



California Regulatory Notice Register

REGISTER 2015, NO. 44-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

OCTOBER 30, 2015

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

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

PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: Oxford Preparatory Academy

ADOPTION

MULTI-COUNTY: Municipal Insurance Cooperative

A written comment period has been established commencing on October 30, 2015, and closing on December 14, 2015. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

The Executive Director of the Commission, upon her or its own motion or at the request of any interested per-

son, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than December 14, 2015. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Office of the Attorney General, pursuant to the authority vested in it by sections 82011, 87303, and 87304 of the Government Code will review proposed amendments to the conflict-of-interest code of the Fair Political Practices Commission (hereinafter "Commission").

The Office of the Attorney General has established a written comment period commencing on **October 30, 2015**, and closing on **December 14, 2015**, during which interested persons may comment on the proposed amendment of the Commission's Code. Interested persons should direct their written statements, arguments, or comments, concerning the proposed amendments to Deputy Attorney General Ted Prim, Office of the Attorney General, 1300 I Street, Room 125, Sacramento, CA. 95814. Any written comments must be received no later than 5:00 p.m. on December 14, 2015.

At the end of the 45-day comment period, the proposed amendments to the conflict-of-interest code will be submitted to the Chief Deputy Attorney General for review, unless an interested person requests a public hearing no later than 15 days prior to the close of the written comment period. If a public hearing is requested, it will be conducted at **10:00 a.m., on December 14, 2015**, by a designee of the Chief Deputy Attorney General at 1300 I Street, Sacramento, California. If this hearing is held, oral testimony will be accepted. Subsequent to the hearing, the proposed code will be submitted to the Chief Deputy for review.

The Chief Deputy Attorney General will review the above-referenced amendments to the Commission's conflict-of-interest code, proposed pursuant to Government Code section 87306, which designates, pursuant to Government Code section 87302, those Commission employees who must disclose certain investments, interests in real property, and income.

The Chief Deputy Attorney General, upon his or her own motion or at the request of an interested person, will approve, or revise and approve, or return the amendment to the Commission for revision and re-submission within 60 days without further notice.

The Office of the Attorney General has determined that the proposed amendments:

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

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

AUTHORITY

Government Code sections 82011, 87303, and 87304 provide that the Office of the Attorney General in the code-reviewing body for the Commission. The Chief Deputy Attorney General shall approve the code as submitted, revise the proposed code, and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

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

CONTACT PERSON

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

Ted Prim
Deputy Attorney General
1300 I Street,
Sacramento, CA 95814
(916) 324-5481
Ted.Prim@doj.ca.gov

AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODE

Copies of the proposed conflict-of-interest code may be obtained from the Office of the Attorney or the Fair Political Practices Commission. Requests for copies from the Commission should be made to Alexandra Castillo, 428 J Street, Suite 620, Sacramento, California 95814; Telephone (916) 322-5660. Requests for copies from the Office of the Attorney General should be made to Ted Prim at the address appearing above.

**TITLE 4. CALIFORNIA ALTERNATIVE
ENERGY AND ADVANCED
TRANSPORTATION FINANCING
AUTHORITY**

The California Alternative Energy and Advanced Transportation Financing Authority (the "Authority" or "CAEATFA"), organized and operating pursuant to Division 16 (commencing with Section 26000) of the California Public Resources Code (the "Act") — pursuant to the authority vested in it by the Public Resources Code Section 26009 to promulgate regulations and Public Resources Code Section 26011 to provide financial assistance to a participating party, and acting pursuant to the Memorandum of Agreement ("MOA") between CAEATFA and the California Public Utilities Commission ("CPUC") which sets forth the policies and procedures for establishment of a series of ratepayer-funded pilot programs as authorized and described in the CPUC-approved Decision 13 09 044, Decision Implementing 2013-14 Energy Efficiency Financing Pilot Programs (the "Decision"), issued September 20, 2013 — proposes to adopt the Residential Energy Efficiency Loan Assistance Program regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Authority proposes to adopt Title 4, Division 13, Article 5, Sections 10091.1 through 10091.15 of the California Code of Regulations concerning the implementation of the Residential Energy Efficiency Loan Assistance Program ("REEL Program" or "Program"). These regulations were initially adopted under the emergency rulemaking process on March 9, 2015 (Office of Administrative Law ("OAL") File No. 2015-0227-01E), pursuant to Public Resources Code 26009. These proposed regulations are similar to those enacted on March 9, 2015 under the emergency rule-

making process and re-adopted with modifications under the emergency rulemaking effective September 8, 2015. These proposed regulations are substantially similar to those enacted on September 8, 2015 under the emergency rulemaking process, and include some amendments and additions that Authority staff believe are appropriate to strengthen the REEL Program and incorporate lessons learned from early implementation. The current rulemaking action would make those regulations permanent. The Authority is soliciting input for any modifications or amendments to these proposed regulations.

PUBLIC HEARING

A public hearing regarding the regulations has been scheduled from 1:00 p.m. until business is concluded on December 15, 2015 at 915 Capitol Mall, Room 587, Sacramento, California 95814. Any additional public hearings will be publicized to CAEATFA's list serve and on the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/cheef/reel/index.asp>.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the regulations to the Authority. **The written comment period on the regulations ends at 5:00 p.m. on Tuesday, December 15, 2015.** All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Article 2, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

AUTHORITY AND REFERENCE

Authority: Public Resources Code Section 26009. Section 26009 of the Public Resources Code authorizes the Authority to adopt necessary regulations relating to its authority established by the Act, and Public Resources Code 26011 establishes the authority to provide financial assistance to a participating party.

Reference: Public Resources Code Sections 26003(a)(3)(A), 26003(a)(6), 26003(a)(8)(A), 26011 and 26040. On September 19, 2013, the CPUC approved the Decision, and requested the Authority act as the master administrator of the California Hub for Energy Efficiency Financing (“CHEEF”), funded by ratepayer funds collected by the four investor owned utilities — Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company (collectively the “IOUs”). CAEATFA’s purpose is to advance the State’s goals of reducing the levels of greenhouse gas emissions, increasing the deployment of sustainable and renewable energy sources, implementing measures that increase the efficiency of the use of energy, creating high quality employment opportunities, and lessening the State’s dependence on fossil fuels. Its statute provides it the ability to provide financial assistance to various participating parties that carry-out eligible projects. In July 2014, CAEATFA received Legislative budget authority to administer the CHEEF functions, and subsequently entered into a Memorandum of Agreement with the CPUC, and a receivables contract with the IOUs.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Existing law establishes the California Alternative Energy and Advanced Transportation Financing Authority and authorizes the Authority to provide “financial assistance” to “participating parties” for the implementation of “projects” as those terms are defined in Public Resources Code Section 26003. See Public Resources Code Section 26011. A Memorandum of Agreement between CAEATFA and the CPUC sets forth the policies and procedures for establishment of a series of ratepayer-funded pilot programs as authorized and described in the CPUC-approved Decision 13 09 044, Decision Implementing 2013–14 Energy Efficiency Financing Pilot Programs. The proposed regulations will allow the Authority to administer the “Residential Energy Efficiency Loan Assistance Program,” pursuant to its MOA with the CPUC and its contract with the Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company to implement the California Hub for Energy Efficiency Financing Pilot Programs.

To encourage residential energy efficiency lending, the Authority is creating a loan loss reserve to mitigate lenders’ risk in originating loans for energy efficiency retrofit projects. Primarily, the program is intended to attract a greater amount of private capital to the energy

efficiency retrofit market by reducing risk to lenders; broadening the availability of lower cost financing to individuals who might not have been able to access it otherwise; and addressing the upfront cost barrier to energy efficiency retrofit projects.

