for portable ladders in proposed Section 3276, and to locate the requirements that pertain to the use of fixed ladders in proposed Section 3278.

Subsection (b) prohibits employees from standing on the topcap or step below the topcap of a stepladder.

Subsection (b) would be deleted to avoid duplication and inconsistency with proposed Section 3276(e)(15)(E), which would prohibit employees standing on the topcap or step below the topcap of a step ladder. The effect of this amendment would be to provide clarification that this provision applies to portable ladders and not to fixed ladders.

Section 3277. Fixed Ladders.

Subsection (c)(5) requires that all wood parts of fixed ladders meet the requirements of Section 3278. Section 3278 requires that the safety requirements for portable wood ladders meet the requirements of ANSI A14.1–1994, which is incorporated by reference, or the ANSI standard in effect at the time the ladder was placed in service.

The proposal would incorporate the design and construction requirements for all portable ladders in proposed Section 3276(c). Proposed new Section 3276(c)(1) would require that portable wood ladders placed in service after the effective date of this proposed amendment meet the design and construction requirements of ANSI A14.1–2007, which is incorporated by reference, or the ANSI A14.1 standard in effect at the time the ladder was placed in service. The proposal would amend Section 3277(c)(5) to require all wood parts of fixed ladders meet the design and construction requirements of proposed Section 3276(c). The effect of these amendments would be to provide clarity and

consistency and to update the reference to the ANSI A14.1 standard.

Section 3278. Portable Wood Ladders.

The proposal would renumber this section to Section 3276 and amend the title to “Portable Ladders”. The effect of this amendment would be to consolidate the requirements for all portable ladders in proposed Section 3276.

The first paragraph of Section 3278 requires that the safety requirements for portable wood ladders meet the requirements of ANSI A14.1–1994, which is incorporated by reference, or the ANSI standard in effect at the time the ladder was placed in service.

The proposal would delete this provision and incorporate the design and construction requirements for all portable ladders in proposed Section 3276(c), which is discussed below. The effect of these amendments would be to consolidate the design construction requirements for all portable ladders in proposed Section 3276, and to update the reference to ANSI A14.1 to the most recent version of the standard,

Subsection (a), Scope, states that the standard is intended to provide rules for the construction, care, and use of the common types of portable wood ladders.

The proposal would amend subsection (a) to broaden the scope to include all self-supporting and non-self-supporting portable ladders and to include rules that pertain to ladder design and selection. The effect of this amendment would be to consolidate the requirements for all portable ladders in proposed Section 3276.

Subsection (c), Materials, General Requirements, requires that all wood parts be free from sharp edges, splinters, irregularities and defects which affect the ladder’s structural integrity.

The proposal would re-title this subsection to “Design and Construction”, delete the current provision, and consolidate provisions that pertain to ladder design and construction under amended subsection (c). New subsection (c)(1) would require portable wood ladders to be designed and constructed in accordance with ANSI A14.1, which is incorporated by reference, or Section 1676, which prohibit sharp edges, splinters, irregularities and defects. The proposal would also consolidate the provisions that pertain to ladder inspection, care and maintenance under proposed subsection (e), which would require ladders to be maintained in good condition, inspected for defects, and withdrawn from service if defective. The effect of this amendment would be to consolidate the requirements for the design and construction of all portable ladders in proposed subsection (c) and the requirements for inspection, maintenance and repair in subsection (e).

New Subsection (c)(1) would require portable wood ladders placed in service after the effective date of this

proposed amendment to be designed and constructed in accordance with ANSI A14.1–2007, which is incorporated by reference, or for other such ladders the ANSI A14.1 standard in effect when the ladder was placed in service, unless, as provided by the exception, the ladder is a job-made cleat ladder that complies with Section 1676.

Currently, the first paragraph of Section 3278 requires that the safety requirements for portable wood ladders meet the requirements of ANSI A14.1–1994, which is incorporated by reference, or the ANSI standard in effect at the time the ladder was placed in service. The effect of this amendment would be to require portable wood ladders to be designed and constructed in accordance with ANSI A14.1–2007 or the applicable ANSI A14.1 standard in effect at the time the ladder was placed in service, unless the ladder is a job-made cleat ladder that complies with Section 1676.

New Subsection (c)(2) would require portable metal ladders placed in service after the effective date of this proposed amendment to be designed and constructed in accordance with ANSI A14.2–2007, which is incorporated by reference, or for other such ladders the ANSI A14.2 or A14.10 standard in effect when the ladder was placed in service.

Currently, the first paragraph of Section 3279, Portable Metal Ladders, requires that safety requirements for portable metal ladders meet the requirements of ANSI A14.2–1990 or ANSI A14.10–2000 or the ANSI A14.2 standard in effect when the ladder was placed in service. The effect of this amendment would be to require portable metal ladders to be designed and constructed in accordance with ANSI A14.2–2007 or the ANSI A14.2 or ANSI A14.10 standard in effect at the time the ladder was placed in service.

New Subsection (c)(3) would require portable reinforced plastic ladders placed in service after the effective date of this proposed amendment to be designed and constructed in accordance with ANSI A14.5–2007, which is incorporated by reference, or for other such ladders the ANSI A14.5 or A14.10 standard in effect when the ladder was placed in service.

Currently, the first paragraph of Section 3280, Portable Reinforced Plastic Ladders, requires that safety requirements for portable reinforced plastic ladders meet the requirements of ANSI A14.5–1990 or ANSI A14.10–2000, which is incorporated by reference, or the ANSI A14.5 standard in effect when the ladder was placed in service. The effect of this amendment would be to require portable reinforced plastic ladders to be designed and constructed in accordance with ANSI A14.5–2007 or the applicable ANSI A14.5 or ANSI A14.10 standard in effect at the time the ladder was placed in service.

New Subsection (c)(4) would require portable special purpose ladders that are not covered by one of the referenced ANSI A14 standards to be designed and constructed in accordance with sound engineering principles and approved per Section 3206. As defined in proposed subsection (b), a special purpose ladder is a portable ladder which represents either a modification or a combination of design or construction features in one of the general-purpose types of ladders previously defined, in order to adapt the ladder to special or specific uses. The ANSI A14 ladder standards cover a few types of special purpose ladders but most types are not covered. For example, ANSI A14.1–2007, Section 6.4, Special Purpose Ladders, contains specific requirements for platform ladders, painter’s stepladders, and mason’s ladders; but states that other types of special purpose ladders, such as cleat ladders, trolley and rolling ladders, tripod stepladders, three-section extension ladders, fruit-pickers ladders, combination step and extension ladders, stockroom stepladders, aisleway stepladders, shelf ladders, self-leveling ladders, and library ladders, are not covered.

Proposed subsection (c)(4) would require that these other types of special purpose ladders which are not covered by applicable ANSI standards be designed and constructed in accordance with sound engineering principles and approved per Section 3206. Section 3206 provides several means by which a product may be approved, including: certification of conformance with applicable governmental or other nationally recognized standards, or applicable scientific principles; certification by a nationally recognized testing laboratory; and Division approval based on submission of engineering calculations, stress analyses, and other data. The effect of this amendment would be to ensure that all portable ladders are designed and constructed in accordance with sound engineering principles.

Subsection (d) is titled “Construction Requirements.”

The proposal would amend the subsection title to “Selection” and locate provisions regarding ladders selection to this subsection. The proposal would relocate provisions regarding the design and construction of portable ladders under proposed subsection (c), Design and Construction. The effect of these amendments would be to provide clarity and consistency.

Subsection (d)(1) is titled “Portable Step Ladders.”

The proposal would delete the existing subsection title. The proposal would amend subsection (d)(1) to require that ladders be selected and their use restricted to the purpose for which the ladder is designed. The effect of this amendment would be to require that ladders be selected and used only for the purposes for which the ladders are designed.

Subsection (d)(1)(A) prohibits the use of stepladders longer than 20 feet and specifies that step-ladders be Type I, heavy duty, 3 to 20 feet; Type II, medium duty, 3 to 12 feet; or Type III, light duty, 3 to 6 feet.

The proposal would relocate the prohibition on the use of stepladders longer than 20 feet to proposed Section 3276(e)(16)(D) and relocate the specifications regarding ladder duty rating to proposed subsection (d)(2). The effect of this amendment would be to provide clarity and consistency.

Proposed subsection (d)(1)(A) would require that scaffolds or other worker positioning equipment be used when work cannot be safely done from ladders. The effect of this amendment would be to provide consistency with existing Section 1637 which requires that scaffolds be provided for all work that cannot be done safely by employees standing on permanent or solid construction at least 20 inches wide, except where such work can be safely done from ladders.

Subsections (d)(1)(B) through (d)(1)(D) specify design and construction requirements for steps, siderails, and spreaders.

The proposal would locate the design and construction requirements for all portable ladders in proposed subsection (c) which would require step ladders to meet the design and construction requirements of the applicable ANSI A14 ladder standards which include specifications for steps, siderails, and spreaders. The proposal would amend existing subsection (d)(1)(B) and delete subsections (d)(1)(C) and (d)(1)(D) to avoid duplication or conflict with proposed subsection (c). Proposed subsection (d)(1)(B) would require that when selecting a ladder for use, consideration be given to the ladder length or height required, the working load, the duty rating, worker position to the task to be performed, and the frequency of use to which the ladder will be subjected. The effect of these amendments would be to require that ladders be selected for use based on the ladder length or height required, the working load, the duty rating, worker position to the task to be performed, and frequency of use to which the ladder will be subjected.

Subsection (d)(2) prohibits the use of single ladders longer than 30 feet.

The proposal would relocate this provision to subsection (e)(16)(D). Proposed subsection (d)(2) would provide a table that compares the ladder duty rating with the ladder type and working load; and would require ladders to be used according to the duty classifications provided in the table which are consistent with the design, construction, and labeling requirements in the ANSI A14 standards for portable ladders. The effect of this amendment would be to provide clarity in regards to ladder duty rating, ladder type, and working load.

Subsection (d)(3) prohibits the use of two-section extension ladders longer than 60 feet and requires ladders

of this type consist of two sections, one to fit within the side rails of the other, and arranged in such a manner that the upper section can be raised and lowered.

The proposal would relocate the prohibition on the use of extension ladders longer than 60 feet to proposed subsection (e)(16)(D) and would delete the remaining text regarding the design of extension ladders. Proposed subsection (c) would require that two-section extension ladders meet the design and construction requirements of applicable ANSI A14 ladder standards which are at least as comprehensive as the requirements of subsection (d)(3). The effect of this amendment would be to provide clarity, consistency and non-duplication.

The proposal would further amend subsection (d)(3) to require ladders used in connection with ladder jack scaffolds to be Type I, IA, or IAA duty rated ladders which are to be installed and used in accordance with Section 1648 of the CSO. The effect of these amendments would be to inform employers in the construction industry of the additional requirements regarding ladders used with ladder-jack scaffolds.

Subsection (d)(4) prohibits the use of trestle ladders or extension sections or base sections of extension trestle ladders longer than 20 feet.

The proposal would relocate this provision to proposed subsection (e)(16)(D) and delete existing subsection (d)(4). The effect of this amendment would be to provide clarity and consistency.

Subsection (d)(5) prohibits the use of painter's step ladders longer than 12 feet.

The proposal would relocate this provision to proposed subsection (e)(16)(D) and delete existing subsection (d)(5). The effect of this amendment would be to provide clarity and consistency.

Subsection (d)(6) defines mason's ladder as a special type of single ladder intended for use in heavy construction work, and prohibits the use of a mason's ladder longer than 40 feet.

The proposal would relocate the prohibition to proposed subsection (e)(16)(D) and delete existing subsection (d)(6). The effect of this amendment would be to provide clarity and consistency.

Subsection (d)(7) defines a cleat ladder as a special type of single ladder intended for general use in construction work.

The proposal would delete this subsection. The effect of this amendment would be to avoid confusion with the description of cleat ladder provided in Section 1676, Job-Made Cleat Ladders.

Subsection (d)(7)(A) prohibits the use of cleat ladders longer than 30 feet.

The proposal would relocate this prohibition to proposed subsection (e)(16)(D) and delete existing subsec-

tion (d)(7)(A). The effect of this amendment would be to provide clarity and consistency.

Subsections (d)(7)(B), (d)(7)(C) and (d)(8) provide specifications regarding the dimensions of the cleats on cleat ladders and the attachment of the cleats to the ladder. A cleat ladder is a type of wood ladder used in construction work and is regulated under Section 1676, Job-Made Cleat Ladders of the CSO, which provides specifications regarding the dimensions of the cleats on cleat ladders and the attachment of the cleats to the ladder.

The proposal would delete existing subsections (d)(7)(B), (d)(7)(C) and (d)(8). The effect of this amendment would be to avoid duplication or conflict with the requirements of Section 1676.

Subsection (d)(9) provides that other types of special ladders such as three-section extension ladders, fruit-picker's ladders, combination step and extension ladders, stockroom step ladders, aisle way step ladders, shelf ladders, and library ladders are not specifically covered by this code.

Proposed subsection (c)(4) requires other types of special purpose ladders that are not covered by the ANSI ladder standards to be designed and constructed in accordance with sound engineering principles and approved per Section 3206. The proposal would delete existing subsection (d)(9). The effect of this amendment would be to require that other types of special ladders be designed and constructed in accordance with sound engineering principles.

Subsection (d)(10) prohibits the use of trolley ladders and side rolling ladders longer than 20 feet.

The proposal would relocate this provision to proposed subsection (e)(16)(D) and delete existing subsection (d)(10). The effect of this amendment would be to provide clarity and consistency.

Subsection (e) is titled "Care and Use of Ladders"

The proposal would amend the title to "Care, Use, Inspection and Maintenance of Ladders." The effect of this amendment would be to provide clarity in regards to the additional requirements in proposed subsection (e) that pertain to the care and maintenance of ladders.

Subsection (e)(1) pertains to the maintenance of ladders.

The proposal would merely add the word "Maintenance" as a heading at the beginning of the subsection. The effect of this amendment would be to provide clarity and consistency.

Subsection (e)(2) requires that metal bearings of locks, wheels, pulleys, etc., be frequently lubricated.

The proposal would delete this provision because subsection (e)(1) already requires that ladders be maintained in good condition at all times and that the moveable parts operate freely without binding or undue play. In addition, the term "frequently lubricated" is vague.

The effect of this amendment would be to provide clarity and consistency.

The proposal would amend subsection (e)(2) to require that ladders be inspected by a competent person for visible defects prior to the start of the shift and after any occurrence that could affect their safe use. This proposal would be at least as effective as (ALAEA) federal 29 CFR Section 1926.1053(b)(15) which requires ladders used in construction to be inspected by a competent person for visible defects on a periodic basis and after any occurrence that could affect their safe use. The effect of this amendment would be to ensure the proposal is ALAEA the counterpart federal standard.

Subsection (e)(3) requires frayed or badly damaged ropes to be replaced.

The proposal would delete this provision because subsection (e)(1) already requires ladders to be maintained in good condition at all times. The effect of this amendment would be to avoid duplicative provisions.

The proposal would amend subsection (e)(3) to require ladders that have developed defects be withdrawn from service for repair or destruction; and tagged or marked "Dangerous, Do Not Use" or similar language. In addition, the amended subsection would specifically prohibit the use of ladders with broken or missing steps, rungs, cleats, safety feet, side rails, or other defects. The effect of this amendment would be to ensure the proposal is ALAEA as federal 29 CFR Section 1926.1053(b)(16) which requires that portable ladders with structural defects, such as, but not limited to, broken or missing rungs, cleats, or steps, broken or split rails, corroded components, or other faulty or defective components, either be immediately marked in a manner that readily identifies them as defective, or be tagged with "Do Not Use" or similar language, and be withdrawn from service until repaired.

Subsection (e)(4) requires that safety feet and other auxiliary equipment be kept in good condition to ensure proper performance.

The proposal would delete this provision because subsection (e)(1) already requires that ladders be maintained in good condition at all times and proposed subsection (e)(3) would additionally prohibit the use of ladders with broken or missing steps, rungs, cleats, safety feet, side rails, or other defects. The proposal would modify the provisions of subsection (e)(6) and relocate them to proposed subsection (e)(4) to require that ladders be cleaned of oil, grease, or slippery materials. The effect of this amendment would be to provide clarity and avoid duplicative provisions.