Authority staff (“Staff”) undertook a four-month public participation process beginning in October 2014 to develop these regulations, which included individual meetings and consultation with State agencies and interested parties, notices to interested parties, public availability, comment periods specific to preliminary drafts of proposed regulations and program structure, and public workshops. The regulations were approved by the Authority’s Board on February 18, 2015. The regulations were subsequently submitted to the Office of Administrative Law and adopted through the emergency rulemaking process on March 9, 2015 (OAL File Number 2015–0227–01E). That rulemaking is incorporated into this document by reference (OAL file number 2015–0227–01E). Following the adoption of the emergency regulations, Staff incorporated feedback and lessons learned from the early implementation process. The revised emergency regulations were approved by the CAEATFA Board at a publically noticed meeting on August 18, 2015, and readopted through the emergency rulemaking process on September 8, 2015.

The proposed regulations establish the rules, process and procedures for the REEL Assistance Program, including the eligibility and evaluative criteria loans must meet in order for Participating Financial Institutions and Participating Finance Lenders to qualify and receive a Loss Reserve Contribution. These regulations also address the eligibility and evaluative criteria of projects and of contractors performing the installation of Eligible Improvements. These regulations are the result of stakeholder comments obtained during public workshops and the regulation review process outlined above.

Article 5. Establishes the REEL Assistance Program.

Section 10091.1. Definitions. The proposed regulation establishes the specific meaning of several terms commonly used throughout the regulations and Program documents. The definitions provide detail on various program requirements, including Borrowers, Eligible Property, Eligible Financial Institutions and Eligible Finance Lenders, Eligible Loans, Eligible Improvements, and the different loss reserve accounts that will be established by the Authority.

Section 10091.2. Eligible Financial Institution and Eligible Finance Lender Applications to Participate. This section describes the process for a financial institution or finance lender to apply to participate in the Program. It identifies the information and qualifications required of a financial institution or finance lender. This includes a description of the loan product that it will

provide as a result of the loan loss reserve, as well as certifications to comply with program rules and various lender service agreement provisions. This section also establishes the timing of the Authority's decision to permit the applicant to be a Participating Financial Institution or Participating Finance Lender, and requires a Participating Financial Institution or Participating Finance Lender to submit a signature sheet for authorizing officials for program administration purposes.

Section 10091.3. Additional Requirements for Finance Lenders. This section describes the additional requirements that finance lenders operating under a finance lender license through the California Department of Business Oversight will need to meet to be approved as a Participating Finance Lender in the Program. These provisions include additional insurance requirements, description of quality control procedures, and various certifications and representations.

Section 10091.4. Loan Eligibility and Minimum Underwriting Criteria. This section discusses the minimum financial underwriting criteria required for loans to be eligible for enrollment in the Program. This section requires that each loan enrolled is consistent with the lender's initial application, and also includes a description of eligible improvements. It establishes minimum underwriting criteria and loan term parameters, including: loan maximum, FICO score, debt-to-income ratio, and interest rate cap. The section clarifies eligibility for projects that are partially enrolled in the Program. This section also makes clear that Participating Financial Institutions and Participating Finance Lenders may add additional criteria to their loan underwriting process.

Section 10091.5. Contractor Qualification and Management. This section describes the requirements for energy efficiency retrofit contractor participation in the Program. Qualified Contractors will be required to have an active license with the California Contractors State License Board for the work they perform under the Program. They must also hold and maintain one million dollars in commercial general liability insurance throughout their participation in the Program, as well as complete training on Program rules and procedures given by the Authority or its agents, the IOUs, or the Center for Sustainable Energy. The section includes the process and noticing requirements for suspending Qualified Contractors from participating in the Program if their licenses become inactive or if they fail to comply with Program requirements. The proposed regulations also create a framework for suspended contractors to appeal their suspension to the Authority.

Section 10091.6. Establishment and Funding of Loss Reserve Accounts. This section describes the process through which Loss Reserve Accounts are established and funded. Such accounts shall be held by the Program

Trustee for each Participating Financial Institution, Participating Finance Lender, and Successor Servicer, and will be funded with Loss Reserve Contributions from IOU-Program Holding Accounts and IOU-Program Reservation Accounts upon enrollment of Eligible Loans. On a quarterly basis, the Authority will review the balance of each Loss Reserve Account and may make adjustments to the funding to reflect reductions in the outstanding principal of Enrolled Loans corresponding with that Loss Reserve Account. The section also clarifies the funding and quarterly adjustment processes for partially enrolled loans.

Section 10091.7. Optional Loss Reserve Reservation and Project Pre-Approval. The section provides Participating Financial Institutions and Participating Finance Lenders the option to get loans pre-approved, which will be helpful in confirming Eligible Improvements, and/or the availability of funds for Loss Reserve Contributions. It identifies the specific information needed to approve an optional Loss Reserve Reservation or Project Pre-Approval, and also identifies the time frames for processing such requests. The section describes the process through which a Participating Financial Institution or Participating Finance Lender may make a Loss Reserve Reservation based upon the loan amount that will be made for a specific, upcoming project. The Participating Financial Institution or Participating Finance Lender may also request a Project Pre-Approval to ensure that the proposed project will meet Program requirements; the Project Pre-Approval request includes information to verify that the proposed contractor is a Qualified Contractor and that the proposed improvements are Eligible Improvements. Changes to this section were made to add a certification to the Qualified Contractor application for consistency with those required on other forms for the Program.

Section 10091.8. Loan Enrollment. This section outlines the documentation and certifications that are required to be submitted to the Authority to enable CAEATFA to determine that a loan meets the eligibility criteria and may be enrolled in the Program, and to determine the appropriate Loss Reserve Contribution to be deposited into the Loss Reserve Account on behalf of the Participating Financial Institution or Participating Finance Lender. While the terms and conditions of Eligible Loans are determined by the regulations and loan terms are solely by agreement between each Participating Financial Institution, or Participating Finance Lender, and its Borrowers, the specific documents required to qualify a loan for enrollment in the Program must be completed by the Borrower, the Qualified Contractor(s) or Self-Installer performing the energy efficiency work paid for by the loan, and by the Participating Financial Institution or Participating Finance Lender.

Section 10091.9. Claims. This section describes the process whereby a Participating Financial Institution, Participating Finance Lender, or Successor Servicer may claim, and if approved, receive reimbursement for a loss from an Enrolled Loan arising as a result of a Borrower's default and the Participating Financial Institution, Participating Finance Lender, or Successor Servicer's ultimate charge-off of that loan. Required documentation and claim limits are defined, as is the procedure for repayment of amounts recovered in excess of the Participating Financial Institution, Participating Finance Lender, or Successor Servicer's actual loss on an Enrolled Loan. The section also makes clear distinctions for how claim payments for partially enrolled loans will be processed. Additional data points are added to the claim application to distinguish the total loan amount from the enrolled loan amount.

Section 10091.10. Project Requirements. This section describes the quality assurance requirements necessary for projects to be funded by loans that will be enrolled in the Program. Specifically, the section describes a Qualified Contractor's requirement to ensure that all permits and approvals for the project were obtained, and to provide the Borrower with a Bill Impact Estimate. The Program also requires that Combustion Appliance Safety or Combustion Appliance Zone testing be completed in certain circumstances; this section identifies those circumstances and the specifications around the types of contractors that may perform the test. This section also outlines the process for and scope of field verifications of installed measures to ensure compliance with Program requirements, which varies depending on the scope of the Project and whether the Eligible Improvements were installed by a Qualified Contractor or a Self-Installer.

Section 10091.11. Reporting. This section outlines the information that Participating Financial Institutions, Participating Finance Lenders, and Successor Servicers will be required to submit in monthly reports to the Authority. The reports will include information regarding each Enrolled Loan under the Program. Participating Financial Institutions, Participating Finance Lenders, and Successor Servicers will also be required to report annually on any material changes to information or certifications provided in the initial application to participate or indicating that all statements made in the application remain materially unchanged, and to update any expiring documents required under Program guidelines. This section also incorporates a process for and timeframe during which a Participating Financial Institution, Participating Finance Lender, or Successor Servicer must notify the Authority of any changes in loan terms for Enrolled Loans. In addition, the section specifies that a PFI or PFL must report any change in

servicing of Enrolled Loans to the Authority at least ten (10) business days prior to the change occurring.

Section 10091.12. Sale of Enrolled Loans. This section describes the circumstances under which Participating Financial Institutions and Participating Finance Lenders may assign their rights to the Loss Reserve Contributions for Enrolled Loans to investors who have purchased Enrolled Loans. The Participating Financial Institution or Participating Finance Lender will still be required to submit quarterly reports on the status of its enrolled portfolio and submit any claims on behalf of its investors. In addition, this section describes the required information and process for an Eligible Financial Institution or Eligible Finance Lender to enroll as a "Successor Servicer" and assume the responsibilities for reporting and submitting claims to CAEATFA for previously Enrolled Loans. The section also describes notification processes that program participants must comply with in the event an Enrolled Loan is sold and the Loss Reserve Contribution for that loan is to be assigned to a Successor Servicer.

Section 10091.13. Termination and Withdrawal. This section describes the circumstances and process under which a Participating Financial Institution, Participating Finance Lender, or Successor Servicer may elect to withdraw or be required to terminate its participation under the Program. The section also discusses noticing methods for such terminations and withdrawals, and the circumstances under which the Executive Director of the Authority may terminate a Participating Financial Institution, Participating Finance Lender, or Successor Servicer's ability to enroll new loans in the Program. In the event of a termination or a withdrawal, this section outlines the continued loss reserve coverage of previously Enrolled Loans. Loans enrolled prior to any termination that have not been repaid will continue to be secured by the Loss Reserve Account.

10091.14. Reports of Regulatory Agencies. This section establishes that the Executive Director may seek information directly from any federal or state agency concerning any Participating Financial Institution, Participating Finance Lender, Successor Servicer, or Qualified Contractor participating in the Program.

10091.15. California Hub for Energy Efficiency Financing Privacy Rights Disclosure. This section sets forth the necessary information that describes the Borrower's privacy rights under the Program. The regulations require that each Participating Financial Institution or Participating Finance Lender must submit with each loan to be enrolled a copy of the Disclosure signed by the Borrower. The document discloses that the Authority may come into possession of a series of data points, which are set forth in the Authority's contract with the investor-owned utilities. Data will be made

available to the public in an anonymized form and aggregated with information from other loan participants to protect the Borrower's privacy rights while still making both loan and energy efficiency project performance available to the public. The information collected will also help to ensure accurate reporting that will assist with Program administrative planning and operations.

The Authority's legal counsel reviewed the California Code of Regulations and found no existing regulations dealing with this issue. Therefore, CAEATFA believes that the proposed regulation is neither inconsistent nor incompatible with existing state regulations. The proposed regulations, their purpose, and alternatives considered by the Authority are discussed in detail in the Initial Statement of Reasons.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Executive Director of the Authority has made the following determinations regarding the effects of the regulations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

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

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

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made the determination that the regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

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

Small business: The regulation will not have an adverse impact on small business in California and will not affect small businesses since they do not impose additional restrictions or cost on small businesses.

RESULTS OF ECONOMIC IMPACT ANALYSIS

The Authority anticipates that the proposed regulations will have little to no effect on (1) the creation or elimination of jobs within the state; (2) the creation of new businesses or the elimination of existing businesses within the state; and (3) the expansion of businesses currently doing business within the state; and (4) may have an indirect, non-monetary benefit on the health and welfare of California residents and the state's environment.

The Authority finds that the proposed regulation will have a positive effect on businesses of contractors who conduct the energy efficiency retrofits. The proposed regulation may also have a positive effect on the state's economy and environment generally as a result of the increased economic activity and energy conservation as a result of Borrowers' investment in energy upgrades to their homes. Studies have cited the need for lower cost financing to remove barriers for homeowners to invest in energy upgrades.

CONSIDERATION OF ALTERNATIVES

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

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

AGENCY CONTACT PERSON

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

Andrew Enriques, Analyst
 CAEATFA
 915 Capitol Mall, Room 435
 Sacramento, California 95814
 Telephone: 916-653-2510
 Email: Andrew.Enriques@treasurer.ca.gov

(backup contact) Jennifer Gill, Analyst
CAEATFA
915 Capitol Mall, Room 435
Sacramento, California 95814
Telephone: 916-653-3033
Email: Jennifer.Gill@treasurer.ca.gov

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

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 435, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, the proposed text of the regulations, the Economic Impact Statement, and the Technical, Theoretical, and/or Empirical Studies, Reports, or Documents. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

After the public hearing and the written comment period ends, the Authority may adopt the regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed regulations, as modified. Inquiries about and request for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

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

**AVAILABILITY OF MATERIALS ON
THE INTERNET**

Materials prepared for this rulemaking, including this Notice, the Initial Statement of Reasons, the text of the proposed regulations, the Economic Impact Analysis, and Technical, Theoretical, and/or Empirical Studies, Reports, or Documents may be accessed on the Authority's website located at <http://www.treasurer.ca.gov/caeatfa/>.

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

**New Section 3342, General Industry Safety Orders
Workplace Violence Prevention in Health Care**

NOTICE IS HEREBY GIVEN that the Occupational Safety and Health Standards Board (Board) proposes to adopt, amend or repeal the foregoing provisions of Title 8 of the California Code of Regulations in the manner described in the Informative Digest, below.

PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on December 17, 2015, in the Auditorium of the State Resources Building at 1416 9th Street, Sacramento, CA 95814. At this public hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. The written comment period commences on October 30, 2015, and closes at 5:00 p.m. on December 17, 2015. Comments received after that deadline will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments are to be submitted as follows:

- By mail to Sarah Money, Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; or
- By fax at (916) 274-5743; or
- By e-mail sent to oshsb@dir.ca.gov.

AUTHORITY AND REFERENCE

Labor Code (LC) Section 142.3 establishes the Board as the only agency in the State authorized to adopt occupational safety and health standards. In addition, Labor Code Section 142.3 requires the adoption of occupational and health standards that are at least as effective as federal occupational safety and health standards. The proposed regulations implement, interpret, and make specific LC Section 6401.8.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Pursuant to California Labor Code (LC) Section 142.3, the Board may adopt, amend, or repeal occupational safety and health standards or orders. Section 142.3 permits the Board to prescribe, where appropriate, suitable protective equipment and control or technological procedures to be used in connection with occupational hazards and provide for monitoring or measuring employee exposure for their protection.

In February 2014, two health care worker unions filed petitions requesting the Board to amend the General Industry Safety Orders by adopting a new standard to provide health care workers with specific protections against workplace violence. Richard Negri, Health and Safety Director, Service Employees International Union (SEIU) and Katherine Hughes, Liaison for SEIU Nurse Alliance of California, filed Petition 538 requesting the Board to adopt a new workplace violence prevention standard that would cover all workers employed in all health care settings. A similar petition, Petition 539, was submitted by Bonnie Castillo, Director of Governmental Relations for the California Nurses Association requesting the Board to adopt a new workplace violence prevention standard that would cover all health care workers employed by general acute care hospitals licensed pursuant to subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code (HSC) in all units, including inpatient and outpatient settings and clinics on the license of the hospital.

On June 19, 2014, the Board adopted a revised petition decision which granted Petitions 538 and 539 and requested the Division of Occupational Safety and Health (Division) to convene an advisory committee to develop a consensus rulemaking proposal addressing workplace violence protection standards for consideration by the public and the Board. In that decision, the Board stated that it determined that the necessity for improved workplace violence protection standards had been established.