Subsection (e)(5) requires that ladders be inspected frequently and those that have developed defects be withdrawn from service for repair or destruction and tagged or marked as "Dangerous, Do Not Use."

This provision would be relocated to proposed subsection (e)(3). Subsection (e)(5) would be amended to “Protective Coatings” which would be the title for new subsections (e)(5)(A) and (e)(5)(B). The effect of this amendment would be to consolidate the requirements that pertain to protective coatings for wood and metal ladders.

New Subsection (e)(5)(A) would require that when metal ladders are subject to deteriorating agents, a protective coating be applied in accordance with the manufacturer’s guidelines.

Currently, Section 3279(d)(3) requires a protective coating to be applied to metal ladders which are subject to deteriorating agents. The proposal would relocate this provision to new subsection (e)(5)(A) and would amend it to add “in accordance with the manufacturer’s guidelines”. The effect of this amendment would be to provide clarity and consistency.

New Subsection (e)(5)(B) would prohibit painting wood ladders with anything other than a transparent material.

The effect of this proposal would be to be ALAEA federal 29 CFR Section 1926.1053(a)(12) which requires that wood ladders not be coated with any opaque covering, except for identification or warning labels which may only be placed on one face of a side rail.

Subsection (e)(6) requires rungs to be kept free of grease and oil.

This provision would be relocated to proposed subsection (e)(4) and would be amended to require that ladders be kept free of oil, grease, and slippery materials. Proposed subsection (d)(2) would require that ladders be used according to their specified duty classification. The proposal would amend subsection (e)(6) to specifically prohibit ladders from being overloaded when used. The effect of this amendment would be to provide clarity and consistency.

Subsection (e)(7) requires that ladders be used at a 4 to 1 pitch where possible and be placed to prevent slipping, or lashed or held in position; it prohibits using ladders in horizontal position as platforms, runways or scaffolds.

These provisions would be relocated to proposed subsection (e)(9). The proposal would amend subsection (e)(7) to require that ladders be placed on secure and level footing and when necessary ladder levelers be used on uneven surfaces. The proposed subsection would also prohibit using unstable bases to obtain additional height, and using ladders on slippery surfaces unless suitable means of preventing slippage are employed. The effect of this amendment would be to be ALAEA federal 29 CFR Sections 1926.26(c)(3)(iii), 1925(d)(2)(v), and 1926.1053(b)(7) which require ladders to be placed on secure footing, prohibit ladders from being placed on unstable bases to obtain addition-

al height, and prohibit using ladders on slippery surfaces, respectively.

Subsection (e)(8) requires the use of a specially designed ladder when it is used by more than one person or with a ladder jack scaffold.

The proposal would delete this provision. The effect of this amendment would be to avoid conflict with proposed subsections (d)(2) and (d)(3) which require ladders to be used according to their duty rating and specify the minimum duty ratings for ladders used with ladder jack scaffolds. Subsection (e)(8) would be amended to require the top of non-self-supporting ladders such as single and extension ladders to be placed with the two rails supported equally, unless a single support attachment is provided and used. The effect of this amendment would be to be ALAEA federal Section 1926.1053(b)(10) which requires that the top of a non-self-supporting ladder be placed with the two rails supported equally unless it is equipped with a single support attachment.

The proposal would also relocate the provision in subsection (e)(9) to subsection (e)(8), which requires that the top rest for portable rung and cleat ladders be reasonably rigid and have ample strength to support the load. The effect of this amendment would be to provide clarity and consistency.

Subsection (e)(9) provides that the side rails of ladders be placed on a secure footing and that the top support be reasonably rigid and have ample strength to support the load.

The separate requirements for footing support and top support would be relocated to proposed subsections (e)(7) and (e)(8), respectively. Subsection (e)(9) would be amended to incorporate the requirements of Sections 1675(g) and (j) which pertain to the ladder’s angle of inclination and securing the ladder, respectively. The effect of this amendment would be to provide clarity and to consolidate the requirements for portable ladders in proposed Section 3276.

Subsection (e)(10) prohibits placing a ladder in front of a door opening towards the ladder unless the door is blocked open, locked, or guarded.

This provision would be amended and relocated to proposed subsection (e)(14) which would prohibit placing ladders in passageways, doorways, driveways, or any location where they may be displaced by activities being conducted on any other work, unless protected by barricades or guards. The effect of this amendment would be to be ALAEA federal 29 CFR Section 1926.1053(b)(8).

Proposed subsection (e)(10) would require that, except for ladders used for access to fixed ladders, when two or more ladders are used for access to elevated work areas the ladders be offset with a platform or landing between them. The effect of this amendment would be to

be ALAEA federal 29 CFR Section 1926.1053(a)(10) which contains a provision that is substantively the same.

Subsection (e)(11) prohibits placing ladders on boxes, barrels, or other unstable bases to obtain additional height.

This provision would be relocated to proposed subsection (e)(7). Proposed subsection (e)(11) would require that the side rails of portable ladders used for access to an upper landing surface extend not less than 36 inches above the upper landing surface, unless such an extension is not possible, in which case the ladder be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grabrail, be provided to assist employees in mounting and dismounting the ladder. The proposed amendment would prohibit an extension that would, by itself, cause the ladder to slip off its support when the ladder deflects under load. The amendment would also include an exception that would exempt employers from the requirement to provide a grasping device provided that personal fall protection is used. The effect of this amendment would be to be ALAEA federal 29 CFR Section 1926.1053(b)(1) which contains a provision that is substantively the same.

Subsection (e)(12) prohibits the use of ladders with broken or missing steps, rungs, or cleats, broken side rails, or other faulty equipment.

This prohibition would be relocated to proposed subsection (e)(3). Existing Section 3279(d)(9) prohibits splicing short metal ladders together to provide long sections unless the manufacturer endorses extended uses and the ladders are equipped with the necessary hardware fittings. This provision would be amended to apply to all portable ladders and relocated to proposed subsection (e)(12). The effect of this amendment would be to broaden the prohibition on the splicing of metal ladders, to additionally include wood and plastic ladders.

Subsection (e)(13) prohibits splicing short ladders together to provide long sections.

This provision would be deleted because proposed subsection (e)(12) would contain the same prohibition. Proposed subsection (e)(13) would require extension ladders to be erected with the top section above and resting on the bottom section with the rung locks engaged. The effect of this amendment is to ensure extension ladders are used as designed.

Subsection (e)(14) prohibits using ladders made by fastening cleats across a single rail.

This provision would be deleted because proposed subsection (c)(1) would require job-made cleat ladders to comply with proposed Section 1676 which prohibits single rail cleat ladders. The effect of this amendment would be to avoid duplication. Proposed subsection

(e)(14) would prohibit placing ladders in passageways, doorways, driveways, or any location where they may be displaced by activities being conducted on any other work, unless protected by barricades or guards. The effect of this amendment would be to be ALAEA federal 29 CFR Section 1926.1053(b)(8) which contains a provision that is substantively the same.

Subsection (e)(15) prohibits using ladders as guys, braces, or skids, or for other than their intended purposes.

This prohibition would be amended and relocated to subsection (e)(16)(A) which would prohibit ladders from being used as a brace, skid, guy or gin pole, gangway, or for other uses than that for which they were intended, unless specifically recommended for use by the manufacturer. Proposed subsection (e)(15) would be titled "Climbing and Working Location". The effect of this amendment would be to provide clarity.

New Subsection (e)(15)(A) would provide that employees climb or work with the body near the middle of the step or rung and would prohibit over-reaching from this position.

The intent of this subsection is to prevent the employee from climbing or working with his/her center of gravity near or outside of the side rail. When it is not practical to work with the body near the middle of the step or rung, the proposal would provide an exception which would exempt employers from this requirement provided that the ladder is secured to the top support and personal fall protection is used. The effect of this amendment would be to prevent an employee from over-reaching and falling from the ladder and/or the ladder from becoming unstable and falling.

New Subsection (e)(15)(B) would prohibit employees from carrying equipment or materials that prevent the safe use of ladders.

The effect of this amendment would be to inform the regulated public that the stated prohibition, applicable to all ladders pursuant to subsection (a)(1) of existing Section 3276, would remain applicable to portable ladders, since existing Section 3276 is proposed to be renumbered and limited to fixed ladders.

New Subsection (e)(15)(C) would require that when ascending or descending a ladder, the user face the ladder and maintain contact with the ladder at three-points at all time.

The effect of this amendment would be to inform the regulated public that the provision currently applicable to all ladders pursuant to subsections (a)(2) and (a)(3) of existing Section 3276, would remain applicable to portable ladders, since existing Section 3276 is proposed to be renumbered and limited to fixed ladders.

New Subsection (e)(15)(D) would prohibit an employee from standing and working on the top 3 rungs of a single or extension ladder unless there are members of

the structure that provide a firm handhold or the employee is protected by a personal fall protection system.

This proposed provision is the same as the provision in existing Section 1675(k) which is proposed for deletion. The effect of this amendment would be to consolidate the requirements for all portable ladders in Section 3276.

New Subsection (e)(15)(E) would prohibit employees from standing on the top step or toecap of step ladders.

This proposed provision is the same as the provision in existing Section 1675(n) which is proposed for deletion. The effect of this amendment would be to consolidate the requirements for all portable ladders in Section 3276.

New Subsection (e)(15)(F) would prohibit using the cross-bracing on the rear section of step ladders for climbing unless the ladders are designed and provided with steps for climbing on both front and rear sections.

This proposed provision is the same as the provision in existing subsection 3279(d)(10)(B) which is proposed for deletion. The effect of this amendment would be to consolidate the requirements for all portable ladders in Section 3276.

New Subsection (e)(15)(G) would prohibit ladders from being moved, shifted, or extended while occupied, unless the ladder is designed and recommended for this purpose by the manufacturer.

The effect of this amendment would be to be ALAEA federal 29 CFR Section 1926.1053(b)(11) which is identical to the proposed amendment.

Subsection (e)(16) specifies the minimum overlap for the two sections of two-section extension ladders.

This provision would be amended and relocated to proposed subsection (e)(16)(E) The effect of this amendment would be to provide clarity and consistency with the minimum overlap requirements for two-section extension ladders specified in ANSI A14.1-2007, ANSI A14.2-2007, and ANSI A14.5-2007. Proposed subsection (e)(16) would be titled "Prohibited Uses" and the provisions that pertain to prohibited uses would be located under this subsection. The effect of this amendment would be to provide clarity.

New Subsection (e)(16)(A) would prohibit using ladders as a brace, skid, guy or gin pole, gang-way, or for other uses than that for which they were intended, unless specifically recommended for use by the manufacturer.

This proposed provision is substantively the same as the provision in existing Section 3279(d)(10)(A) which is proposed for deletion. The effect of this amendment would be to consolidate the requirements for all portable ladders in Section 3276.

New Subsection (e)(16)(B) would prohibit the use of planks on the top step or toecap of step ladders.

This proposed provision is substantively the same as the provision in existing subsection 1675(f) which is proposed for deletion. The effect of this amendment would be to consolidate the requirements for all portable ladders in Section 3276.

New Subsection (e)(16)(C) would prohibit using step ladders as single ladders or in the partially closed position.

Section 8.3.13.2 of ANSI A14.1-2007 requires that the user ensure the step ladder is fully opened, with spreaders locked and all feet contacting a firm level support surface. The effect of this amendment would be to require that step ladders be used as designed so they do not collapse or slip and injure the user.

New Subsection (e)(16)(D) would specify the maximum length for various types of ladders and prohibit the use of ladders that exceed the specified maximum length.

The proposed provisions are the same as those provided under existing subsection (d), except for two-section extension ladders made of metal or reinforced plastic which are not currently addressed. The proposal would relocate the existing provisions regarding maximum ladder lengths to the proposed new subsection. In addition, the proposal would specify a maximum length of 72 feet for two-section metal and reinforced plastic extension ladders. The effect of this amendment would be to prohibit the use of ladders that exceed the lengths specified in ANSI A14.2 and ANSI A14.5.

New Subsection (e)(16)(E) would specify the minimum overlap for the two sections of two-section extension ladders when the ladders are in use.

The proposed specifications update those in existing subsection (e)(16) to be consistent with ANSI A14.1-2007, ANSI A14.2-2007, and ANSI A14.5-2007. The effect of this amendment would be to prohibit the use of ladders that do not provide the minimum overlap specified in the ANSI ladder standards.

Subsection (e)(18) prohibits using a ladder to gain access to a roof unless the top of the ladder extends at least 3 feet above the point of support at the eave, gutter, or roof line.

This provision would be deleted, as it is superseded by proposed subsection (e)(11) which would require the side rails of ladders to extend not less than 36 inches above the landing surface to which the ladder is used to gain access. The effect of this amendment would be to avoid conflict or duplication with the provisions of proposed subsection (e)(11).

Proposed subsection (e)(18) would require the use of non-conductive ladders in locations where the ladder or user may contact unprotected energized electrical conductors or equipment. The proposal would also require that conductive ladders be legibly marked with signs reading "CAUTION — Do Not Use Around Electrical

Equipment”, or equivalent wording. These proposed provisions are substantively the same as the provisions of existing Section 3279(c)(11) which is proposed for deletion. The effect of this amendment would be to consolidate the requirements for all portable ladders in proposed Section 3276.

The proposal would also add a NOTE following this subsection. The effect of this amendment would be to inform the reader that additional requirements for working in proximity to energized electrical equipment can be found in Article 37 of the Electrical Safety Orders.

Subsection (e)(19) provides portable rung ladders are to be equipped with non-slip bases when there is a hazard of slipping and clarifies that non-slip bases are not intended as a substitute for care in safely placing, lashing, or holding a ladder that is used on a slippery surface.

This provision lacks clarity because “non-slip bases” is not defined in the standard or in the ANSI A14 ladder standards which are incorporated by reference in proposed subsection (c). The ANSI standards do, however, contain requirements regarding the provision of safety feet. Proposed subsection (e)(3) would prohibit the use of ladders with broken or missing safety feet. In addition, proposed subsection (e)(7) would prohibit using ladders on ice, snow or slippery surfaces unless suitable means to prevent slippage have been employed, and proposed subsection (e)(9) would require ladders to be placed to prevent slipping or tied, blocked, held, or otherwise secured to prevent slipping. The proposal would delete the current provisions in subsection (e)(19). The effect of this amendment would be to provide clarity and to avoid duplication or conflict with proposed subsections (e)(3), (e)(7), and (e)(9).

Proposed subsection (e)(19) would require that ladders transported on motor vehicles be properly supported and secured to prevent falling. The effect of this amendment would be to prevent damage to ladders during transport and to prevent injury to employees who may be struck by the ladder or subsequently use the damaged ladder.

Subsection (e)(20) prohibits climbing on the rear cross-bracing of step ladders unless the ladders are provided with steps on both sides.

This provision is substantively the same as the provisions of subsection (e)(15)(F). The proposal would delete this provision from subsection (e)(20). The effect of this amendment is to prevent duplication. Proposed subsection (e)(20) would require the area around the top and bottom of a ladder to be kept clear. The effect of this amendment would be to be ALAEA federal 29 CFR Section 1926.1053(b)(9) which contains the identical provision.

New Subsection (f), titled “Employee Training”, would require employees and supervisors to be provided training on ladder safety. New subsections (f)(1) through (f)(7) would list the training topics to be included in the training, unless the employer can demonstrate that a topic is not applicable to the employer’s workplace.

The training topics relate to the topics covered in subsections (a) through (e) of this proposed standard. The effect of this amendment would be to ensure ladder users and supervisors know how to safely select, maintain, inspect, and use ladders in accordance with the proposed standard.

Section 3279. Portable Metal Ladders.

This section pertains to the design, construction, and use of portable metal ladders.

The proposal would delete the existing provisions of Section 3279 and consolidate the requirements for portable wood, metal, and reinforced plastic ladders in proposed Section 3276, as discussed prior.

The first paragraph of existing Section 3279 requires that the safety requirements for portable metal ladders meet the requirements of ANSI A14.2–1990, ANSI A14.10–2000 or the ANSI A14.2 standard in effect at the time the ladder was placed in service.

The proposal would delete this provision to avoid duplication and inconsistency with proposed Section 3276(c)(2) which would require that portable metal ladders placed in service after the effective date of this amendment meet the design and construction requirements of ANSI A14.2–2007, which is incorporated by reference, or for other such ladders, the ANSI A14.2 or ANSI A14.10 standard in effect at the time the ladder was placed in service. The effect of this amendment would be to consolidate the design and construction requirements for all portable ladders in proposed Section 3276(c), and to update the reference to ANSI A14.2 to the most recent version of the standard.