In September 2014, the state legislature passed and the governor signed Senate Bill (SB) 1299, Workplace violence prevention plans: hospitals, which amended

the LC by creating new Section 6401.8. LC Section 6401.8 requires the Board, no later than July 1, 2016, to adopt standards developed by the Division that require a hospital licensed pursuant to subdivision (a), (b), or (f) of Section 1250 of the HSC, *except as exempted by subdivision* (d) of LC Section 6401.8, to adopt a workplace violence prevention plan as a part of its injury and illness prevention plan to protect health care workers and other facility personnel from aggressive and violent behavior. Although LC Section 6401.8(d) provides an exemption for a hospital operated by the State Department of State Hospitals, the State Department of Developmental Services, or the Department of Corrections and Rehabilitation, subsection (e) then states that LC Section 6401.8 does not limit the authority of the Board to adopt standards to protect employees exempted by subdivision (d). Subsection (e) goes on to state that the Board is not precluded from adopting plans to protect employees from workplace violence; or to adopt standards that require an employer subject to this section, or any other employer, to adopt a workplace violence prevention plan that includes elements or requirements additional to, or broader in scope than, those described in this section. The LC Section also requires that all workplace violence prevention plans be developed in conjunction with affected employees, including their recognized collective bargaining agents, if any. It requires that all temporary personnel be oriented to the workplace violence prevention plan. It prohibits hospitals from disallowing an employee from, or taking punitive or retaliatory action against an employee for, seeking assistance and intervention from local emergency services or law enforcement when a violent incident occurs. It requires that hospitals document, and retain for a period of five years, a written record of any violent incident against a hospital employee, regardless of whether the employee sustains an injury, and regardless of whether the report is made by the employee who is the subject of the violent incident or any other employee. It also requires that a hospital report violent incidents to the Division. If the incident results in injury, involves the use of a firearm or other dangerous weapon, or presents an urgent or emergent threat to the welfare, health, or safety of hospital personnel, the hospital shall report the incident to the Division within 24 hours. All other incidents of violence shall be reported to the Division within 72 hours.

The LC Section requires that by January 1, 2017, and annually thereafter, the Division, in a manner that protects patient and employee confidentiality, post a report on its Internet Web site containing information regarding violent incidents at hospitals, that includes, but is not limited to, the total number of reports, and which specific hospitals filed reports, the outcome of any related inspection or investigation, the citations levied

against a hospital based on a violent incident, and recommendations of the Division on the prevention of violent incidents at hospitals.

The Division developed this proposal with the assistance of advisory stakeholders in order to ensure that the proposal provided sufficient protection for employees in these work settings and provided employers with sufficient flexibility to address these risks in the least burdensome manner.

This proposed rulemaking action is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system's component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the State regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).

This proposed rulemaking action differs from existing federal regulations, in that federal OSHA does not have a specific counterpart standard for protecting employees against occupational exposure to workplace violence.

Anticipated Benefits

The proposed rulemaking will compel employers in health facilities and other settings to evaluate the circumstances within their operations that can be altered to curtail the incidence of violent acts committed against employees and patients. Employers will be required to assess the physical features of facilities that might be likely to have acts of violence, such as infrequently used staircases, and take mitigating actions to reduce the likelihood of their occurrence, such as limiting access to the stairwell. Employers will also adopt work practices that will be more protective of employees and provide training that will improve the recognition of signs of violent behavior, and how to handle incidents based on the features of their operations. Employees will be involved in the evaluation and planning process so that they can provide their expertise based on experiences with violent behavior. Employers who interact by handing off violent patients will establish some form of communication to alert the transport and receiving institutions that the transferee may be violent. These requirements should reduce the number of serious injuries suffered by employees, and loss of life from violent acts, and in turn should reduce the fiscal losses due to work absence, staff replacement, workers' compensation, and possibly other legal costs.

The specific changes are as follows:

New Section 3342. Workplace Violence Prevention in Health Care.

Proposed subsection (a) establishes that the following health care facilities, service categories, and operations are required to comply with the provisions of this section: health facilities, as defined; outpatient medical offices and clinics; home health care and home-based hospice; paramedic and emergency medical services including these services when provided by firefighters and other emergency responders; field operations such as mobile clinics, dispensing operations, medical outreach services, and other off-site operations; drug treatment programs; and ancillary health care operations. The Board has determined these provisions will also apply to hospitals operated by the State Department of State Hospitals, the State Department of Developmental Services, or the Department of Corrections and Rehabilitation, which are exempted by subdivision (d) of LC Section 6401.8. The intended effect is to identify the affected employers.

Subsection (b) of the proposed standard includes a number of definitions. The effect of these definitions is to establish the exact meanings for the terms as used within the context of the requirements of this section. They are necessary to clarify that the terms, as used, may have more specific meaning for workplace violence than they would in the more general usage.

Subsection (c) requires each employer covered by this section to establish, implement, and maintain an effective written workplace violence prevention plan (Plan) that is in effect at all times and is specific to the hazards and corrective measures for each unit, service, or operation. The intended effect is to require employers to have a Plan that allows employees on all shifts to access the written Plan when they need to. The subsection allows the written Plan to be incorporated into the hospital's written IIPP, or kept as a separate document. The effect of the subsection is to establish the basic elements that an employer would be responsible for addressing through its IIPP under Section 3203, as required by LC Section 6401.8. Since LC Section 6401.8 does not list detailed elements for the Plan, the proposal specifies appropriate elements that also apply to other health care settings.

Subsection (c)(1) requires that the names and/or the job titles of the individuals who are responsible for implementing the Plan are included. This intended effect is to identify the individuals who have the responsibility for administering the Plan for the unit, service or operation so that other administrators and employees know who should be contacted if there are questions or difficulties with carrying out the Plan.

Subsection (c)(2) requires effective procedures for the active involvement of employees and their representatives in the development, implementation and review of the Plan, including participation in the identification, evaluation and correction of workplace violence hazards, design and implementation of training, and the reporting and investigation of workplace violence incidents. This subsection also requires the involvement of security personnel who are employees of the facility, or representatives of employers who provide security services to the employer. The intended effect is to assure that affected employees provide valuable input from their experiences and observations in the development and implementation of the Plan.

Subsection (c)(3) requires employers to include in the Plan their methods for coordinating the implementation of the Plan with other employers who have employees working in the health care facility, service or operation, to ensure that those employers and employees have a role in implementing the Plan. This includes how employees of other employers and temporary employees will be provided with the training required by subsection (f), and procedures for reporting, investigating, and recording of workplace violence incidents. The intended effect is to permit all employees working at a facility, service or operation to follow the individual employer's Plan.

Subsection (c)(4) requires the employer's Plan to have provisions prohibiting employers from disallowing an employee from, or taking punitive or retaliatory action against an employee for, seeking assistance and intervention from local emergency services or law enforcement when a violent incident occurs. It also requires the employer to include in the Plan effective procedures to accept and respond to reports of workplace violence, including Type 3 violence, and to prohibit retaliation against an employee who makes such a report. The intended effect is to provide assurance that employees will be able to utilize these critical provisions.

Subsection (c)(5) requires having a process for assuring that all employees and supervisory personnel adhere to the requirements of the Plan. The intended effect is to have all personnel follow the procedures selected for the facility, service or operation.

Subsection (c)(6) requires the employer to have procedures for communicating workplace violence matters. The intended effect is to assure that several requirements involving communicating critical information have specific procedures for employees to follow. These include: how employees will document and communicate to other employees and between shifts and units information regarding conditions that may increase the potential for workplace violence incidents; how an employee can report a violent incident, threat,

or other workplace violence concern; how employees can communicate workplace violence concerns without fear of reprisal; how employee concerns will be investigated, and how employees will be informed of the results of the investigation and any corrective actions to be taken. This is also intended to assure consistency with LC Section 6401.8(b)(6) which prohibits hospitals from disallowing an employee from, or taking punitive or retaliatory action against an employee for, seeking assistance and intervention from local emergency services or law enforcement when a violent incident occurs.

Subsection (c)(7) requires the employer to have procedures for developing and providing training in accordance with subsection (f). The intended effect of this is to have the employer establish appropriate training and content and explain how employees and their representatives may participate in the development and delivery of the training.

Subsection (c)(8) is intended to establish that health facilities and operations are required to have procedures to assess environmental and community based risk factors posing a risk of violence to their employees.

Subsection (c)(8)(A) requires employers in fixed workplaces to have procedures to identify and evaluate environmental risk factors in each unit and area of the establishment, including areas surrounding the facility such as employee parking areas and other outdoor areas. The intended effect is for employers to assess risk factors such as: employees working in locations isolated from other employees (including employees engaging in patient contact activities) because of being assigned to work alone or in remote locations, during night or early morning hours, or where an assailant could prevent entry into the work area by responders or other employees; poor illumination or blocked visibility or where employees or possible assailants may be present; lack of physical barriers between employees and persons at risk of committing workplace violence; lack of effective escape routes; obstacles and impediments to accessing alarm systems; locations within the facility where alarm systems are not operational; entryways where unauthorized entrance may occur, such as doors designated for staff entrance or emergency exits; presence of furnishings or any objects that can be used as weapons in the areas where patient contact activities are performed; and storage of high-value items, currency, or pharmaceuticals.

Subsection (c)(8)(B) requires employers conducting field operations such as mobile clinics and dispensing operations, medical outreach services, and other off-site operations to have procedures to identify and evaluate environmental risk factors for each site at which services will be provided, including the factors listed in subsection (c)(8)(A). This also includes establishing

procedures for communication with any dispatching authority to determine the nature of any risk factors present at the scene, and to ensure appropriate assistance is provided by cooperating agencies. The intended effect is to assure that a risk assessment of a service area is made and an appropriate contingency plan is provided, and that appropriate communication of hazards or violent incidents can be made.

Subsection (c)(8)(C) requires home health care and home-based hospice employers to have procedures implemented to identify and evaluate environmental risk factors in the home where care will be provided. The intended effect is to identify potential problems such as the presence of weapons, evidence of substance abuse, the presence of uncooperative cohabitants, during intake procedures, and at the time of the initial visit, and during subsequent visits whenever there is a change in conditions, in order to take appropriate precautions.

Subsection (c)(8)(D) requires paramedic and other emergency medical service providers to have procedures for communication with any dispatching authority to determine the nature of any risk factors present at the scene, and to ensure appropriate assistance can be provided by cooperating agencies. The intended effect is to assure that a risk assessment of a service area is made and an appropriate contingency plan is provided, and that appropriate communication of hazards or violent incidents can be made.

Subsection (c)(8)(E) requires ancillary health care operations to have procedures to identify and evaluate environmental risk factors, including the factors listed in subsection (c)(8)(A), for the area in which the health care operation is located, as well as other areas of the host establishment that may contribute to workplace violence hazards. The intended effect is to have employers evaluate risk factors in the area where an operation will be located, such as the accessibility of a location within a retail establishment by individuals with criminal intent, and take appropriate precautionary measures.

Subsection (c)(9) requires the employer to have procedures to identify and evaluate patient-specific workplace violence risk factors by utilizing assessment tools, decision trees, algorithms or other effective means to identify situations in which patient-specific Type 2 violence is more likely to occur. It also requires procedures to assess visitors or other persons who may pose a risk of committing Type 1 workplace violence or display disruptive behavior. The intended effect is to allow employees to identify potential violence by evaluating the following factors: the patient's mental status, including conditions which may cause the patient to be non-responsive to instruction, act or behave unpredictably, disruptively, uncooperatively, or aggressively; the patient's treatment and medication status, type,

and dosage, as is known to the health facility and employees; the patient's history of violence, as is known to the health facility and employees; and any disruptive or threatening behavior displayed by the patient or others.

Subsection (c)(10) requires the employer to have procedures for correcting hazards related to workplace violence in a timely manner in accordance with Section 3203(a)(6). The subsection requires the employer to take measures that include engineering and work practice controls to the extent feasible; to protect employees from imminent hazards immediately; to take measures to protect employees from identified serious hazards within seven days of the discovery of the hazard; and to take interim measures to abate the imminent or serious nature of the hazard while completing the permanent control measures when an identified corrective measure cannot be implemented within this timeframe. The intended effect is for employers to implement corrective measures in a timely manner and to adopt corrective measures that include the following:

- A) Having procedures to ensure that sufficient numbers of staff are trained and available to prevent and immediately respond to workplace violence incidents for each shift.
- B) Providing line of sight or other immediate communication in all areas in which patients or members of the public may be present.
- C) Configuring spaces so that employee access to doors and alarm systems cannot be impeded by a patient, other persons, or obstacles.
- D) Securing furnishings and other objects that may be used as improvised weapons in areas where patients who have been identified as having a potential for workplace Type 2 violence are reasonably anticipated to be present.
- E) Having a security plan that includes monitoring and controlling public entrances to prevent the transport of unauthorized firearms and other weapons into the facility in areas in which patients or visitors are reasonably anticipated to possess firearms or other weapons.
- F) Maintaining sufficient staffing, including security personnel, to implement the Plan at all times, including maintaining order in the facility, and responding to workplace violence incidents in a timely manner.
- G) Providing an alarm system, or other effective means, for employees to summon security and other aid to defuse or respond to an actual or potential workplace violence emergency.
- H) Having an effective means by which employees can be alerted to the presence of a security threat, including providing information on the location and nature of the threat.

- D) Having an effective response plan for actual or potential workplace violence emergencies, including the employees designated to respond, the role of facility security and how the assistance of law enforcement agencies will be obtained. Employees designated to respond to emergencies must not have other assignments that would prevent them from responding immediately to an alarm.
- J) Assigning or placing minimum numbers of staff to reduce patient-specific Type 2 workplace violence hazards.

Subsection (c)(11) requires the employer to have procedures for post-incident response and workplace violence injury investigation. The intended effect is to ensure that incidents of violence are investigated and appropriate steps are taken to address employee injuries and trauma. The investigation is intended to assess the need for implementing corrective measures by evaluating information about the incident that includes: procedures for providing immediate medical care or first aid to employees who have been injured in the incident; identification of all employees involved in the incident; a procedure for providing individual trauma counseling to all employees affected by the incident; a post-incident debriefing as soon as possible after the incident to include all employees and supervisors and security involved in the incident; review of any patient-specific risk factors, and any risk reduction measures that were specified for that patient; review of whether appropriate corrective measures developed under the Plan — such as adequate staffing, provision and use of alarms or other means of summoning assistance, and response by staff or law enforcement — were effectively implemented; solicitation from the injured employee and other personnel involved in the incident of their opinions regarding the cause of the incident, and whether any measure would have prevented the injury.

Subsection (d) requires that a detailed set of information be recorded in a Violent Incident Log by the employer about the circumstances such as where and when the incident occurred, the employees who were involved, the nature of the attack, if a weapon was used, if the incident involved harassment or other intimidating behavior, sexual in nature, or involved an animal. The Log is to also describe consequences of the incident such as if medical treatment was provided to the employee, how much time the employee(s) took off for recovery, if any, how the incident was concluded, if security or other personnel were summoned and assisted, if there was a continuing threat to the employee(s), and contact information for the person who completed the report. Some of the information in the Log may be used by hospitals to report incidents to the Division as re-

quired by subsection (g). The intended effect is to provide a basic set of information that all affected employers can utilize for recording violent incidents so that the information collected can be evaluated uniformly.

Subsection (e) requires the employer to have procedures for an annual review of the Plan, including procedures for the active involvement of employees in the review of the effectiveness of the Plan in their work areas, services or operations. The review is to assess staffing, such as staffing patterns insufficient to address the risk of violence; sufficiency of security systems, including alarms, emergency response, and security personnel availability; job design, equipment, and facilities; and security risks associated with specific units. The intended effect is that problems found during the review of the Plan will be corrected in accordance with subsection (c)(10).