Section 3280. Portable Reinforced Plastic Ladders.

This section requires that the safety requirements for portable plastic ladders meet the requirements of ANSI A14.5–1992, ANSI A14.10–2000, which are incorporated by reference, or the ANSI A14.5 standard in effect at the time the ladder was placed in service.

The proposal would delete this provision to avoid duplication and inconsistency with proposed Section 3276(c)(3) which would require that portable plastic ladders placed in service after the effective date of this amendment meet the design and construction requirements of ANSI A14.5–2007 or the ANSI A14.5, which are incorporated by reference, or for other such ladders, the ANSI A14.5 or ANSI A14.10 standard in effect at the time the ladder was placed in service. The effect of

this proposal would be to consolidate the design construction requirements for all portable ladders in proposed Section 3276(c), and to update the reference to ANSI A14.5 to the most recent version of the standard.

Section 3287. Ladders.

This section pertains to ladders used for window cleaning operations.

Subsection (b)(1) requires that wood ladders comply with Section 3278, not be painted with other than a transparent material, and includes an exception which refers the reader to Section 3287(a)(1) for maximum length.

This provision would be amended to apply to all portable ladders. The reference to Section 3278 would be amended to reference Section 3276. The provision regarding the painting of ladders would be deleted, since proposed Section 3276(e)(5)(B) would prohibit painting wood ladders with other than a transparent material. The effect of these amendments would be to inform the regulated public that the proposal would delete existing Section 3278 and relocate the provisions regarding portable wood ladders in Section 3276.

Subsection (b)(2) requires that metal ladders meet the requirements of Section 3279 and includes an exception which refers the reader to Section 3287(a)(1) for maximum length.

The proposal would delete existing subsection (b)(2) and the exception. The effect of these amendments would be to avoid duplication or inconsistency with proposed subsection (b)(1) which would apply to portable metal ladders.

Subsection (b)(3) requires that reinforced plastic ladders meet the requirements of Section 3280.

This subsection is proposed to be deleted. The effect of this amendment would be to eliminate duplication or inconsistency with proposed subsection (b)(1) which would apply to portable reinforced plastic ladders.

Subsection (b)(4) would be renumbered to subsection (b)(2). This amendment would have no effect other than to maintain the sequential numbering of the subsections.

Section 3413. Ladders.

This section pertains to ladders used for outdoor advertising operations.

Subsection 3413(a) requires that ladders be at least Type I, Type IA, or Type IAA duty ladders and be designed and constructed in accordance with Sections 3278 and 3279.

The reference to Sections 3278 and 3280 would be amended to reference Section 3276(c). The effect of this amendment would be to update the internal reference to the design and construction requirements for portable wood and metal ladders from existing Sections

3278 and 3279 to proposed Section 3276(c) where the design and construction requirements for wood, metal and reinforced plastic ladders would be consolidated.

Section 3458.1. Ladders Attached to Date Palms.

This section pertains to ladders attached to date palms.

Subsection (b) requires that the use of date palm ladders be in accordance with the requirements of Section 3276.

The reference to Section 3276 would be amended to reference Section 3278. This amendment would have no effect other than to provide consistency because the proposal would renumber Section 3276 to Section 3278.

DOCUMENTS INCORPORATED
BY REFERENCE

1. American National Standard for Ladders — Wood Safety Requirements, ANSI A14.1–2007.
2. American National Standard for Ladders — Portable Metal — Safety Requirements, ANSI A14.2–2007.
3. American National Standard for Ladders — Portable Reinforced Plastic — Safety Requirements, ANSI A14.5–2007.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

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

Impact on Housing Costs

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

Impact on Businesses

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

Cost Impact on Private Persons or Businesses

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

Costs or Savings in Federal Funding to the State

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

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

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

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

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

DETERMINATION OF MANDATE

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

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

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

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

EFFECT ON SMALL BUSINESSES

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

ASSESSMENT

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

REASONABLE ALTERNATIVES CONSIDERED

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

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

Division 1, Chapter 4, Subchapter 7,
Article 20

Section 3563 and Article 25, Section
3651

Rollover Protective Structures for Ride-On Power Lawn Mowers

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The proposed amendments for this rulemaking action were initiated in large part from recommendations submitted to the Board in the matter of Petition File No. 494 submitted by Julio and Madeline Petrini.

The Petitioners’ son was fatally injured when the riding lawn mower¹ he was operating went over a landscaping retaining wall and overturned on him. The lawn mower he was operating was not equipped with a rollover protective structure (ROPS).

Title 8 standards pertaining to power lawn mowers are located in the General Industry Safety Orders (GISO) Section 3563. The existing standard does not address the use of ROPS in combination with seat belts for riding lawn mowers. Therefore, the petition recommended that the Board consider a rulemaking action that would address ROPS and seat belt requirements for the operators of riding power lawn mowers. At the direction of the Board, an advisory committee of stakeholders was convened and the proposal was developed.

A review of the accidents and injuries associated with riding lawn mowers in the federal OSHA data base indicates a number of serious injuries and sometimes fatal accidents related to workers being crushed by lawn

¹ When the term “riding lawn mower” is used in this document, it means the same as “ride-on, sit-down lawn mower.”

mowers overturning on them or being drowned when mowers overturned in water, pinning the operator. California has fared better than some other states with a history of only several occupational fatalities. The Bureau of Labor Statistics Information for the year 2007 indicated that nationally, there were 21 fatal accidents on riding lawn mowers. In 2006, there were at least 290 non-fatal, nationwide reported accidents involving riding lawn mowers.

Federal OSHA accident data included similar circumstances involved in accident injuries, including operating the riding lawn mowers on slopes that exceeded the manufacturer's specifications or operation of riding mowers on wet and slippery surfaces encountering an obstruction such as a tree stump, a ditch, or a body of water. The water in some of the incidents was not very deep, less than two feet in some cases, but the operator was pinned under the mower with no one to provide assistance. In some accidents, the mower was equipped with ROPS and/or seatbelts, but the ROPS were not in use having been folded down in the disengaged position.

A primary purpose of this rulemaking action is to address requirements for ROPS and seatbelt use during operation of ride-on, sit-down, power lawn mowers. However, the proposal also seeks to replace outdated language and include provisions that ensure power lawn mowers meet applicable ANSI consensus standards. The proposal also limits the use of ride-on, sit-down mowers in areas and situations that have been found to be unsafe and hazardous for the operator. The proposal also includes training requirements for the operators of power lawn mowers.

Section 3563 Power Lawn Mowers.

Existing Section 3563 includes the general requirements for power lawn mowers.

Subsection (a) Scope.

The existing scope, subsection (a) states that these regulations apply to power lawn mowers of 20-brake horsepower or less and addresses provisions for walk-behind and riding mowers including lawn riding tractors and lawn and garden riding tractors and related mowing attachments. Certain types of grass/turf cutting machines such as sulky-type units, flail mowers and sickle bar mowers often associated with agricultural operations are excluded. An informational "Note" refers to Article 25 (which includes provisions for agricultural/industrial tractors) when tractors of more than 20-brake horsepower are used.

An amendment deletes the reference to "20-brake horsepower" which essentially can also be referred to as "20 engine horsepower." The provisions in Section 3563 go back to at least 1978 when 20 engine horsepower likely was an accurate way to determine a ma-

chine intended primarily for mowing lawns versus agricultural/industrial operations. Agricultural and industrial tractors are typically utility tractors designed for use with multiple implements and attachments for agricultural or industrial work. However, today many zero turn lawn mowers² and lawn riding tractors designed primarily for mowing are well over 20 engine horsepower and often can range up to 30 engine horsepower. Consequently, the references to "20-brake horsepower" including the "Note" for subsection (a) are deleted because they are obsolete indicators of the type and design of machines that are currently used as ride-on, sit-down power lawn mowers.

Agricultural and industrial tractors are designed as utility machines for multiple uses with a variety of implements and attachments. They are not designed primarily for mowing lawns but in some cases can be equipped with turf mowing implements that cut grassy areas. These types of tractors are frequently used along freeways and highways for cutting grassy, turf areas. These utility tractors are covered by provisions in GISO Article 25 which address ROPS and seatbelt use for tractors.

Some lawn mower manufacturers also produce a wide variety of lawn and garden riding tractors that are usually smaller in size, weight and power than agricultural tractors but differ from agricultural tractors in that they are designed primarily and with the specific intent of mowing lawns. Most models of lawn and garden riding tractors designed for lawn care and maintenance are equipped with an under belly mowing deck, although a limited number of models such as the John Deere Lawn Mower, Model 1445 have a power drive that allows the use of reel or rotary bladed front-mounted mowing decks. An amendment is proposed for subsection (a) that clarifies lawn riding tractors and lawn and garden riding tractors "with mowing attachments" are included in the scope section.

In order to ensure that machines designed primarily for mowing lawns are covered by the appropriate provisions in Section 3563 and that agricultural/industrial tractors are covered in Article 25, an amendment is made to subsection (a) that excludes tractors from the provisions of Section 3563 unless the tractor is designed primarily for mowing lawns and is manufactured in conformance with national consensus standards for power lawn mowers.

The effect of the proposed amendments for subsection (a) is to remove outdated and obsolete language and provide clarity to provisions in the scope section of the standard.

² A zero turn mower is a machine designed for mowing lawn with a ride-on operator and can be turned in a full circle in a stationary spot because of the design of the wheels and drive mechanism.

Subsection (b) General.**Subsection (b)(1)**

Existing subsection (b)(1) provides that mowers placed in service after March 29, 1975 through April 15, 1999, shall be designed, constructed, tested and labeled to meet the provisions of ANSI B71.1–1972 and B71.1a–1974 or ANSI B71.1–1980, Safety Specifications for Power Lawn Mowers, Lawn and Garden Tractors and Lawn Tractors. Amendments are proposed having the effect of providing consistency with the proposed provisions in subsection (b)(2) and would require that lawn mowers “meet the requirements” of the aforementioned ANSI B71.1 standards.

An additional amendment permits that power lawn mowers can meet the requirements of the applicable ANSI B71.1 or B71.4 standard in effect at the time the mower was manufactured for the time frame specified in subsection (b)(1). The effect of this amendment merely permits the mower to meet the appropriate provisions of a later edition of the ANSI B71.1 or B71.4 standard published during the time period specified in the subsection (i.e. through April 15, 1999).

Subsection (b)(2)

Existing subsection (b)(2) states that power mowers placed in service after April 15, 1999 shall be “approved” as defined in Section 3206 of the GISO. An amendment is proposed that deletes language allowing mowers to be “approved” in lieu of language for this subsection that would require mowers to meet the requirements of the specific ANSI/OPEI³ power lawn mower standards published after April 15, 1999, which are hereby incorporated by reference. The term “approved” as defined in GISO Section 3206 has broad application, however, it does not provide specific safety information and guidance for the design, guarding, controls and safety features necessary for safe mowing operations. Therefore, the amendment has the effect of ensuring that power lawn mowers meet the provisions of the applicable consensus standard for the mower design type and date of manufacture.

Subsection (b)(3)

A new proposed subsection (b)(3) would require power lawn mowers manufactured after the effective date of the regulation to have a durable label stating that the power lawn mower is manufactured in accordance with the applicable ANSI B71.1 or B71.4 standard. The ANSI B71 standards already require a durable label on power lawn mowers that provides the name of the manufacturer or supplier; model number or serial number, or both; and the name and address of a source for replacement parts.

The advisory committee including manufacturer representatives agreed that adding a statement of compliance with the applicable ANSI B71.1 or .4 standard would have the effect of assisting both the employer and the Division in determining that the mower is in compliance with the provisions of subsection (b)(2). It should be noted that stakeholders determined that the ANSI compliant labeling provision should be omitted for existing mowers as to retroactively label mowers currently in use would be very onerous and difficult to achieve with effective results.

Subsection (c) Roll-Over Protective Structures (ROPS) and Seat Belts.

New proposed subsection (c) would require that when visual inspection or technical information from the manufacturer indicates that a riding lawn mower is designed by the manufacturer to be equipped with ROPS, or to accept ROPS as an option, ROPS engineered and approved for the mower shall be provided and used. The amendment further requires that approved seat belt assemblies shall be provided and used on all riding lawn mowers where ROPS are installed. An exception is proposed stating that ROPS and seat belts may be temporarily suspended only when operating in areas where the vertical clearance is insufficient to allow a ROPS equipped mower to operate.

The proposed amendment would have the effect of requiring that riding mowers designed by the manufacturer for use with ROPS and seatbelts to be used and equipped in accordance with the manufacturer’s design and engineering decision that such features provide additional safety for the operator. The proposed exception has the effect of permitting the riding mower to be operated in areas where the vertical clearance is insufficient to allow a ROPS equipped mower to operate.

A “Note” is proposed for this subsection providing an informational reminder that the requirements for ROPS on agricultural and industrial tractors are provided in Article 25 of the General Industry Safety Orders.

Subsection (d) Prohibited Use of Ride-On, Sit-Down Lawn Mowers.

Proposed subsection (d)(1) would require that ride-on, sit-down mowers be used on slopes in accordance with the manufacturer’s recommendations. When the manufacturer’s recommendations are not obtainable or do not address using such mowers on slopes, subsection (d)(2) would require ride-on, sit-down mowers to be used on slopes consistent with angle limitations typically specified by mower manufacturers. Operating riding mowers on steep slopes is a frequent cause of serious accidents. The proposed amendments would have the effect of requiring such mowers to be used in accordance with the recommendations of manufacturers.

³ OPEI means “The Outdoor Power and Equipment Institute.”

Subsection (d)(3) would have the effect of prohibiting the use of ride-on, sit-down mowers within 5 feet of the hazards outlined in subsection (d)(3)(A) & (B). These hazards to mower operators were identified in committee discussions and included review of power lawn mower owner's manuals and accident causes. Maintaining a 5 foot distance from known hazardous areas would allow the use of 48 inch, 36 inch, or 21 inch deck walk-behind mowers to complete work near hazardous conditions.

Subsection (e) Power Operator Lawn Mower Training.

Proposed subsection (e) outlines the training requirements for the operators of power lawn mowers that are included in the scope of Section 3563. It was the consensus of the advisory committee to include specific training requirements for operators given that ROPS will not eliminate all serious accidents and that not all riding lawn mowers are designed for ROPS systems.

Proposed subsections (e)(1) and (e)(2) address issues such as safety training and would require that power lawn mower operators are trained by qualified persons. Further, subsection (e)(2)(C) would in part require instruction and demonstrations by the trainer and practical exercises to be performed by the trainee. Proposed subsection (e) would have the effect of providing specific training provisions that have been successful with other equipment such as the use of powered industrial trucks (forklifts).

Subsection (e)(3) Training program content.

Proposed subsection (e)(3)(A) through (G) would have the effect of outlining the training program content and provisions such as, but not limited to the review of the operator's manual, safety devices, controls, the use of ROPS, seatbelts and hazardous conditions that could affect the stability of a mower.

Subsection (e)(4) Refresher training and evaluation.

Proposed subsection (e)(4) would have the effect of providing requirements that would trigger operator refresher training including when the operator receives a new job assignment that includes operating a mower or machinery that the operator is unfamiliar with or includes mowing lawns on terrain or surfaces that present hazards unfamiliar to the operator in their current or past work assignments.

Subsection (e)(5) Avoidance of duplicative training.

Subsection (e)(5) will have the effect of avoiding duplicative training when an employee has received training previously and is found to be competent to safely operate the type of mower that he or she will be authorized to use.

Subsection (e)(6) Recordkeeping.

Proposed subsection (e)(6) has the effect of requiring instruction and training documentation in accordance with the general record keeping provisions in GISO Section 3203, Injury and Illness Prevention Program.

Section 3651 Agricultural and Industrial Tractors.

Section 3651(a) addresses ROPS protection requirements for all agricultural and industrial tractors manufactured after October, 25, 1976. An information "Note" is proposed for subsection (a) for clarity to indicate that tractors that are designed and used for the purpose of mowing lawns and that meet power lawn mower national consensus standards are covered in Section 3563 "Power Lawn Mowers."