Subsection (f) requires the employer to provide effective training to all employees in the facility, unit, service or operation, including temporary employees and that the training address the workplace violence hazards identified in the facility, unit, service or operation, the corrective measures the employer has implemented, and the activities the employee is reasonably anticipated to perform under the Plan. This is intended to assure that all employees within a given facility or mobile operation recognize when emergency situations are announced, and know what they should do in response. The subsection also requires the participation of employees and their representatives in the creation of training curriculum and training materials, conduct of training sessions, and the review and revision of the training program. This is intended to have employers utilize knowledge of the employees who are familiar with the specific hazards that they typically confront, to develop effective training. With the intent of providing effective training, the training content must be appropriate for the employees in terms of the educational level, literacy and language of the trainees. The details of the training are as follows:

Subsection (f)(1) requires initial training to be provided when the Plan is first established, to all new employees, and to all employees given new job assignments for which training has not previously been received. This is consistent with Section 3203(a)(7). The intended effect is to assure that an employee understands the Plan and knows how to recognize potential for violence, and when and how to seek assistance to prevent or respond to violence. Subsection (f)(1) also requires an employer who employs proprietary private security officers, contracts with a private patrol operator or other security service to provide security guards, or hires or contracts for the services of peace officers, to arrange for those personnel to participate in the work-

place violence training provided to employees including the opportunity for interactive questions and answers with a person knowledgeable about the employer's workplace violence prevention plan. The intended effect of this is to have the training that is provided for the health care workers to be integrated with the instruction and planning that is given to security personnel so that their roles in response to violent incidents is clearly defined and understood by all the affected personnel.

Subsection (f)(1)(A) establishes the content of the initial training for employees in facilities, services and operations covered by the standard. The content is consistent with LC Section 6401.8(b). It requires the training to include at least the following elements that are applicable to the employee's assignment:

Subsection (f)(1)(A)1 requires an explanation of the employer's Plan, including the employer's hazard identification and evaluation procedures, general and personal safety measures the employer has implemented, how the employee can communicate concerns about workplace violence without fear of reprisal, and how the employee can participate in the review and revision of the Plan. The intent of this is to be consistent with LC Section 6401.8. The subsection also requires an explanation of the employer's Plan to address incidents of workplace violence, and how such incidents will be reported without fear of retaliation.

Subsection (f)(1)(A)2 requires instruction on how to recognize potential for violence, factors contributing to the escalation of violence and how to counteract them, and when and how to seek assistance to prevent or respond to violence. This is intended to enable employees to recognize the risk factors and know how to seek assistance to prevent or respond to workplace violence and is consistent with LC Section 6401.8.

Subsection (f)(1)(A)3 requires instruction on strategies to avoid physical harm. This is intended to teach employees techniques and precautions that should be taken to protect themselves and others around them.

Subsection (f)(1)(A)4 requires instruction on how to report violent incidents to law enforcement. The intended effect of this is to have employers instruct employees about the procedures for filing criminal complaints with law enforcement against perpetrators when circumstances warrant and is consistent with LC Section 6401.8.

Subsection (f)(1)(A)5 requires instruction on any resources available to employees for coping with incidents of violence, including, but not limited to, critical incident stress debriefing and employee assistance programs. This is intended to inform employees what resources are available to them from their employers and is consistent with LC Section 6401.8 as to the content provided to hospital employees.

Subsection (f)(1)(A)6 requires the employer to include in the training session an opportunity for interactive questions and answers with a person knowledgeable about the employer's workplace violence prevention plan. The intended effect is to assure that employees can ask for clarifications about the training content before it is forgotten. For hospital employees, this is also consistent with LC Section 6401.8.

Subsection (f)(1)(B) requires employers to provide additional training when new equipment or work practices are introduced, or when a new, or previously unrecognized workplace violence hazard has been identified. This is intended to assure that employees can safely use new equipment and perform new work practices. The subsection allows the additional training to be limited to addressing the new equipment or work practices in order to minimize the disruption and cost to the employers. This is also necessary to be consistent with Section 3203(a)(7).

Subsection (f)(2) requires a refresher training to be conducted at least annually for employees performing patient contact activities and their supervisors. The intended effect is to assure that these employees maintain their knowledge of the procedures that are to be followed in their respective facility, unit, service or operation as well as how to use the equipment and assure it is properly maintained. This also enables the results of periodic reviews of the Plan to be presented especially when changes to the Plan have been made to correct problems or improve procedures.

Subsection (f)(3) establishes additional training requirements for health facilities for all employees who are assigned to respond to alarms or other notifications of violent incidents or whose assignments involve confronting or controlling persons exhibiting aggressive or violent behavior. The training is to be provided prior to initial assignment, and at least annually thereafter. The training is required to include very specific topics that enable these personnel to be prepared to take appropriate actions to defuse the intensity of the situation or to use procedures that will minimize the likelihood of injury to employees and the patient, or other person who has become violent. These employees are to have an opportunity to practice the maneuvers and techniques included in the training with other employees they will work with, and to debrief the practice session. Problems found shall be corrected. The intended effect is to provide employees with the highest likelihood of confronting violent situations with the training that will enable them to reduce the likelihood of injury.

Subsection (f)(4) requires employers to ensure that all personnel present in health care facilities, services and operations have been trained on the employer's Plan, and what to do in the case of an alarm or other noti-

fication of emergency. Non–employee personnel who are reasonably anticipated to participate in implementation of the Plan shall be provided with the training required for the specific assignment. The intended effect is to assure that all employees in a facility are familiar with the significance of an alarm that warns of threats, such as the “active shooter” scenario in which a person is in the facility shooting a firearm at any personnel, and how to react in the safest way possible according to response plans developed by the employer.

Subsection (g)(1) establishes requirements for general acute care hospitals, acute psychiatric hospitals, and special hospitals to report each reportable violent incident (as defined) to the Division. The intent of this is to be consistent with LC Section 6401.8.

Subsection (g)(2) requires that each general acute care hospital, acute psychiatric hospital, and special hospital make a report to the Division within 24 hours, after the employer knows or with diligent inquiry would have known of the incident, if the incident resulted in an injury, or involves the use of a firearm or other dangerous weapon including the use of common objects as weapons, or presents an urgent or emergent threat to the welfare, health or safety of hospital personnel. This is intended to be consistent with LC Section 6401.8.

Subsection (g)(3) requires that other reportable incidents of workplace violence be reported to the Division within 72 hours. This is intended to be consistent with the legislative intent of SB 1299. These reporting provisions, however, will also apply to hospitals operated by the State Department of State Hospitals, the State Department of Developmental Services, and the Department of Corrections and Rehabilitation, which are exempted by LC Section 6401.8(d).

Subsection (g)(4) is intended to have the reports include as a minimum the following items:

- A. Hospital name, site address, hospital representative, phone number and email address, and the name, representative name, and contact information for any other employer of employees affected by the incident.
- B. Date, time and specific location of the incident.
- C. A brief description of the incident.
- D. The number of employees injured and the types of injuries sustained.
- E. Whether security or law enforcement were contacted, and what agencies responded.
- F. Whether there is a continuing threat, and the measures being taken to protect employees.
- G. A unique incident identifier.
- H. Whether this was also reported to the nearest Division District Office per the requirements of Section 342.

I. The report shall not include any employee or patient names. Employee names shall be furnished upon request to the Division.

The Note to subsection (g)(4)(H) establishes that this report does not relieve the employer of the requirements of Section 342, to report a serious injury, illness, or death to the nearest Division District Office. This is intended to clarify that if employers report a reportable violent incident as required by subsection (g), they are still responsible for a separate and immediate report by telephone to the nearest Division District Office as soon as practically possible but not longer than eight hours after the employer knows or with diligent inquiry would have known of the death or serious injury or illness. This is intended to clarify that the new requirements do not supersede the existing requirements of Section 342.

Subsection (g)(5) requires that the employer provide supplemental information to the Division regarding the incident within four hours of a request from the Division. This is intended to allow the Division to access additional information for further investigation of a violent incident.

Subsection (g)(6) requires that the report be provided by accessing the Division’s online mechanism created for this process. This is intended to clarify that employers will use an online report format furnished on the Division’s website.