DOCUMENTS INCORPORATED
BY REFERENCE

1. American National Standards Institute/Outdoor Power Equipment Institute (ANSI/OPEI) B71.1-1998 standard for Consumer Turf Care Equipment-Walk-Behind Mowers and Ride-On Machines with Mowers-Safety Specifications.
2. ANSI B71.1-2003 standard for Consumer Turf Care Equipment-Walk-Behind Mowers and Ride-On Machines with Mowers-Safety Specifications.
3. ANSI/OPEI B71.4-1999 standard for Commercial Turf Care Equipment-Safety Specifications.
4. ANSI B71.4-2004 standard for Commercial Turf Care Equipment-Safety Specifications.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m., at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

SPECIFIC TECHNOLOGY OR EQUIPMENT

The provisions in proposed Section 3563(c) would require the use of roll-over protective structures (ROPS) in combination with seat belts for riding lawn mowers designed by the manufacturer to be equipped with such safety equipment. A number of major lawn mower manufacturers selling mowers in California are equipping commercial riding mowers with ROPS and seatbelts as standard equipment. Some riding lawn-mower models are not designed to accept ROPS systems by the manufacturer. In these cases, the proposal would not require retrofitting the mower for ROPS systems. However, riding lawn mower models sold with-

out ROPS that were designed by the manufacturer to accept ROPS as an optional safety related accessory would be subject to the ROPS provisions of the proposal.

The proposal would allow employers 180 calendar days to inventory their equipment and meet the ROPS related provisions. A number of employers and agencies, both public and private, would already be in compliance or near compliance with the proposal. Furthermore, one major manufacturer is offering a free program and another manufacturer a reduced price program to equip certain commercial riding lawn mowers with ROPS and seatbelts when the mower is designed to accept such safety equipment. It is not known at this time if other manufacturers will offer similar programs but it is likely that additional cost reducing/discount programs would be offered that would reduce the average estimated costs for ROPS when required.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

There are a limited number of state agencies that own and operate riding power lawn mowers. These agencies would be minimally impacted to the extent outlined in the cost analysis. The Department of Parks and Recreation (DPR) likely owns the most number of riding lawn mowers at 60 statewide. It is estimated for DPR that between 10 and 20 mowers would need consideration for updating to the ROPS provisions in the proposal. The average cost to update a mower for ROPS is approximately \$425.00.

The Department of General Services (DGS) indicates it owns approximately 15–20 riding mowers statewide and that no more than half of those would need consideration for a ROPS system. It should be noted from a review of the OSHA accident summary document outlined in item No. 5, under the heading “Documents Relied Upon” that riding lawn mower accidents are often serious and frequently fatal. Eliminating just one accident would likely far outweigh any one–time cost for any employer/agency to update applicable mowers that are designed for ROPS systems.

Impact on Housing Costs

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

Impact on Businesses

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

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person would necessarily incur related to the proposed action. The primary business with the potential to incur costs would be landscape contractors providing lawn care services. A number of contractors are already in compliance or near compliance with the proposal’s ROPS related provisions. Landscape contractors attended the advisory committee that reached consensus for the provisions in this proposal and the California Landscape Contractors Association provided assistance with the potential cost analysis for this rulemaking. The typical or average one–time cost expected for those landscape contractors affected are not expected to be onerous or burdensome. For example, the average small landscape contractor affected by the proposal would have 4 riding mowers of which 2 may need a ROPS system, for an estimated average one–time cost of \$425.00 per mower.

Costs or Savings in Federal Funding to the State

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

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

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

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

The proposal imposes nondiscretionary costs on local agencies; however, only agencies owning riding lawn mowers within the scope of the proposed regulations would be affected. A number of agencies would already be in compliance or near compliance with the proposal. Additionally, some agencies contract a portion or all of their landscape and lawn care services to private contractors. Of those agencies affected, the costs are not expected to be onerous or burdensome. This is because the average agency affected by the proposal has a significant percentage of riding mowers typically in compliance and the average cost to update a mower with ROPS when necessary is nominal.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program

or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

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

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

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses, primarily lawn care/landscape businesses. The smallest lawn care contractors are often maintaining residential/home lawns that do not require the use of riding lawnmowers and consequently, these contractors would not be affected by the proposal. For other small contractors affected by the proposal, the costs are not expected to be onerous or burdensome as outlined under the heading “Cost Impact on Private Persons or Businesses.”

ASSESSMENT

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

REASONABLE ALTERNATIVES CONSIDERED

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

and less burdensome to affected private persons than the proposed action.

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

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

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than December 11, 2009. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on December 17, 2009, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274–5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

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

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

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

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

**TITLE 10. DEPARTMENT OF
INSURANCE**

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

Date: October 19, 2009

**Regulation File:
REG-2009-00023**

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt amendments to California Code of Regulations (“CCR”) Title 10, Chapter 5, Subchapter 2, Article 1, sections 2202(a), 2202(b), 2202(c), 2202(d), 2203(b), and the authority and reference citations for sections 2202 and 2203 after considering comments from the public. (All references to the CCR in this Notice are references to sections in CCR Title 10.) The Commissioner proposes to amend these sections under the authority granted by California Insurance Code (“CIC”) sections 742.43, 779.21, 10168.92 (for section 2202 only), 10192.3, 10234, 10327, 10506, 10506.3 (for section 2202 only), 10704, and 12973.9.

The Commissioner proposes to amend sections 2202(b), 2202(c), 2202(d), and 2203(b) to adjust the fees he charges insurance providers for processing, indexing and maintaining copies of documents defined in CCR section 2201(a).

In addition, the Commissioner proposes to amend CCR Title 10, Chapter 5, Subchapter 2, Article 1, section 2202(a)(12) and section 2202(b) to conform the language of these subsections to the filing requirement language of Insurance Code sections 10163.35 and 10168.93, which did not exist when the regulations were last amended.

Finally, the proposed amendments add, delete, or delete and replace authority and/or reference citations to CCR sections 2202 and 2203 so that the authority and reference citations for these sections conform to current law. The proposed amendments also correct typographical errors in section 2202.

PUBLIC HEARING

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

**Date and time: Thursday, December 17, 2009 at
10:00 a.m.**

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

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

**PRESENTATION OF WRITTEN COMMENTS;
CONTACT PERSONS**

All persons are invited to submit written comments on the proposed amendments to the regulations during the public comment period. The public comment period will end at **5:00 p.m. on December 17, 2009**. Please direct all written comments to the following contact person:

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

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

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

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at her address listed above, **no later than 5:00 p.m. on December 17, 2009**. Any written materials received after that time may not be considered.

**COMMENTS TRANSMITTED BY E-MAIL
OR FACSIMILE**

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: homn@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Nancy Hom and sent to the following facsimile number: (415) 904-5729. **Comments sent to**

other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

ACCESS TO HEARING ROOMS

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

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes the adoption of amendments to Title 10, Chapter 5, Subchapter 2, Article 1, sections 2202(a), 2202(b), 2202(c), 2202(d), and 2203(b) pursuant to the rulemaking authority vested in him by Insurance Code sections 742.43, 779.21, 10168.92 (for section 2202 only), 10192.3, 10234, 10327, 10506, 10506.3 (for section 2202 only), 10704, and 12973.9.

The Commissioner’s proposed amendments to CCR section 2202 will implement, interpret, and make specific the provisions of Insurance Code sections 742.42, 779.8, 795.5, 1320, 9080.1, 10112.5, 10163.35, 10168.93, 10192.15, 10192.19, 10205, 10225, 10231.2, 10231.6, 10232, 10233.9, 10234.9, 10234.93, 10234.97, 10236.11, 10236.13, 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11027, 11029, 11066, 11069, 11522, 11658, and 12250.

The Commissioner’s proposed amendments to CCR section 2203 will implement, interpret, and make specific the provisions of Insurance Code sections 742.42, 779.8, 795.5, 1320, 10112.5, 10163.35, 10192.15, 10192.19, 10205, 10225, 10231.2, 10231.6, 10232, 10236.11, 10236.13, 10270, 10270.1, 10270.2, 10270.3, 10270.5, 10270.507, 10270.57, 10270.9, 10270.93, 10290, 10292, 10436, 10506, 10705, 10717, 11011, 11066, 11069, and 11658.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

Under existing law, when the Insurance Code requires that a document (defined by CCR sections 2201(a) and 2202) be filed with, submitted to, or approved by the Commissioner, “fees as provided for by

[CIC section 12973.9] shall be paid to the commissioner to cover the expenses of processing and indexing the same and maintaining copies of the same.” Insurance Code section 12973.9. The fees which the Commissioner may charge for actions on documents submitted to him are set forth in CCR sections 2202 and 2203.

The fees set forth in CCR sections 2202 and 2203 have not changed in over twelve years, while the cost of processing, indexing, and maintaining the documents which must be filed has increased substantially. The inadequacy of the fees has created an ongoing structural deficit for the Department of Insurance.

For the five years from fiscal year 2002–03 to fiscal year 2007–08, the cost of processing documents subject to filing as set forth in CCR 2202 and 2203 increased by 35% (from \$3.7 million to \$5 million dollars). During the same five years, the Commissioner charged insurers an average of approximately \$500,000 (\$0.5 million) per year. If the imbalance between the actual costs incurred by the Commissioner and the fees charged to cover these costs is not corrected, the Commissioner will continue to recoup from insurers just one-tenth of his actual costs.

Other revenue sources of the Department of Insurance, primarily general fees and license revenue, are currently covering the approximately \$3.8 million annual shortfall between costs incurred and fees charged insurers for document processing. In effect, the Department’s other revenues are subsidizing insurance company operating expenses because current fee levels are inadequate.

Insurance Code section 12973.9 grants the Commissioner the authority to promulgate such regulations as are necessary in order to establish the standard(s) “by which the commissioner shall determine the original fee schedule or any amended fee schedule.” The standards are set forth in CCR section 2202(e). Section 2202(e) provides that the Commissioner may increase or decrease fees by issuing a Bulletin setting forth the modified fees at least 90 days prior to their effective date. The Commissioner issued such a bulletin, Bulletin 2009–5, on March 26, 2009. A copy of Bulletin 2009–5 is included in the record of this rulemaking.

In addition to the fiscal problem described above, the existing language of CCR section 2202 does not conform to changes which have taken place in the law since the regulations were last amended, specifically changes which define documents which must be filed.

Lastly, the regulations contain outdated and erroneous authority and reference citations which do not conform to existing law, a comma in CCR section 2202(a)(2) that was inserted in error, and the omission of the word “care” in section 2202(a)(5)(E) made in error.

EFFECT OF PROPOSED ACTION

First, the proposed amendments amend the fees set forth in CCR sections 2202(b), 2202(c), 2202(d), and 2203(b) to cover the cost of processing insurance filings. The proposed amendments correct fee levels so that fees charged more accurately reflect the actual costs incurred in processing, indexing, and maintaining documents as required by law. The fee changes do not exceed the amounts calculated by the Department of Insurance's Budget Office as necessary to cover all direct and indirect costs of the unit(s) for the next succeeding fiscal year or years thereafter. There are no other moneys received or projected to be received for the unit(s) processing the documents subject to such fees. The effect of the amendments will be to stop the unsustainable cash flow imbalance currently taking place.

Second, the Commissioner proposes to amend CCR Title 10, Chapter 5, Subchapter 2, Article 1, section 2202(a)(12) and section 2202(b) to conform the language of these subsections to the filing requirement language of Insurance Code sections 10163.35 and 10168.93. Insurance Code sections 10163.35 and 10168.93 specify life insurance and annuity documents which must be filed with the Commissioner under California's nonforfeiture statutes. Both section 10163.35 and section 10168.93 were added to the Insurance Code in 2004, after CCR sections 2202(a)(12) and 2202(b) were last amended. Consequently sections 2202(a)(12) and 2202(b) contain outdated descriptions of documents which are required to be filed under California law. The amendments to CCR subsections 2202(a)(12) and 2202(b) conform the language of those subsections to the requirements of Insurance Code sections 10163.35 and 10168.93.

Finally, the proposed amendments delete the comma that was inserted in error in CCR section 2202(a)(2), add the word "care" to section 2202(a)(5)(E), and add, delete, or delete and replace the following citations to the Insurance Code in the CCR sections listed below, for the reasons set forth below:

- a. The proposed regulations add a citation to CIC section 10168.92 as a rulemaking authority citation for section 2202. Section 10168.92 provides the commissioner with rulemaking authority with regard to annuity filings.
- b. Section 10195.1 is deleted as a rulemaking authority citation for sections 2202 and 2203 because section 10195.1 was repealed effective January 1, 2001. The proposed amendments replace the citations to section 10195.1 with citations to Insurance Code section 10192.3, which authorizes the Commissioner to promulgate regulations concerning Medicare supplement policies.

- c. The proposed regulations add a citation to CIC section 10506.3 as a rulemaking authority citation for section 2202. Section 10506.3 provides the commissioner with rulemaking authority with regard to modified guaranteed annuities.
- d. Section 10163.3 is deleted as a reference citation for section 2202 because section 10163.3 was amended effective January 1, 2005 to exclude the provisions concerning filings with the commissioner. The proposed amendment replaces the citation to section 10163.3 in CCR section 2202 with a citation to Insurance Code section 10163.35. Section 10163.35 became effective January 1, 2005 and it contains the filing requirement language which was deleted from section 10163.3.
- e. The proposed amendments add a citation to section 10168.93 as a reference citation for section 2202. Section 10168.93 requires insurers to file annuity contract forms.
- f. Section 10195.1 is deleted as a reference citation for sections 2202 and 2203 because section 10195.1 was repealed effective January 1, 2001. The proposed amendments replace the reference citations to section 10195.1 with reference citations to Insurance Code section 10192.15, which contains filing requirements for Medicare supplement documents.
- g. Section 10195.45 is deleted as a reference citation for sections 2202 and 2203 because section 10195.45 was repealed effective January 1, 2001. The proposed amendments replace the reference citations to section 10195.45 with reference citations to Insurance Code section 10192.15, which contains filing requirements for Medicare supplement documents.
- h. Section 10195.65 is deleted as a reference citation for sections 2202 and 2203 because section 10195.65 was repealed effective January 1, 2001. The proposed amendments replace the reference citations to section 10195.65 with reference citations to Insurance Code section 10192.19, which contains filing requirements for Medicare supplement advertisements.
- i. The proposed amendments add citations to Insurance Code Section 10231.2 as reference citations for sections 2202 and 2203. Section 10231.2 requires insurers to file long term care products with the commissioner. It did not exist when sections 2202 and 2203 were last amended.
- j. Section 10235.22 is deleted as a reference citation for section 2202 because section 10235.22 was repealed effective January 1, 2001.

- k. The proposed amendments add citations to section 10236.11 as reference citations for sections 2202 and 2203. Section 10236.11 requires insurers to file rates for long term care products.
- l. The proposed amendments add citations to section 10236.13 as reference citations for sections 2202 and 2203. Section 10236.13 requires an insurer to make a filing with the commissioner if it wishes to increase premium for long term care products.
- m. The proposed amendments delete the reference citation to section 10489.93 in section 2202 because the portion of section 10489.93 which required life insurance forms to be filed was deleted from that section effective January 1, 2005. The filing requirement for life insurance forms is now set forth in section 10163.35. The proposed amendments add a citation to section 10163.35 as a reference citation for section 2202.
- n. The proposed amendments add a citation to section 11011 as reference citation for sections 2202 and 2203. Section 11011 requires fraternal benefit societies to file articles of incorporation, certificates, and other documents with the commissioner.
- o. The proposed amendments delete the citations to sections 11027 and 11029 as reference citations for section 2203 to resolve an inconsistency within the regulations. Under section 2202(a)(15), document filings under section 11027 and 11029 are exempt from section 2203.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

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

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

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

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

The Commissioner has made an initial determination that the adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurers.

The Commissioner has considered performance standards, but the Commissioner has identified no performance standards which would be as effective as the proposed amendments to address the issue of cost recovery, to conform the existing regulations to existing law, to update and correct legal citations, and to correct typographical errors in the regulations.