Subsection (h) establishes the records that are to be created and maintained for the purposes of this Standard. The intended effect is that the employer will develop and maintain the following records:

Subsection (h)(1) establishes that records of workplace violence hazard identification, evaluation, and correction shall be created and maintained in accordance with Section 3203(b) except that the Exception to (b)(1) in Section 3203 does not apply. The intended effect is that employers with fewer than 10 employees will not have the option to maintain the inspection records only until the hazard is corrected or to document training by maintaining a log of instructions provided to the employee with respect to the hazards unique to the employees’ job assignment when first hired or assigned new duties.

Subsection (h)(2) requires employers to have records of the training established in subsection (f). The intended effect is to ensure that employees have received the training required by this section and to be consistent with Section 3203(b)(2) except that the Exception No. 1 does not apply. The subsection requires that the records are to include the following information: training dates; contents or a summary of the training sessions; names and qualifications of persons conducting the training; and names and job titles of all persons attending the training sessions. The subsection also establishes that these records are to be maintained for a minimum of one

year to assure that the administrative personnel overseeing the training process can identify the personnel who require training over time and comply with the refresher training requirement. This process is intended to be consistent with similar regulations that require recordkeeping so that they can be handled in a similar and familiar fashion.

Subsection (h)(3) establishes that records of violent incidents, including but not limited to, the Violent Incident Report, the reports required by subsection (g), and workplace violence injury investigations be conducted in accordance with subsection (c)(11). It also requires that these records be maintained for a minimum of five years and not contain “medical information” as defined by Civil Code Section 56.05(g). This is intended to ensure that employers and employees can review injury investigations without compromising medical confidentiality.

Subsection (h)(4) requires that the records required by this subsection are to be made available to the Chief or his or her representatives for examination and copying. This is consistent with Section 3204 and numerous other Sections in Title 8 and is intended to allow the Division to determine if an employer is complying with the requirements of this section.

Subsection (h)(5) requires the records required by this subsection are to be made available to employees and their representatives for examination and copying as employee exposure records in accordance with Section 3204(e)(1). This is intended to be consistent with Section 3204 and LC Section 6408.

Subsection (h)(6) is necessary to inform employers that occupational injury and illness occurrences may require separate records that are required by Title 8, Division 1, Chapter 7, Subchapter 1, Occupational Injury or Illness Reports and Records. These include the Cal/OSHA Form 300, Log of Work Related Injuries and Illnesses; the Cal/OSHA Form 300A, Summary of Work-Related Injuries and Illnesses; the Cal/OSHA Form 301, Injury and Illness Incident Report; or equivalent forms, as well as the Form 5020, Employer’s Report of Occupational Injury or Illness Form; and Form 5021, Rev. 4, Doctor’s First Report of Occupational Injury or Illness. The intended effect is to clarify that these are all separate records that have different protocols for completing and retaining.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on Local Agencies and School Districts:

None.

Cost or Savings to State Agencies: These costs should not exceed \$25,700. See the Cost Impacts section below for a breakdown of these total costs on state agencies.

Cost to any Local Government or School District which must be Reimbursed in Accordance with Government Code Sections 17500 through 17630:

None.

Other Nondiscretionary Cost or Savings Imposed on Local Agencies: These costs should not exceed \$51,600. See the Cost Impacts section below for a breakdown of these total costs on local agencies.

Cost or Savings in Federal Funding to the State:

None.

Cost Impacts on a Representative Private Person or Business: The Board has identified the following components of the proposed regulation that may result in additional costs or savings to some employers.

Implementation of subsections (c) and (e): Workplace violence prevention plan; Annual review of the workplace violence prevention plan

These subsections are not expected to impose any significant additional costs because these programs should already be in place for all employers as required by Section 3203, Injury and Illness Prevention Program. Further, hospitals specified in LC Section 6401.8 should already have a workplace violence prevention plan as a part of its injury and illness prevention plan to protect health care workers and other facility personnel from aggressive and violent behavior. Similarly, hospitals should have established a security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior per HSC, Section 1257.7. However, for additional health care facilities, service categories and operations other than general acute care hospitals, acute psychiatric hospitals and special hospitals covered by LC Section 6401.8 and HSC Section 1257.7, there may be some minor costs involved in ensuring that the existing facility program meets the specific requirements in this section. One-time costs relating to review and updating of existing plans to ensure compliance with the specific requirements of this subsection are not anticipated to exceed four hours of administrative time, estimated at approximately \$200 per facility. With approximately 7,268 facilities falling into this category, the total one-time cost for this subsection is estimated not to exceed \$1,453,600. Of these facilities, 56 are State facilities (\$11,200) and 66 are local facilities (\$13,200). For State facilities, this should be a high estimate since Welfare and Institutions Code (WIC) 4141 already requires state hospitals to update its injury and illness prevention plan at least once a year to include necessary safeguards to prevent workplace safety hazards in connection with workplace violence

associated with patient assaults on employees to address: control of physical access throughout the hospital and grounds; alarm systems; presence of security personnel; training; buddy systems; communication; and emergency responses; therefore this subsection does not impose new requirements.

Implementation of subsection (d): Violent incident log

Based on California Department of Public Health Licensing Data, there are currently approximately 7,825 health care establishments licensed in California that will be newly required to maintain logs of workplace violence incidents. A similar regulation requiring employers in the health care industries to develop and maintain a log of needle stick and sharps incidents was promulgated in 2001. The Division, based on data obtained from Federal Register, Vol. 66, No. 12, Thursday, January 18, 2001, estimated an annual cost of \$67.00 per establishment. Adjusted for an average annual inflation rate of 2.3% per year, the adjusted annual cost would be \$89.38. With approximately 7,825 establishments, the total annual cost of this subsection is estimated not to exceed \$699,400. Of these facilities, 79 are State facilities (\$7,100), and 145 are Local Government facilities (\$13,000). For state facilities, this should be a high estimate since the data for the records would have already been obtained per the WC 4141 requirement that data obtained from the incident reporting procedures be accessible to staff and that incident reports also be forwarded to the injury and illness prevention committee.

Implementation of subsection (f): Training.

The Board has determined that the training requirements do not impose significant additional costs because most of the required training elements are currently required as part of the Injury and Illness Prevention Plan, and may also be required under California Code of Regulations, Titles 15, 17, or 22 for the specific type of employer, as well as LC Section 6401.8 and HSC Section 1257.8 for covered hospitals.

Implementation of subsection (g): Reporting Requirements for General Acute Care Hospitals, Acute Psychiatric Hospitals, and Special Hospitals.

There are approximately 557 general acute care hospitals, acute psychiatric hospitals, and special hospitals that will be newly required to report certain workplace violence incidents to the Division. Similar rulemaking for reporting serious injuries was recently promulgated by OSHA. Federal Register, Vol 79, No. 181, Thursday, September 18, 2014, used the following calculation. Estimated number of incidents (14.2/year/facility per CDC MMWR dated 4/24/2015) X the estimated time per report (0.5 hours) X the hourly compensation of a record-keeper (\$45.12) yields an estimated annual cost per facility of \$320.35. The total annual cost for this

subsection is estimated not to exceed \$178,500. Of these facilities, 23 are State facilities (\$7,400), and 79 are local government (\$25,400). LC Section 6401.8 specifically requires hospitals licensed pursuant to subdivision (a), (b), or (f) of Section 1250 of the HSC, to report violent incidents to the Division; therefore this subsection does not impose new requirements for the majority of these hospitals. This requirement has been expanded by the Board to include hospitals operated by the State Department of State Hospitals, the State Department of Developmental Services, or the Department of Corrections and Rehabilitation, which are exempted by LC Section 6401.8(d); for state facilities, this should be a high estimate since WIC Section 4141 requires each state hospital to develop an incident reporting procedure that can be used to develop reports of patient assaults on employees and assist the hospital in identifying risks of patient assaults on employees, and to provide hospital management with immediate notification of reported incidents; and that the hospital provide for timely and efficient responses and investigations to incident reports made under the incident reporting procedure.

Implementation of subsection (h): Recordkeeping.

The Division has determined that the recordkeeping requirements of this section do not impose significant costs to employers because the records that would be required are for the most part required under current standards. Subsections (h)(1) and (h)(2) would require the employer to create and maintain records of workplace violence hazard identification, evaluation and correction and training records. These records are currently required under Section 3203.