The Commissioner has not considered other proposed alternatives which would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

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

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Commissioner has made an initial determination that the adoption of the proposed amendments will result in overall costs to insurers who make document filings under CCR sections 2201 and 2202 of approximately 3.8 million dollars (\$3,800,000) per year. The cost for each of the approximately 1,300 insurers who make such filings is estimated to be, in the aggregate, approximately three thousand dollars (\$3,000) per year on average. The Commissioner is not aware of any cost impacts that a representative private person or business, other than the insurers described above, would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination

of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above, but he invites interested parties to comment on this issue.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

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

IMPACT ON SMALL BUSINESS

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

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes that are comparable to the proposed amended regulations.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regard-

ing this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

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

AUTOMATIC MAILING

A copy of the proposed amended regulations and this Notice, including the Informative Digest, which contains the general substance of the proposed amendments to the regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

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

To browse, click on the 'Currently Proposed Regulations' link. A list of the names of regulations for which documents are posted will appear. Find in the list the "Policy Form Processing Cost Recovery" link, and click it. Links to the documents associated with these regulations will then be displayed.

To search, enter the Department's regulation file number for the regulations in the search field. Alternatively, search by keyword ("cost recovery" for example). Then, click on the 'Submit' button to display links to the rulemaking documents online.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available 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. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

TITLE 14. OFFICE OF SPILL PREVENTION AND RESPONSE

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Game, proposes to amend Sections 791.7 and 792 in Subdivision 4, Chapter 2, Subchapter 1 of Title 14 of the California Code of Regulations (CCR). OSPR also proposes to amend the following forms: FG OSPR-1924, FG OSPR-1925, FG OSPR-1947, and FG OSPR-1972. These sections and forms pertain to California Certificates of Financial Responsibility.

PUBLIC HEARING

A public hearing has been scheduled at which any interested party may present statements, orally or in writing, about this proposed regulatory action. The hearing will continue until all testimony is completed, and will be held as follows:

Wednesday, December 16, 2009
Office of Spill Prevention and Response
1700 K Street
Sacramento, CA
First Floor Conference Room
10 a.m.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. All written comments must be received by OSPR at this office no later than **5:00 p.m. on December 16, 2009**, in order to be considered. Written comments may be submitted by mail, fax, or e-mail, as follows:

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

PERMANENT ADOPTION OF REGULATIONS

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

AUTHORITY AND REFERENCE

Government Code Section 8670.37.54(b) grants the Administrator the authority to adopt regulations governing policy or other contractual terms, conditions or defenses which are necessary or which are unacceptable in establishing evidence of financial responsibility. Accordingly, the proposed regulations implement, interpret and make specific Government Code Sections 8670.37.51 through 8670.37.57 relating to financial responsibility.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act), enacted in 1990 by Senate Bill 2040, created a comprehensive state oil spill program for marine waters.

The Act mandates that all vessel and marine facility owner/operators shall be prohibited from transporting oil or operating a marine facility which transfers oil to or from a vessel in California, without first obtaining a certificate demonstrating specified levels of financial responsibility to pay for any costs resulting from oil spills occurring in California marine waters, or in locations which could affect California marine waters.

Pursuant to the authority in the Act, OSPR currently has regulations (Title 14, California Code of Regulations, Sections 791 through 797) which define terms used in the regulations; establish procedures for applying for a California Certificate of Financial Responsibility.

bility (COFR); establish required levels of financial responsibility and certificate requirements for owners or operators of vessels and marine facilities, and owners of oil; provide information on the types of evidence required in order to establish financial responsibility; inform the regulated community of those situations in which a certificate may be revoked; and, provide the methods for reporting changes which could affect the certificant's ability to comply with the financial responsibility requirements.

This proposal would amend the regulations as follows:

- Remove the requirement for an original or certified COFR Copy to be carried on board a vessel.
- Update regulatory sections and form numbers.
- Amend the COFR Marine Facilities Application, FG OSPR-1924 (9/09), to add address to the list of information required of the financial contact person.
- Amend the COFR Tank Vessels Application, FG OSPR-1925 (9/09), to add more complete contact information, to request previous vessel name if any, to remove LPG Carrier in the list of tank vessel types, and to simplify the gross tonnage information.
- Amend the COFR Owners of Oil Application, FG OSPR-1947 (9/09), by fixing a minor formatting error.
- Amend the COFR Nontank Vessels (300 GT or Greater) Application, FG OSPR-1972 (9/09), to add LPG/LNG Carrier in the list of nontank vessel types, clarify the fuel capacity information, simplify the gross tonnage information, and to add information to simplify and expedite the fee processing.

SMALL BUSINESS IMPACT STATEMENT

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

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 8574.10 AND 8670.55

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

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

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

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

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

Cost impacts on representative private persons or businesses:

These amendments clarify current practices and significantly streamline the applications and will, therefore, not result in significant additional costs to private persons or directly affected businesses. The OSPR 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.

BUSINESS IMPACTS

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

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

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

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF DOCUMENTS AND OSPR CONTACT PERSON

OSPR has prepared an Initial Statement of Reasons for the proposed regulatory action and has available all

the information upon which the proposal is based. Copies of the exact language of the proposed regulations, Initial Statement of Reasons, forms, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from the:

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

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

http://www.dfg.ca.gov/ospr/law/regs_rev.html

Questions regarding the proposed regulations, requests for documents, or any questions concerning the substance of this regulatory action may be directed to Joy Lavin-Jones ((916) 327-0910), or Alexia Retallack ((916)322-1683).

TITLE 16. BOARD OF BEHAVIORAL SCIENCES

TITLE 16 DEPARTMENT OF CONSUMER AFFAIRS BOARD OF BEHAVIORAL SCIENCES NOTICE OF PROPOSED CHANGES IN THE REGULATIONS

CONTINUING EDUCATION REQUIREMENTS: LICENSED EDUCATIONAL PSYCHOLOGISTS, EXCEPTIONS FROM AND PROVIDERS

NOTICE IS HEREBY GIVEN that the Board of Behavioral Sciences (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 1625 North Market Blvd., El Dorado Room, Sacramento CA 95834 at 9:00 a.m., on Thursday, December 17, 2009. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Behavioral Sciences (Board) at its office not later than 5:00 p.m. on December 14, 2009, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals

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

Authority and Reference: Pursuant to the authority vested by Sections 4990.16, 4990.18, and 4990.20 of the Business and Professions Code (BPC), and to implement, interpret, or make specific Sections 25, 28, 4980.395, 4980.54, 4980.57, 4989.34, 4996.22, and 4996.26 of the BPC, the Board is considering amending Division 18 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board of Behavioral Sciences administers and enforces the provisions of the Educational Psychology Act ("Act" — Business and Professions Code (BPC) sections 4989.10 and following). BPC section 4989.34 of that Act requires licensed educational psychologists ("LEP"s) to certify completion of approved continuing education (CE) in, or relevant to, educational psychology and authorizes the Board to establish "exceptions" for LEPs from CE requirements for "good cause" as determined by the Board. Further, Section 4989.34 authorizes the Board to establish, by regulation, a procedure for approving providers of LEP CE courses and to set minimum standards for those CE course providers.

Current law does not specify requirements for Board-approved CE courses for LEPs, set license renewal requirements relative to CE for LEPs, or establish a procedure for the Board to grant exceptions to those requirements. Current law also does not create a procedure for the approval of providers of LEP CE courses or set minimum standards for those CE course providers. This proposal would establish those requirements and procedures.

This rulemaking also proposes changes to the CE exception process for all licensees, in order to bring this section and the Board's forms into compliance with both the Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). Other clarifying and technical changes are also proposed to the Board's CE regulations.

Amend Section 1807 — Human Sexuality Training

Section 1807 specifies the requirements for human sexuality training required of marriage and family ther-

apists (MFTs) and licensed clinical social workers (LCSWs).

The proposed regulation would require a licensed educational psychologist (LEP) to complete human sexuality training prior to applying for his or her first license renewal on or after January 1, 2011.

Amend Section 1807.2 — Child Abuse Assessment Training Requirements

Section 1807.2 sets forth the requirements for child abuse assessment and reporting training for MFTs and LCSWs.

The proposed regulation would require a LEP, in addition to meeting all other requirements for licensure, to complete child abuse assessment and reporting training prior to applying for his or her first license renewal on or after January 1, 2011. This proposal would also clarify that in addition to meeting all other requirements for licensure, MFTs and LCSWs must have completed coursework and training in child abuse assessment prior to licensure.

Amend Section 1810 — Alcoholism and Other Chemical Substance Dependency Training

Section 1810 sets forth the requirements for substance abuse training for MFTs and LCSWs.

The proposed regulation would require a LEP who renews his or her license after January 1, 2011 to complete at least fifteen (15) hours of instruction and training in alcoholism and other chemical substance dependency in ten (10) specific course content areas. In addition, the proposal would require the training and coursework received by the LEP to be obtained from an accredited or approved educational institution, a governmental entity, a licensed health facility or a CE provider approved by the Board.

Amend Section 1819.1 — Continuing Education Provider Fees

Section 1819.1 sets the fee for CE provider applications at two hundred dollars (\$200).

The proposed regulation would require the same application fee from providers who offer LEP CE courses.

Amend Title of Article 8 — Continuing Education Requirements for Marriage and Family Therapists and Licensed Clinical Social Workers

The proposed regulation would add the phrase “and Licensed Educational Psychologists” to the Title of Article 8.

Amend Section 1887 — Definitions

Section 1887 sets forth the definitions for a continuing education (CE) course, self-study course, provider, and renewal period.

The Board is proposing clarifying language and a new definition for the “initial” renewal period.

Amend Section 1887.1 — License Renewal Requirements

BPC section 4989.34 requires a LEP, upon renewal of his or her license, to provide proof of not less than 36 hours of approved CE in the preceding two years. Section 1887.1 specifies the license renewal requirements for MFTs and LCSWs pertaining to CE. The proposed regulation would do all of the following:

- Require that, unless an exception to CE is granted, LEPs must certify in writing that he or she has completed thirty-six (36) hours of CE credit.
- Require a LEP be subject to disciplinary action if the licensee falsifies or makes material misrepresentations of fact relating to the completion of CE.
- Specify a timeline for licensees to meet the proposed LEP CE requirements. LEPs renewing January 1, 2011 through December 31, 2011 would be required to complete 18 units of CE prior to renewal. On or after January 1, 2012, all LEPs would be required to complete 36 units of CE prior to renewal.

Amend Section 1887.2 — Exceptions from Continuing Education Requirements

The federal Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101 and following) and the California Fair Employment and Housing Act (FEHA) (Government Code Sections 12900–12996) are both civil rights laws enacted for individuals with disabilities, providing protection from discrimination. The FEHA is made applicable to the Board and other state licensing agencies through Government Code section 12944, subdivision (b). FEHA contains broad definitions of physical disability, mental disability and medical condition.

BPC Sections 4980.54(e), 4989.34(e) and 4996.22(c) permit the Board to establish exceptions to CE requirements for MFTs, LEPs and LCSWs for “good cause” as determined by the Board. Section 1887.2 specifies the circumstances under which the board will exempt MFTs and LCSWs from the CE requirements, including reduced hours required during a licensee’s initial renewal period, no hours required for inactive licensees, military service outside of California, living out of the country, or reasonable accommodation of a disability. The proposed regulation would do all of the following:

- Make a technical clarifying change to subsection (a), specifying that a licensee must complete at least 18 hours of CE prior to a new licensee’s initial renewal, rather than the full thirty-six (36) hours.

- In subsection (b), exempt LEPs who renew their licenses beginning January 1, 2011 and through December 31, 2011 from the full thirty–six (36)–hour CE requirement and instead require eighteen (18) hours of CE prior to license renewal.
- In subsection (c), exempt inactive LEPs from the CE requirements. The purpose of this change is to implement BPC 4989.34(e) which allows the Board to establish exceptions to CE requirements for “good cause,” as determined by the Board.
- In subsection (d):
 - Specify that a request for exception includes a request for a reasonable accommodation.
 - Permit a licensee to submit a request for exception on a form incorporated by reference entitled “Request for Continuing Education Exception — Licensee Application” Form No. 1800 37A–635 (Revised 2/09).
 - Require the request for CE exception to be submitted to the Board at least sixty (60) days prior to the expiration date of the license.
 - Specify that an approved request for exception or accommodation is valid for one renewal period.
 - Allow the Board to grant a reasonable accommodation for completion of CE if, for at least one year during the previous license renewal period, the licensee or immediate family member had a physical or mental disability or medical condition as defined in FEHA, that impacted his or her ability to complete CE.
 - Qualifies the disability or medical condition of a domestic partner for the granting of a reasonable accommodation, where the licensee is the primary caregiver. This is consistent with California law that states that domestic partners shall have the same rights and benefits as granted upon spouses (Family Code section 297.5).
 - Require licensees to submit, along with the request for reasonable accommodation, a form demonstrating evidence of a disability or medical condition and how it impacts the licensee’s ability to complete the CE. This form would be incorporated by reference and entitled, “Request for Continuing Education Exception — Verification of Disability or Medical Condition” Form no. 1800 37A – 636 (New 02/09).
- Amend “Request for Continuing Education Exception — Licensee Application”, Form No. 1800 37A–635 (Revised 02/09) as follows:
 - Make technical changes and other revisions consistent with proposed changes to Section 1887.2 of this proposal.
 - Amend Part 2 of the Application to require the applicant to explain the disability or medical condition and not the attending physician or psychologist.
 - Replace language requiring an explanation of how the disability “interferes” with one or more major life activities with language requiring an explanation of how the disability or medical condition “limits” one or more major life activities.
 - Delete language requiring reporting of dates and details regarding the disability and replace it with a requirement that the applicant submit a completed form from his or her health care provider entitled “Request for Continuing Education Exception — Verification of Disability or Medical Condition,” Form No. 1800 37A–636 (New 02/09).
 - Add a question regarding the type of accommodation being requested.
 - Add accommodation options and provide the applicant an opportunity to request specific accommodations.
 - Add a notice of possible violation for falsely certifying completion of CE.
 - Add a notice regarding the collection and the use of personal information provided on the application.
 - Add a statement permitting submission of written statements from a physician in lieu of completing the form, provided certain conditions are met.
 - Specify that the request for exception must be received at least sixty (60) days prior to the expiration date of the license.
- Adds “Request for Continuing Education Exception — Verification of Disability or Medical Condition”, Form 1800 37A–636 (New 02/09) that provides the following:
 - Part 1 — Requires the applicant to disclose name, business telephone,

residence telephone, address of record, Social Security number, license number, renewal period requesting exception for, and the reason for the exception request.

- Part 2 — Requires the applicant's physician or psychologist to complete a series of questions regarding the disability or medical condition and provide an explanation of how the disability or medical condition limits one or more major life activities.
- Require both the applicant and the health care provider to certify their statements under penalty of perjury.
- Provide a notice regarding collection and use of personal information given on the application.
- Specify that the form must be received at least sixty (60) days prior to the license's expiration date.
- Provide a copy of the request for exception regulation text.
- Describe how to request an exception from the CE requirements.
- Describe limitations on and requirements for granting exceptions.
- Describe anticipated time frames for processing exception requests and specify that the exception request should be submitted prior to submission of the renewal application.

Amend Section 1887.3 — Continuing Education Course Requirements

Section 1887.3 sets forth specific CE course requirements for MFTs and LCSWs, which includes a limit on the amount of coursework that can be earned through self-study; permits a licensee who teaches a course to claim credit for the course once per renewal period; prohibits a licensee from claiming the same course more than once during a renewal period; and prohibits a licensee who takes CE as a condition of probation from applying the course toward license-required CE. This section also requires licensees to take courses in substance abuse, HIV and AIDS, and law and ethics. The proposed regulation would do all of the following:

- Require LEPs to complete at least fifteen (15) contact hours of coursework in spousal or partner abuse assessment, detection and intervention strategies and same gender abuse dynamics during his or her first renewal on or after January 1, 2011.

- Require LEPs to complete a three-hour CE course in aging and long-term care during his or her first renewal period on or after January 1, 2011. The course would include the biological, social and psychological aspects of aging.
- Require LEPs, beginning January 1, 2011 and through December 31, 2011, to complete at least 18 hours of CE prior to his or her license renewal. On or after January 1, 2012, all LEPs would be required to complete 36 units of CE prior to biennial renewal.
- Clarify that a licensee must take 36 units of CE during each renewal period pursuant to BPC sections 4980.54, 4989.34 and 4996.22.
- Remove a reference to BPC section 29 in subdivision (b) of this Section.
- Clarify that the 36-hour coursework requirement occurs during each renewal period and includes a minimum of six (6) hours of content in law and ethics.

Amend Section 1887.4 — Continuing Education Course Content

Section 1887.4 requires CE providers to ensure that course content is relevant to the practice of MFTs and LCSWS and related to direct or indirect care of clients. BPC section 4989.34(c) specifies that CE training, education and coursework for LEPs shall incorporate aspects of the discipline that are fundamental to the understanding or practice of educational psychology.

The proposed regulation would require CE course content for LEPs to be relevant to the practice of educational psychology and meet the requirements of BPC Section 4989.34. Course content for LEPs would also have to be related to direct or indirect patient/client care, including covering specialty areas of therapy and pragmatic aspects of clinical practice.

Amend Section 1887.5 — Hours of Continuing Education Credit

Section 1887.5 defines the equivalencies between hours and units of CE credit for MFTs and LCSWs. For purposes of counting CE credit, one hour of instruction is equal to one hour of CE credit. One academic quarter unit is equal to ten (10) hours of CE credit and one academic semester unit is equal to fifteen (15) hours of CE credit.

The proposed regulation would apply current regulations for MFTs and LCSWs related to the method of counting hours of CE credit for other Board licensees to LEPs.

Amend Section 1887.6 — Continuing Education Providers

Section 1887.6 specifies from whom a LCSW or MFT can take a CE course, including an accredited or

approved postsecondary institution or a board-approved provider. BPC section 4989.34 authorizes the Board to establish, by regulation, a procedure for approving providers of LEP CE courses and to set minimum standards for those CE course providers.

The proposed regulation would require LEPs to take CE from an accredited or approved school or board-approved provider as required by BPC section 4989.34.

Amend Section 1887.7 — Board-Approved Providers

Section 1887.7 sets forth the qualifications for an applicant to become a board-approved CE provider for LCSWs and MFTs, including submission of an application and fees. This section also sets forth the terms of renewal of a CE provider approval and change of ownership, specifies that an approval is not transferable, and prohibits a CE provider from presenting a course for credit when the provider’s approval is expired.

The Board is proposing minor language clean up to refine the regulation by removing outdated or unnecessary language and by adding technical language for clarity. The Board also proposes to apply its current procedure for approving MFT and LCSW CE providers to LEP CE providers.

This proposal would additionally revise the form incorporated by reference “Continuing Education (CE) Provider Application”, Form No. 1800 37A-633 (revised 02/09) as follows:

- Make technical revisions to the form’s header for consistency with other Board forms.
- Specify the application fee at \$200.
- Delete requirements for disclosure of prior license status with the Department of Consumer Affairs (DCA) and replace it with a requirement for disclosure of prior application history to the Board for CE provider approval.
- Require an explanation of how each course relates to the scope of practice for LCSWs, LEPs or MFTs.
- Notify applicants of the 6 to 8 weeks processing time for the application.
- Make grammatical or other technical changes to the Application instructions, including updating addresses and phone contact information.
- Provide disclosures to the applicant in the Application’s instructions regarding the collection and use of information disclosed.

Amend Section 1887.8 — Revocation and Denial of Board-Approved Provider Status

Section 1887.8 specifies the grounds for revocation or denial of a MFT or LCSW CE provider approval, including a substantially related misdemeanor or felony conviction, failure to comply with licensing-related

laws (if also a board licensee), or making material misrepresentation of fact in information submitted to the board. This section also provides the parameters for when a board decides to revoke or deny its approval of a provider and sets forth the terms of a CE appeals committee.

The proposed regulation would apply the current procedures and standards for MFT and LCSW CE providers to LEP CE providers.

Amend Section 1887.9 — Course Advertisements

Section 1887.9 specifies requirements for MFT or LCSW CE course advertisements, including that the information published is accurate and contains minimum disclosures.

The proposed regulation would require the same standards for providers of LEP CE.

Amend Section 1887.10 — Course instructor Qualifications

Section 1887.10 sets forth MFT or LCSW CE minimum course instructor qualifications and requires a healing arts licensee who is restricted pursuant to a disciplinary action to notify all CE providers for whom he or she provides instruction.

The proposed regulation would apply the current standards for MFT and LCSW CE course instructors to LEP CE course instructors.

Amend Section 1887.11 — Records of Course Completion

Section 1887.11 requires MFT or LCSW CE providers to issue a record of course completion in a specified form and containing mandated items of disclosure, to the licensee.

The proposed regulation would require the same of LEP CE providers.

Amend Section 1887.12 — Licensee and Provider Course Records

Section 1887.12 sets forth requirements for maintenance of course records for MET and LCSW licensees (two years) and CE providers (four years). This section also permits the board to audit the course records of a provider.

The proposed regulation would apply the current procedures and standards for MFT and LCSW CE providers to LEP CE providers.

Amend Section 1887.13 — Renewal of Expired Approval

Section 1887.13 sets forth the requirements for a LCSW or MFT CE provider approval renewal, and requires delinquent providers to submit a letter to the board stating that no courses were presented while the approval was expired, or, if a course was provided while the approval was expired, that participants were notified of such and that the CE hours will not be disallowed

by the board if the provider renews within one (1) year after expiration.

The proposed regulation would apply the current procedures and standards for MFT and LCSW CE providers to LEP CE providers.

Amend Section 1887.14 — Time Limit for Renewal of Approval After Expiration; New Approval

Section 1887.14 sets forth the time limit for renewal of a MFT or LCSW CE provider approval after expiration and the requirements for a new approval.

This proposed regulatory change would apply the current procedures and standards for MFT and LCSW providers to LEP CE course providers.

Forms Incorporated by Reference

This proposed rulemaking also makes changes to two forms incorporated by reference that are currently used by the Board related to CE:

- Section 1887.2: “Request for Continuing Education Exception — Licensee Application”, Form 1800 37A–635 (Revised 02/09).
- Section 1887.7: “Continuing Education (CE) Provider Application”, Form 1800 37A–633 (Revised 02/09)

Additionally, a new form is being added by reference to Section 1887.2(d)(2), “Request for Continuing Education Exception — Verification of Disability or Medical Condition”, Form 1800 37A–636 (New 02/09).

FISCAL IMPACT ESTIMATES

Local Mandate: None

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

Nondiscretionary Costs/Savings to Local Agencies: None

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

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

AND

The following studies/relevant data were relied upon in making the above determination: There would be very minor costs to businesses to comply with the CE requirements for LEPs which would cost each business approximately \$90 per year. This is based on the cost

per unit of CE averaging \$5 (it ranges from free to \$10 per unit, based on a review of seven websites offering CE to MFTs and LCSWs from BBS–approved providers) at 18 units required per year. There would be minor costs to businesses who want to provide CE courses to LEPs at \$200 initially (application fee) and \$200 every two years thereafter (renewal fee).

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal would create job and business opportunities for those who want to provide CE to LEPs. Otherwise, this proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses:

CE costs an average of \$5 per unit. LEPs will be required to complete 18 units per year for an average cost of \$90 per person per year. For LEPs who have a disability or medical condition and want to apply for an exception to CE, there would be an approximate \$300 cost related to an evaluation or forms completion by a physician or psychologist. Finally, those who wish to provide CE to LEPs and are not currently approved by the Board as a CE provider will have an initial application cost of \$200 and \$200 renewal fee every two years.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would have a minor impact on small businesses. The implementation of a CE program for LEPs would have a minimal impact on a small business. The board estimates that 767 LEPs own a small business and it would cost \$90 per year to comply. Additionally, there would be a minor impact on small businesses who wish to offer CE to LEPs (those that are not already registered with the board as a CE provider). The costs to these small businesses is \$200 to apply and \$200 to renew every two years.

The changes to the board’s CE exception regulation could present a minimal cost impact to the approximately 85 small businesses per year owned by MFTs, LCSWs or LEPs with a disability or medical condition who apply for an exception to CE. The cost would be approximately \$300 for a physician or psychologist to evaluate the licensee and/or complete paperwork for the board’s records.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either

be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing provided for in this Notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL AND AVAILABILITY OF MODIFIED TEXT

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Contact Person listed below.

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

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

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the Contact Person named below (or by accessing the Web site listed below).

CONTACT PERSON

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

Name: Tracy Rhine
Address: 1625 North Market Blvd., Suite S200
Sacramento, CA 95834
Telephone: 916-574-7847
Fax: 916-574-8625
Email: tracy_rhine@dca.ca.gov

OR

Name: Christy Berger
Address: 1625 North Market Blvd., Suite S200
Sacramento, CA 95834
Telephone: 916-574-7834
Fax: 916-574-8625
Email: Christy_berger@dca.ca.gov

If the regulations adopted by the Board differ from and are substantially related to the action proposed, the text of the proposed regulations with changes clearly indicated will be made available to the public for 15 days prior to the date of adoption.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.bbs.ca.gov.

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on December 14, 2009.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board office not later than 15 days before the close of the written comment period.

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference. Pursuant to the authority vested by Section 4005 of the Business and Professions Code, and to implement, interpret or make specific Sections 123, 496, and 4200 of said Code, the Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 4005 generally authorizes the board to amend rules and regulations necessary for the protection of the public pertaining to the practice of pharmacy and the administration of Chapter 9 of Division 2 of the Business and Professions Code.

Business and Professions Code section 123 sets forth the criminal penalty for a person who engages in conduct which subverts or attempts to subvert any licensing examination or the administration of an examination.

Business and Professions Code section 496 authorizes the board to deny, suspend, revoke, or otherwise restrict applicants or licensees who violate the provisions of Business and Professions Code section 123.

Business and Professions Code section 4200 generally provides for the license requirements of an applicant for a pharmacist license. One of the qualifying criteria is that an applicant must pass the written and practical examination given by the board prior to December 21, 2003, or pass the North American Pharmacist Licensure Examination (NAPLEX).

Existing regulation at Title 16 California Code of Regulations (CCR) section 1721 specifies that an applicant who engages in dishonest conduct during the examination shall not be approved to take the examination for twelve months from the date of the incident, that the applicant shall surrender his or her intern card until eligible to take the examination, and that an applicant may not be issued a pharmacy technician license until the applicant is again eligible to take the examination.

This proposed regulation would amend Section 1721 to increase the period of time that an applicant for examination as a pharmacist is not approved to take the examination from twelve months to three years, if the applicant engages in dishonest conduct during the examination. Further, this proposed regulation would provide that an intern 'license' (not card) shall be surrendered until such time that the applicant is eligible to take the examination. This latter amendment ensures that the terminology in Section 1721 is consistent with the language in Section 4208 of the Business and Professions Code related to an intern pharmacist license.

Existing regulation in 16 CCR 1723.1 declares that examination questions are confidential and provides that an applicant who subverts the licensing examination may be disqualified as a candidate for a license.

This proposed regulation would strengthen the existing penalty provided in Section 1723.1 by adding the following requirements: (1) that the applicant shall not be approved to take the examination for three years from the date of the incident; and, (2) that the applicant shall surrender his or her intern license until he or she is again eligible to take the examination. The proposed regulation would further provide that the applicant would not be issued a pharmacy technician license until the applicant is again eligible to take the examination.

The board has determined that the amendments to 16 CCR sections 1721 and 1723.1 to increase the penalties as proposed are necessary to further protect from subversion the CPJE examination.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17530 Require Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts or evidence/documents/testimony:

From calendar year 2005 through 2009, the board has denied licensure or eligibility to take the California Practice Standards and Jurisprudence Examination (CPJE) due to dishonest conduct or exposure of a qualifying examination to three persons. Applicants for licensure who apply for and take the CPJE pay a fee (as specified in 16 CCR §1749(d)). If a person is denied licensure or eligibility to take the examination because they are found to have engaged in dishonest conduct or they expose any part of the qualifying examination to another person they are precluded from again taking that examination for a period of time specified in the regulations. As such, there is no cost to a person or to a business to comply with the regulation. However, the cost to generate a new test item for the CPJE examination is approximately \$2,000 per item and compromised test items not only pose a financial loss to the board, but also inhibit the board's ability to test for minimum competency. Further, if an otherwise incompetent applicant passes the exam because the exam has been compromised, such a breach is a public safety issue.

Impact on Jobs/New Businesses: The Board of Pharmacy has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board of Pharmacy is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulatory proposal will not have a significant adverse economic impact on businesses since the regulation would only be applicable to applicants for examination as a pharma-

cist who engage in dishonest conduct during an examination as a pharmacist or who subvert any part of a qualifying examination.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Pharmacy has determined that this proposed regulation would not affect small businesses because the regulation is applicable only to applicants for examination as a pharmacist who engage in dishonest conduct during an examination for licensure as a pharmacist or who subvert any part of a qualifying examination.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments in writing relevant to the above determinations at the address listed for the Contact Person.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Pharmacy at 1625 N. Market Blvd., N219, Sacramento, California 95834, or from the Board of Pharmacy's Web site (www.pharmacy.ca.gov).

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written re-

quest to the contact person named below or by accessing the Board of Pharmacy's Web site (www.pharmacy.ca.gov).

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Carolyn Klein
Address: 1625 N. Market Blvd., N219
Sacramento, CA 95834
Telephone No.: (916) 574-7913
Fax No.: (916) 574-8618
E-Mail Address: Carolyn_Klein@dca.ca.gov

The backup contact person is:

Name: Anne Sodergren
Address: 1625 N. Market Blvd., N219
Sacramento, CA 95834
Telephone No.: (916) 574-7910
Fax No.: (916) 574-8618
E-Mail Address: Anne_Sodergren@dca.ca.gov

Website Access. Materials regarding this proposal can be found at www.pharmacy.ca.gov.

GENERAL PUBLIC INTEREST

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

NOTICE OF GENERAL PUBLIC INTEREST

Correction to Notice Previously Published on September 11, 2009

(Register 2009, No. 37-Z)

The Department of Housing and Community Development published a Notice of Proposed Action in the September 11, 2009 edition of the California Regulatory Notice Register (Register 2009, No. 37-Z, p. 1537) concerning the Uniform Multifamily Housing Program (UMR).

PLEASE BE ADVISED the deadline date for submitting written comments to the Department has been extended. Due to an inadvertent error, the original notice was not mailed to all interested parties. All aspects of the notice are the same as what was published on September 11, 2009. The deadline should read as follows:

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

written comment period Began September 11, 2009 and closes at 5:00 p.m. on December 14, 2009. The Department will consider comments received during this time-frame. Please address your comments to Lenora Frazier at lfrazier@hcd.ca.gov. Comments can also be sent via mail to Lenora Frazier, Department of Housing and Community Development, Legal Affairs Division, P.O. Box 952052, Sacramento, California 94252-2052 or via fax to (916) 323-2815 Attention: Lenora Frazier.

If you have any questions, please call the agency contact person mentioned above.

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

REQUEST FOR RELEVANT INFORMATION ON CHEMICALS BEING CONSIDERED FOR LISTING BY THE AUTHORITATIVE BODIES MECHANISM: DDE AND NITROBENZENE

October 30, 2009

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

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

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is requesting information as to whether 1,1-dichloro-2,2-bis(*p*-chlorophenyl)ethylene (DDE) and nitrobenzene meet the criteria for listing as reproductive toxicants under the Safe Drinking Water and Toxic Enforcement Act of 1986.¹ This action is being proposed under the authoritative bodies listing mechanism.²

Chemical	CAS No.	Endpoint	Reference	Chemical Use
1,1-Dichloro-2,2-bis(<i>p</i> -chlorophenyl)-ethylene (DDE)	72-55-9	Developmental, male reproductive	U.S. EPA (2008)	Environmental degradation product of DDT, an insecticide.
Nitrobenzene	98-95-3	Male reproductive	U.S. EPA (2009)	Used in the synthesis of other industrial chemicals and intermediates. Occurs in shoe and metal polishes and soaps.

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 reproductive toxicity (Section 25306(d)³).
- 2) The evidence considered by the authoritative body meets the sufficiency criteria contained in the regulations (Section 25306(g)).

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.

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

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(h)).

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

OEHHA is the lead agency for 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.

DDE

OEHHA's determination: DDE appears to meet the criteria for listing as known to the State to cause repro-

ductive toxicity under Proposition 65, based on findings of the U.S. Environmental Protection Agency (U.S. EPA, 2008).

Formal identification and sufficiency of evidence:

In 2008, the U.S. EPA published a report on DDE (U.S. EPA, 2008). This report concludes that the chemical causes developmental and male reproductive toxicity, and 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 conclusions in the report that DDE causes reproductive toxicity. The U.S. EPA report concludes:

“DDE has been found to be an antiandrogenic compound, which may explain a number of reproductive and developmental effects seen in male rats exposed to DDE at various ages.”

“Observed effects in the male animals include reduced anogenital distance and retention of thoracic nipples in pups exposed during gestation and lactation; delayed puberty in rats exposed either during juvenile development or at very high doses during gestation and lactation; and reduced accessory sex organ weights in exposed adult males.”

“[A]nimal studies also reveal susceptibility to DDE during development, particularly in males. In rats, exposure to 100 mg/kg/day during gestation resulted in a significant decrease in ventral prostate weight in males at 15 months of age and a decrease in weights of glans penis, ventral prostate, and epididymis at 10 months old; reduced anogenital distance and increased mean number of retained nipples also were observed in the newborns. Anogenital distance at birth was reduced in male rat pups exposed transplacentally to 100 mg/kg/day during gestational (and also unquantified pup exposure during lactation); the animals also had retained thoracic nipples on postnatal day 13 and a significant delay in the onset of puberty was reported.”

Based on the U.S. EPA report and the references cited in the report, the evidence appears sufficient for listing by the authoritative bodies mechanism.

Nitrobenzene

OEHHA’s determination: Nitrobenzene appears to meet the criteria for listing as known to the State to cause reproductive toxicity under Proposition 65, based on findings of the U.S. Environmental Protection Agency (U.S. EPA, 2009).

Formal identification and sufficiency of evidence:

In 2009, the U.S. EPA published a report on nitrobenzene (U.S. EPA, 2009). This report concludes that the chemical causes male reproductive toxicity, which ap-

pears 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 nitrobenzene causes reproductive toxicity. The U.S. EPA report concludes:

“In male rats (F344/N and CD) and mice (B6C3F1), nitrobenzene exposure via the inhalation and oral routes has been shown to cause testicular atrophy, including a dramatic decrease in sperm count with ensuing loss of fertility.”

“In rodents. . . nitrobenzene is a moderately effective male reproductive toxicant.”

There “is strong evidence for nitrobenzene to act as a male reproductive toxicant. . .”

Thus, the U.S. EPA (2009) has formally identified nitrobenzene as causing male reproductive toxicity in rodents.

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 DDE and nitrobenzene meet the regulatory criteria for administrative listing. If listing proceeds, OEHHA will publish a Notice of Intent to List.

In order to be considered, **comments must be received by OEHHA by 5:00 p.m. on Tuesday, January 6, 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 DDE and nitrobenzene. At the forum, the public may discuss the scientific data and other relevant infor-

mation on whether either chemical meets the criteria for listing in the regulations.

Requests for a public forum must be submitted in writing no later than **December 4, 2009**. 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

U.S. EPA, 2008: Health Effects Support Document for 1,1-Dichloro-2,2-bis(p-chlorophenyl)ethylene (DDE). U.S. Environmental Protection Agency Office of Water (4304T) Health and Ecological Criteria Division Washington, DC 20460. EPA Document Number EPA-822-R-08-003, January 2008 (www.epa.gov/safewater/ccl/pdf/DDE.pdf).

U.S. EPA, 2009: Toxicological Review of Nitrobenzene (CAS No. 98-95-3) in Support of Summary Information on the Integrated Risk Information System (IRIS). U.S. Environmental Protection Agency Washington, DC. EPA/635/R-08/004F January 2009 (www.epa.gov/iris).

**OAL REGULATORY
DETERMINATION**

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)**

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Date: October 15, 2009
To: Jon Christ
From: Chapter Two Compliance Unit

Subject: **2009 OAL DETERMINATION NO. 24(S)
(CTU2009-0811-02)**
(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 section 54030.10.4 concerning handicraft articles

On August 11, 2009, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether specific language in Department of Operations Manual (DOM) section 54030.10.4 issued by the California Department of Corrections and Rehabilitation (CDCR) constitutes an underground regulation. DOM section 54030.10.4 deals with the possession of handicraft materials. A copy of DOM section 54030.10.4 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, which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).¹ 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.

On March 2, 2009, the warden of California State Prison, Solano, issued a memorandum titled "Inmate Personal Property Limitations." You specifically challenge the following language in the memorandum:

DOM Section 54030.10.4 Inmate Handicraft states in part: *"Inmates who participate in handicraft programs may possess in their quarters/living area, handicraft articles, and written and artistic material produced or created by that inmate, consistent with departmental regulations and within the six cubic feet limitation."* (Emphasis in original memorandum.)

CDCR has adopted regulations governing the type and amount of personal property an inmate may possess. California Code of Regulations, title 15, section 3190 incorporates by reference the Authorized Personal Property Schedule (APPS). The APPS lists the allow-

¹ 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.

able personal property items an inmate may possess in each of the five mission-based regions² of the Division of Adult Institutions.³ The APPS is printed in Article 43 of the DOM. The APPS permits inmates in all of the regions to possess handicraft items upon institutional approval, depending on the level of security to which the inmate is assigned. For example, the APPS provides that inmates in security Levels I, II, III, and Male Conservation Camps, who are assigned to the general population, privilege groups A and B, may possess handicraft items. Inmates in the same institutions who are assigned to the Administrative Segregation Unit, privilege groups C and D, may not possess such items.

In addition to incorporating the APPS by reference, California Code of Regulations, title 15, section 3190(c) states:

The combined volume of state-issued and allowable personal property items shall not exceed six cubic feet, *except as specifically allowed in these regulations.* (Emphasis added.)

Section 3190(c) limits an inmate to no more than six cubic feet of personal property, unless an exception is provided for in title 15. Examples of exceptions from the six cubic foot limitation are section 3190(i)(1) that excepts health care appliances and section 3190(i)(2) that excepts legal material. We do not find, and you have not identified, an exception from the six cubic foot limitation for handicraft material. Handicraft material, therefore, is included in the general limitation of six cubic feet for personal property.

Since handicraft items are not specifically excluded by any other regulation in title 15, they are included in the limitation in section 3190(c) to six cubic feet of personal property. The language in DOM section 54030.10.4 that you challenge as an underground regulation refers specifically to handicraft materials, but does not further embellish on the limitation to six cubic feet of personal property items as set forth in California Code of Regulations, title 15, section 3190(c). The language you challenge in DOM section 54030.10.4 merely restates the general limitation in California Code of Regulations, title 15, section 3190(c). Section 3190(c) is a regulation duly adopted pursuant to the APA. The restatement of a properly adopted regulation is not an underground regulation.

² The five mission-based regions are:

- Reception Centers,
- Levels I, II, III, and Male Conservation Camps,
- California Out Of State Facilities and Community Correctional Facilities,
- Levels III and IV, High Security and Transitional Housing, and
- Female Offenders Programs.

³ The Division of Adult Institutions is the division within CDCR responsible for the administration of California prisons.

For the reasons discussed above, we find that the rule challenged by your petition 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
John McClure

Exhibit A

DOM Section 54030.10.4 Inmate Handicraft

Inmates who participate in handicraft programs may possess in their quarters/living area, handicraft articles, and written and artistic material produced or created by that inmate, consistent with departmental regulations and within the six cubic feet limitation. Facilities may designate additional storage for handicraft articles and materials based upon availability of space. Excess handicraft items, articles, or materials in an inmate's possession shall be confiscated and disposed of in accordance with Section 54030.12.2. Inmate donation of handicraft items, articles, tools, and materials to the institution is subject to provisions of Section 53080.14. Such articles shall be controlled by the hand-

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.

ircraft manager, become the property of the State, and shall be utilized in the same manner as other State owned tools and materials. (Language challenged as an underground regulation is shown in italics.)

DISAPPROVAL DECISION

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

State of California
Office of Administrative Law

In re:
California Integrated Waste Management Board

Regulatory Action: Title 14
California Code of Regulations

Adopt sections: 18453.1
Amend sections: 18449, 18450, 18451, 18453, 18453.1 (renumbered to 18453.3), 18453.2, 18454, 18455, 18456, 18456.1, 18456.2, 18456.3, 18456.4, 18457, 18459, 18459.1, 18459.1.2, 18459.2.1, 18459.3, 18460.1, 18460.1.1, 18460.2, 18461, 18462, 18463, 18464, 18466
Repeal sections: 18456.2.1, 18460.2.1

DECISION OF DISAPPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2009-0831-01 S

SUMMARY OF REGULATORY ACTION

In this proposed regulatory action, the California Integrated Waste Management Board (Board) adopts, amends, and repeals regulations in Article 8.5, Chapter 6, Division 7, Title 14 of the California Code of Regulations, an Article entitled "Waste Tire Hauler Registration and Manifesting Requirements for Used and Waste Tire Haulers, Retreaders, Used and Waste Tire Generators, and Used and Waste Tire End-Use Facilities." These regulations principally implement, interpret and make specific sections 42950 through 42967 of the Public Resources Code. In this rulemaking, the Board

proposes to revise regulatory provisions relating to the following: (1) the registration of used or waste tire haulers, (2) exemptions from the registration requirements, (3) used or waste tire hauler registration denials, suspensions and revocations, (4) the manifest system used to document the movement of used and waste tires from used or waste tire generators to used or waste tire haulers to end-use facilities, (5) the civil penalties that may be imposed by the Board, and (6) program definitions. The rulemaking includes the proposed adoption, amendment and repeal of a number of forms utilized in this used and waste tire hauler program.

DECISION

On October 13, 2009, the Office of Administrative Law (OAL) notified the Board of the disapproval of this regulatory action. The reasons for the disapproval were the following: (1) failure to comply with the "Clarity" standard of Government Code section 11349.1, (2) failure to comply with the "Consistency" standard of Government Code section 11349.1, (3) failure to comply with the "Necessity" standard of Government Code section 11349.1, (4) failure to meet all of the requirements for "Incorporation by Reference" as set forth in section 20 of title 1 of the California Code of Regulations (CCR), (5) failure to comply with all required Administrative Procedure Act procedures, and (6) a number of the required documents in the rulemaking file were defective.

/s/
Bradley J. Norris
Senior Staff Counsel

FOR: SUSANLAPSLEY
Director

Original: Mark Leary
Copy: Cathy Blair

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

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

File# 2009-0908-04
AIR RESOURCES BOARD
Large Spark-Ignition Engine Regulations (LSI)

This rulemaking action adopts more stringent emission standards for large spark-ignition engines.

Title 13
California Code of Regulations
AMEND: 2433
Filed 10/20/2009
Effective 11/19/2009
Agency Contact: Amy Whiting (916) 322-6533

File# 2009-0915-06
CALIFORNIA HORSE RACING BOARD
Coupling of Horses

The California Horse Racing Board proposed to amend section 1606 of title 4 of the California Code of Regulations to delete subsection (b)(2) which requires thoroughbred horses exempted under subsection (b) from coupling requirements of subsection (a) to be trained by a different trainer.

Title 4
California Code of Regulations
AMEND: 1606
Filed 10/20/2009
Effective 11/19/2009
Agency Contact: Harold Coburn (916) 263-6397

File# 2009-0929-02
COMMISSION ON PEACE OFFICER STANDARDS
AND TRAINING
Clarification and Various Corrections

This change without regulatory effect amends the date of two incorporated forms in title 11. Several other forms and guidelines that are for discretionary use are also having their revision dates amended. Other changes include amending the text to mirror statutory language and clarifying Selective Service requirements.

Title 11
California Code of Regulations
AMEND: 9052(c), 9053(b), 9053(c),
9053(e)(5)(A)4, 9053(e)(10)(A), 9053(e)(10)(B),
9054(e)(4), 9057(b), 9059(b), 9059(c),
9059(e)(9)(A), 9059(e)(9)(B), 9060(e)(4)
Filed 10/14/2009
Agency Contact: Patti Kaida (916) 227-4847

File# 2009-0908-01
DEPARTMENT OF BOATING AND WATERWAYS
Equipment and Training Regulations

This action establishes the regulations for the administration of grants of federal funds to local governments

for the purchase of boats, trailers and support equipment to be used in boating safety programs and law enforcement, related training for local agency personnel, and reimbursement of training expense.

Title 14
California Code of Regulations
ADOPT: 6594, 6594.1, 6594.2, 6594.3, 6594.4,
6594.5, 6594.6, 6594.7, 6594.8, 6594.9, 6594.20,
659.21, 6594.22, 6594.23, 6594.24, 6594.25,
6594.26, 6594.27, 6594.40, 6594.41, 6594.42,
6594.43, 6594.44, 6594.45, 6594.46, 6594.47
Filed 10/20/2009
Effective 11/19/2009
Agency Contact: Mike Sotelo (916) 263-0787

File# 2009-0903-07
DEPARTMENT OF CORRECTIONS AND
REHABILITATION
ETO for Religious Events

This regulatory action allows for the use of excused time off (ETO) for attendance at routine religious services.

Title 15
California Code of Regulations
AMEND: 3045.2
Filed 10/14/2009
Effective 11/13/2009
Agency Contact: John McClure (916) 255-5464

File# 2009-0908-02
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This is the certificate of compliance for three prior emergency regulatory actions (OAL file nos. 2009-0127-01 E, 2009-0217-01 E and 2009-0304-02 E) that established or enlarged quarantine areas for the Light Brown Apple Moth (*Epiphyas postvittana*) in Marin, Monterey, San Benito, Santa Clara, Santa Cruz, San Mateo and Sonoma counties.

Title 3
California Code of Regulations
AMEND: 3434(b)
Filed 10/15/2009
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2009-0903-03
DEPARTMENT OF HOUSING AND COMMUNITY
DEVELOPMENT
MH-Seismic Bracing of Water Heater Appliances

Department of Housing and Community Development (Department) adopted three sections under a new title 25 article to implement amendments to the Health and Safety Code made in AB 2050 (Stats.2008, ch.

737). The action establishes statewide requirements and standards for seismic bracing, anchoring, or strapping of existing or replacement gas-burning water heaters installed in all new and used manufactured homes, multifamily manufactured homes, or mobilehomes. The standards are based on similar residential construction standards in title 24, section 508 of the California Plumbing Code and standards recommended by the National Fire Protection Association. Criteria are also provided to allow dealers or owners of manufactured homes to certify compliance with the seismic bracing standards upon registering homes with the Department, and to exempt installers from any permit requirements when the only modification to a home is for compliance with these regulations. The regulations were submitted to be effective upon filing with the Secretary of State.

Title 25
 California Code of Regulations
 ADOPT: 4100, 4102, 4104
 Filed 10/15/2009
 Effective 10/15/2009
 Agency Contact:
 Keisha Wickham (916) 322-1473

File# 2009-0903-02
 DEPARTMENT OF INSURANCE
 Improve the Correlation Between Auto Premium and Actual Miles Driven

Insurance Code section 1861.02(a) provides that one of the factors in determining the rates and premiums for an automobile insurance policy shall be the number of miles a policyholder drives annually. This regulatory action authorizes insurers to determine the number of miles the policyholder drives by means of a verified actual mileage program in addition to or instead of the current estimated annual mileage program. This amendment establishes the requirements and conditions for a verified actual mileage program.

Title 10
 California Code of Regulations
 AMEND: 2632.5
 Filed 10/15/2009
 Effective 10/15/2009
 Agency Contact: Daniel Goodell (415) 538-4191

File# 2009-0902-01
 DEPARTMENT OF PUBLIC HEALTH
 Testing Standards for Labs Performing HIV Screening

The Department of Public Health (Department) proposed to amend Title 17 of the California Code of Regulations, section 1230 to revise the standards for approv-

al of facilities that perform screening tests for the presence of human immunodeficiency virus (HIV).

Title 17
 California Code of Regulations
 ADOPT: 1230 REPEAL: 1230
 Filed 10/15/2009
 Effective 11/14/2009
 Agency Contact:
 Rosalie Dvorak-Remis (916) 327-4310

File# 2009-0915-07
 FISH AND GAME COMMISSION
 Blue Grouse

This action corrects a mention of blue grouse to the correct name of sooty grouse. This conforms to changes that had been made in a previous non-substantive filing.

Title 14
 California Code of Regulations
 AMEND: 300
 Filed 10/20/2009
 Agency Contact:
 Sherrie Fonbuena (916) 654-9866

File# 2009-1015-01
 STATE WATER RESOURCES CONTROL BOARD
 Emergency Fee Regulations to Conform with Budget Act 2009-10

On September 15, 2009, the State Water Resources Control Board adopted Resolution 2009-0071, which revised the emergency water right fee regulations and schedules to be consistent with the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2009-2010. Under the Water Code and existing regulations, a person filing a water right application, petition, registration, groundwater recordation or other filing, must pay a filing fee to the State Water Board. Existing regulations also establish annual fees for water right permits, licenses, water leases, and applications. In addition, the existing regulations establish requirements for filing a petition for reconsideration of a fee determination made by the Board. In general, these emergency regulations would adjust the fee schedule to (1) provide a one-time credit on annual permit or license fees to bring revenues in line with anticipated expenditures for FY 2009-2010, (2) reduce the filing fees for the groundwater recordation program to bring revenues in line with anticipated expenditures, (3) adjust the fee caps on certain filing fees to coincide with the changes in the consumer price index, and (4) clarify fee language for petitions involving water transfers and petitions for temporary urgency involving water transfers.

Title 23
 California Code of Regulations
 AMEND: 1062, 1064, 1066, 1070
 Filed 10/21/2009
 Effective 10/21/2009
 Agency Contact: Erin Mahaney (916) 341-5187

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN May 20, 2009 TO
 October 21, 2009**

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

Title 2

10/01/09 AMEND: 2291, 2292, 2294 ADOPT: 2297
 10/01/09 AMEND: 1898.2, 1898.7
 09/22/09 ADOPT: 18603, 18603.1
 09/22/09 ADOPT: 18901.1 AMEND: 18420.1
 09/18/09 AMEND: 1859.76
 09/17/09 AMEND: 2270, 2271
 09/14/09 AMEND: 588.1, 588.2
 08/31/09 ADOPT: 1859.324.2 AMEND: 1859.302, 1859.324.1, 1859.330
 08/03/09 ADOPT: 647.5, 647.25, 647.36, 647.37.1 AMEND: 647.1, 647.2, 647.3, 647.4, 647.20, 647.20.1, 647.22, 647.23, 647.24, 647.26, 647.30, 647.31, 647.32, 647.33, 647.35, 647.38 REPEAL: 647.25, 647.34
 07/30/09 ADOPT: 1899.570, 1899.575, 1899.580, 1899.585
 07/20/09 ADOPT: 721
 07/07/09 AMEND: 18450.4
 07/06/09 AMEND: 18940.2
 06/15/09 ADOPT: 18746.4 AMEND: 18741.1, 18746.1, 18746.3
 06/12/09 ADOPT: 649.14, 649.17, 649.18, 649.23, 649.25, 649.29, 649.32, 649.33, 649.48 AMEND: 647.4, 649, 649.2, 649.4, 649.7, 649.8, 649.11, 649.12, 649.13, 649.15, 649.16, 649.22, 649.24, 649.26, 649.27, 649.28, 649.30, 649.31, 649.35, 649.36, 649.50, 649.51, 649.57, 649.58, 649.59, 649.62 REPEAL: 649.3, 649.6, 649.9, 649.10, 649.14, 649.23, 649.25

06/09/09 ADOPT: 18405
 06/01/09 ADOPT: 250.1
 05/21/09 AMEND: 18705.1

Title 3

10/15/09 AMEND: 3434(b)
 10/08/09 AMEND: 3434(b)
 10/08/09 AMEND: 3591.20(a)
 09/24/09 AMEND: 3406(b)
 09/24/09 AMEND: 3434(b)
 09/22/09 AMEND: 6562
 09/15/09 AMEND: 3434(b)
 09/14/09 AMEND: 3435(b)
 09/10/09 ADOPT: 2300.1, 2300.2, 2300.3 AMEND: 2300
 09/09/09 AMEND: 3434(b)
 09/03/09 AMEND: 3434(b)
 09/01/09 AMEND: 3435(b)
 08/28/09 AMEND: 3434(b)
 08/27/09 AMEND: 3435(b)
 08/27/09 AMEND: 3588
 08/26/09 AMEND: 6400, 6502, 6620, 6626(a)-(b), 6626(c), 6627, 6670, 6672, 6736, and incorporated by reference forms
 08/20/09 AMEND: 3406(b)
 08/20/09 AMEND: 3591.13(a)
 08/13/09 AMEND: 3434(b)
 08/13/09 AMEND: 6618, 6619, 6761.1, 6770, 6771
 08/12/09 ADOPT: 902.15
 08/07/09 AMEND: 3406(b)
 08/05/09 AMEND: 3434(b), 3434(c)
 08/04/09 AMEND: 3423(b)
 07/31/09 ADOPT: 3436
 07/24/09 AMEND: 3434(b)
 07/22/09 ADOPT: 3591.23
 07/22/09 AMEND: 3406(b)
 07/21/09 AMEND: 3591.2(a)
 07/20/09 AMEND: 3591.20(a)
 07/13/09 AMEND: 625
 07/07/09 AMEND: 3435
 07/02/09 AMEND: 3423(b)
 06/30/09 AMEND: 3434(b)
 06/22/09 AMEND: 3434(b)
 06/19/09 AMEND: 3591.20(a)
 06/15/09 AMEND: 3406(b)
 06/15/09 AMEND: 3434(b)
 06/01/09 AMEND: 3406(b)
 06/01/09 ADOPT: 3408
 05/26/09 AMEND: 3434(b)
 05/20/09 AMEND: 3434(b)
 05/20/09 AMEND: 3434(b)

Title 4

10/20/09 AMEND: 1606

06/24/09 AMEND: 2498.4.9
 06/24/09 AMEND: 2498.4.9
 06/24/09 AMEND: 2498.4.9
 06/01/09 ADOPT: Article 1, 2031.1, 2031.2, 2031.3, 2031.4, 2031.5, 2031.6, Article 2, 2031.7, 2031.8, Article 3, 2031.9, Article 4, 2031.10
 06/01/09 ADOPT: 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10
 06/01/09 ADOPT: 2850.1, 2850.2, 2850.3, 2850.4, 2850.5, 2850.6, 2850.7, 2850.8, 2850.9, 2850.10
 05/29/09 ADOPT: 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5507

Title 11

10/14/09 AMEND: 9052(c), 9053(b), 9053(c), 9053(e)(5)(A)4, 9053(e)(10)(A), 9053(e)(10)(B), 9054(e)(4), 9057(b), 9059(b), 9059(c), 9059(e)(9)(A), 9059(e)(9)(B), 9060(e)(4)
 05/21/09 AMEND: 1005, 1007, 1008

Title 12

10/13/09 ADOPT: 600 REPEAL: 600
 09/17/09 ADOPT: 508

Title 13

10/20/09 AMEND: 2433
 10/13/09 ADOPT: 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359
 09/16/09 ADOPT: 2468, 2468.1, 2486.2, 2468.3, 2468.4, 2468.5, 2468.6, 2468.7, 2468.8, 2468.9, 2468.10
 09/01/09 AMEND: 2222
 08/24/09 AMEND: 2193
 08/12/09 AMEND: 2020(b)
 07/29/09 AMEND: 599
 07/17/09 AMEND: 2111, 2112, Appendix A, 2139, 2147, 2440, 2441, 2442, 2443.1, 2443.2, 2443.3, 2444.1, 2444.2, 2445.1, 2445.2, 2446, 2447, 2474, Documents Incorporated by Reference REPEAL: 2448
 06/29/09 AMEND: 2702, 2704
 06/16/09 AMEND: 1239
 06/04/09 ADOPT: 2340, 2341, 2342, 2343, 2344, 2345
 05/22/09 ADOPT: 225.38 AMEND: 225.00, 225.03, 225.06, 225.09, 225.21, 225.35, 225.45, 225.48, 225.54, 225.72

Title 13, 17

05/29/09 ADOPT: Title 13: 2299.2, Title 17: 93118.2 AMEND: Title 13: 2299.1, Title 17: 93118

Title 14

10/20/09 ADOPT: 6594, 6594.1, 6594.2, 6594.3, 6594.4, 6594.5, 6594.6, 6594.7, 6594.8, 6594.9, 6594.20, 659.21, 6594.22, 6594.23, 6594.24, 6594.25, 6594.26, 6594.27, 6594.40, 6594.41, 6594.42, 6594.43, 6594.44, 6594.45, 6594.46, 6594.47
 10/20/09 AMEND: 300
 10/07/09 AMEND: 122
 10/05/09 AMEND: 670.5
 09/15/09 AMEND: 502
 08/25/09 AMEND: 257, 300, 311, 313
 08/24/09 ADOPT: 749.4
 07/14/09 AMEND: 124
 07/13/09 AMEND: 163
 06/23/09 AMEND: 3959(b)(4)
 06/23/09 ADOPT: 4351.1 AMEND: 4351
 06/16/09 AMEND: 753.5
 06/15/09 AMEND: 27.80
 06/12/09 AMEND: 265, 353, 360, 361, 362, 363, 364, 555, 708
 06/02/09 AMEND: 7.50(b)(91.1)
 05/26/09 AMEND: 7.00, 7.50
 05/21/09 AMEND: 7.50(b)(178)

Title 15

10/14/09 AMEND: 3045.2
 10/06/09 AMEND: 3000, 3173.1, 3176, 3176.3, 3315, 3323
 09/29/09 AMEND: 3341.5
 08/18/09 ADOPT: 1800, 1806, 1812, 1814, 1830, 1831, 1840, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1856, 1857, 1860, 1866, 1867, 1868, 1870, 1872, 1876, 1878, 1888, 1890, 1892
 08/11/09 AMEND: 2253
 08/11/09 ADOPT: 3650, 3651, 3652, 3653, 3654 REPEAL: 3652.1
 07/28/09 ADOPT: 3077, 3077.1, 3077.2, 3077.3, 3077.4 AMEND: 3000, 3043.6, 3375
 06/17/09 ADOPT: 3640, 3730 AMEND: 3500, 3501, 3502, 3600, 3610, 3620, 3625, 3630, 3740
 06/17/09 ADOPT: 3099

Title 16

10/08/09 AMEND: 1888
 10/07/09 ADOPT: 1399.90, 1399.91, 1399.92, 1399.93, 1399.94, 1399.95, 1399.96, 1399.97, 1399.98, 1399.99 REPEAL: 1399.50, 1399.52
 10/05/09 ADOPT: 1399.514
 09/16/09 ADOPT: 1950.1 AMEND: 1984

09/16/09	ADOPT: 1399.720, 1399.721, 1399.722, 1399.723, 1399.724, 1399.725	3.2, 3.6, 8.1, 8.2, 8.3, 11.6, 13.9, 14.2, 14.3, 14.6, 15.2, 17.3, 17.4, 18.1
09/08/09	AMEND: 2310	
08/24/09	AMEND: 4161	
08/11/09	AMEND: 2504.1, 2517.5, 2537, 2540.6, 2564.1, 2575.5, 2590, 2592.6	
08/05/09	AMEND: 995	
08/05/09	AMEND: 1399.15	
08/04/09	ADOPT: 1773.5 AMEND: 1773	
07/28/09	AMEND: 4110	
07/27/09	AMEND: 4130	
07/24/09	AMEND: 1391.10, 1391.12	
07/24/09	AMEND: 1387, 1387.6	
07/17/09	AMEND: 1999.5	
06/26/09	ADOPT: 2611 AMEND: 2606, 2614, 2615, 2616, 2621, 2649 REPEAL: 2612, 2613, 2623	
06/26/09	AMEND: 426.51	
06/16/09	AMEND: 1524	
06/12/09	AMEND: 2021, 2068.5, 2068.6 REPEAL: 2067, 2068	
06/03/09	AMEND: 1888	
06/02/09	AMEND: 1419, 1419.1, 1419.3	
05/20/09	ADOPT: 1815 AMEND: 1886.40	
Title 17		
10/15/09	ADOPT: 1230 REPEAL: 1230	
09/22/09	AMEND: 2500, 2502, 2505	
09/18/09	AMEND: 100500	
09/01/09	ADOPT: 95360, 95361, 95362, 95363, 95364, 95365, 95366, 95367, 95368, 95369, 95370	
08/19/09	ADOPT: 100081	
08/13/09	AMEND: 6500.74, 6500.77	
06/18/09	AMEND: 94508, 94509, 94510, 94512, 94513, 94515	
Title 18		
09/29/09	AMEND: 1620	
07/30/09	AMEND: 1668	
06/04/09	AMEND: 1532, 1533.1, 1533.2, 1534, 1535	
05/21/09	AMEND: 25114	
Title 20		
08/03/09	AMEND: 1670, 1671, 1672, 1673, 1674, 1675	
07/10/09	AMEND: 1601, 1602, 1604, 1605.3, 1606	
07/10/09	AMEND: 1601, 1602, 1603, 1604, 1605.1, 1605.2, 1605.3, 1606, 1607, 1608	
06/23/09	AMEND: 3.1, 3.2, 4.3, 8.6, 10.3, 11.3, 13.2	
06/04/09	AMEND: 1.4, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 2.3, 2.6,	
Title 21		
10/06/09	ADOPT: 1412.1, 1412.2, 1412.3, 1412.4, 1412.5, 1412.6, 1412.7, 1412.8, 1412.9	
09/16/09	ADOPT: 7700, 7701, 7702, 7703, 7704, 7705, 7706, 7707, 7708, 7709, 7710, 7711	
06/22/09	ADOPT: 7700, 7701, 7702, 7703, 7704, 7705, 7706, 7707, 7708, 7709, 7710, 7711	
Title 22		
08/31/09	ADOPT: 2706-7	
07/31/09	AMEND: 80001, 85002 and 85068.4	
07/23/09	AMEND: 120201	
07/22/09	AMEND: 51529	
07/20/09	AMEND: 68201, 68202, 68205, 68206, 68207, 68208, 68209, 68210, 68211, and Appendix 1 to Article 1 of Chapter 47	
07/13/09	AMEND: 66273.3, 66273.39	
06/17/09	AMEND: 926-3, 926-4, 926-5	
05/21/09	AMEND: 2601-1	
Title 23		
10/21/09	AMEND: 1062, 1064, 1066, 1070	
10/06/09	AMEND: 3939.2	
09/30/09	ADOPT: 570, 571, 572, 573, 574, 575, 576	
09/30/09	AMEND: 3939.2	
09/16/09	ADOPT: 2814.20, 2814.21, 2814.22, 2814.23, 2814.24, 2814.25, 2814.26, 2814.27, 2814.28, 2814.29, 2814.30, 2814.31, 2814.32, 2814.33, 2814.34, 2814.35, 2814.36, 2814.37 REPEAL: 2814.20, 2814.21, 2814.22, 2814.23, 2814.24, 2814.25, 2814.26, 2814.27, 2814.28, 2814.29, 2814.30, 2814.31, 2814.32, 2814.33, 2814.34, 2814.35, 2814.36, 2814.37	
09/15/09	ADOPT: 2910.1	
09/15/09	ADOPT: 3989.9	
09/10/09	ADOPT: 490.1, 492.1, 492.2, 492.3, 492.4, 492.5, 492.6, 492.7, 492.8, 492.9, 492.10, 492.11, 492.12, 492.13, 492.14, 492.15, 492.16, 492.17, 493.1, 493.2 AMEND: 490, 491, 492, 493, 494 REPEAL: 495	
08/05/09	ADOPT: 3959.2	
07/09/09	ADOPT: 3959.3	
06/25/09	ADOPT: 3989.8	
06/16/09	ADOPT: 3939.36	
06/01/09	ADOPT: 2631.2	
Title 25		
10/15/09	ADOPT: 4100, 4102, 4104	

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09/17/09 AMEND: 637

09/17/09 AMEND: 1008

09/08/09 ADOPT: 7980, 7980.1, 7982, 7982.1,
7982.2, 7982.3, 7982.4, 7983, 7983.1,
7983.2, 7983.3, 7983.4, 7983.5, 7984,
7984.1, 7984.2

08/19/09 ADOPT: 4200, 4202, 4204, 4205, 4206,
4208, 4210, 4212, 4214, 4216

05/22/09 ADOPT: 4200, 4202, 4204, 4206, 4208,
4210, 4212, 4214, 4216

05/20/09 AMEND: 8217

Title 27

07/23/09 AMEND: 25204

Title MPP

09/22/09 AMEND: 40-107, 42-213, 89-130

08/31/09 ADOPT: 31-021 AMEND: 31-003,
31-410, 31-501

07/06/09 ADOPT: 31-003, 31-502 AMEND:
31-002

06/29/09 AMEND: 11-425, 22-001, 22-003,
22-009, 45-302, 45-303, 45-304,
45-305, 45-306