The availability of records required by subsections (h)(4) and (h)(5) is consistent with other sections, including Sections 3204 and 3203, and does not impose any additional costs.

This proposed standard establishes more detailed language to clarify the more general requirements of SB 1299, and is consistent with existing requirements in CCR T8 GISO Section 3203, and Section 342, as well as requirements in HSC Sections 1250 and 1257.7. Other than that mentioned above, the proposed regulation does not create requirements that were not established by the legislation, and does not impose costs beyond what have been created by the legislation itself.

Total costs for implementation of this regulation are estimated not to exceed \$1,453,600 initially, with an estimated \$877,900 annual cost thereafter. For State Government these costs should not exceed \$11,200 initially, and \$14,500 annually. For local government these costs should not exceed \$13,200 initially, and \$38,400 annually.

Statewide Adverse Economic Impact Directly Affecting Businesses and Individuals: Including the Ability of California Businesses to Compete:

The Board has made an initial determination that this proposal should 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. The Division does not anticipate that there would be sufficient fiscal impact to reduce the number of health practices in the state since residents are unlikely to seek medical care out of state in sufficient numbers to have an impact, or to create new industries to address requirements created by the proposal. The proposal also does not mandate new construction or extensive remodeling. Increasing or decreasing the existing workforce should not be an outcome of the requirements.

Significant Affect on Housing Costs: None.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. There are no costs to any local government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed amendments may affect small businesses. Small businesses such as a small medical practice may identify specific security needs based on past experiences with violence or their initial assessment which could include implementing some engineering controls. Addressing problems in this manner is already required by Section 3203. The proposed regulation provides the employer with a range of options of specific safeguards for security issues. These costs would be offset by reduced indemnification, crime prevention, and fewer workers' compensation claims. Recordkeeping costs for the violent incident logs would be incurred only for employers who have violent incidents occur each year.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses. The Division does not anticipate that there would be sufficient fiscal impact to reduce the number of health prac-

tices in the state, or to create new industries to address requirements created by the proposal. The proposal also does not mandate new construction or extensive remodeling. Increasing or decreasing the existing workforce should not be an outcome of the requirements

BENEFITS OF THE PROPOSED ACTION

This proposal should reduce the number of fatalities and injuries suffered by health care workers and other employees who work in health care facilities, services or operations with the implementation of a workplace violence prevention plan, training, recording and reporting of violent incidents to the Division. Consequently the number of workers' compensation claims against hospitals and other health care employers should also decrease. LC Section 6401.8 (SB 1299) requires specified types of hospitals, including a general acute care hospital or an acute psychiatric hospital, to adopt a workplace violence prevention plan as a part of its injury and illness prevention plan to protect health care workers and other facility personnel from aggressive and violent behavior. This proposal creates an enforceable regulation that provides clear guidance to employers and employees regarding how to implement this law.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), 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 proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

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

CONTACT PERSONS

Inquiries regarding this proposed regulatory action may be directed to Marley Hart (Executive Officer) or the back-up contact person Michael Manieri (Principal Safety Engineer) at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833; (916) 274-5721.

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

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulation available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, and supporting documents. Copies may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR
MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public at least 15 days before the Board adopts the regulations as revised. Please request copies of any modified regulations by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above. The Board will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT
OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Hart or Mr. Manieri at the address or telephone number listed above or via the internet.

AVAILABILITY OF DOCUMENTS ON
THE INTERNET

The Board will have rulemaking documents available for inspection throughout the rulemaking process on its website. Copies of the text of the regulations in an underline/strikeout format, the Notice of Proposed Action and the Initial Statement of Reasons can be accessed through the Standards Board's website at <http://www.dir.ca.gov/oshsb>.

TITLE 10. BUREAU OF REAL ESTATE

AMENDMENT: CRITERIA FOR
REHABILITATION — SECS. 2911 and 2912

NOTICE IS HEREBY GIVEN

The Commissioner (“Commissioner”) of the Bureau of Real Estate (“CalBRE”) proposes to amend Sections 2911 and 2912 of the Regulations of the Real Estate Commissioner (Title 10, Chapter 6 of the California Code of Regulations) (“the Regulations”) after considering all comments, objections, and recommendations regarding the proposed action.

AUTHORITY AND REFERENCE

Section 10080 of the Business and Professions Code (“the Code”) authorizes the Commissioner to adopt regulations that are reasonably necessary for the enforcement of the provisions of the Real Estate Law (Code Sections 10000 et seq.). This proposal amends Sections 2911 and 2912 of the Regulations, in conformance with Section 482(a) and (b) of the Code.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

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

Regular Mail

Bureau of Real Estate
Attn: Daniel E. Kehew, Sacramento Legal Office
P.O. Box 137007
Sacramento, CA 95813-7007

Electronic Mail

CalBRERegulations@dca.ca.gov

Facsimile

(916) 263-8767

**Comments may be submitted until 5:00 p.m.,
Monday, December 14, 2015.**

INFORMATIVE DIGEST/PLAIN ENGLISH
OVERVIEW

Sections 2911 and 2912 of the Regulations both explicitly state that they originate in Business and Professions Code (“the Code”) section 482. That statutory section reads:

“Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.” [Code section 482.]

CalBRE’s resulting Criteria, embodied in the present versions of sections 2911 and 2912, largely mirror one another.¹ Each section provides a list of actions that an applicant or licensee may have taken during a specified time period, each of which would be an additional indicator that the applicant or licensee has overcome the issues that led to their conviction(s).

The Criteria do not function as a “scorecard,” with satisfaction of some specific number or combination of conditions resulting in a favorable decision for the applicant or licensee. Instead, the applicant or licensee is encouraged to accomplish and prove to the Commissioner as many of these conditions as may apply to his or her own situation. Then, as indicated in the final sentence of the statute quoted above, the Commissioner takes all competent evidence of rehabilitation into consideration. That evidence is weighed against the evidence regarding the conviction(s) or act(s) that underlie the application denial or licensing discipline.

The core of each regulation has remained unchanged for decades, although small amendments have been made. Most recently, in 2010, the Commissioner added subdivisions (o) and (p) to section 2911 in response to the adoption of the SAFE Act (Code section 10166.01 et seq.), which imposed a national standard relating to licensing of mortgage loan originators.

This proposal makes the following amendments to the existing criteria:

- Adds language allowing consideration of the nature and severity of the applicant’s or licensee’s conviction(s) or act(s). The lack of such language was highlighted by *Singh v. Davi* (211 CalApp.4th 141 (2012)), precipitating this proposal.
- Adds language to make explicit the holding of *In re Gossage* (23 Cal.4th 1080 (2000)) regarding the appropriate date at which rehabilitation begins.
- Adds language ensuring that the applicant or licensee has not retained funds that belong to a harmed party, even where the harmed party cannot be located.
- Eliminates unnecessary limitations on the use of expungement to demonstrate rehabilitation.
- Makes explicit the statutory requirement [Code section 482] of “competent” evidence — direct documentary evidence and impartial testimony from persons other than the applicant/licensee — to support factual findings of rehabilitation.
- Adds language in section 2911(o) and (p), in order to conform with the statutory language and intent of Code section 10166.051.

DETERMINATION OF
CONSISTENCY/COMPATIBILITY WITH
EXISTING STATE REGULATIONS

The Commissioner has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the Commissioner has concluded that these are the only State of California regulations relating to the subject of rehabilitation for those subject to denial of a real estate license application or petition, or rehabilitation where a licensee is subject to license discipline.

PURPOSE, BENEFITS, AND GOALS OF
THIS AMENDMENT

CalBRE’s statutorily stated purpose is public protection, and the Criteria for Rehabilitation play a key role in service of that purpose. Where a licensee or applicant with a criminal record comes before the Real Estate Commissioner, seeking the benefit of continued licensure or a new license — and the significant level of public trust that license entails — the Real Estate Commissioner must ensure that the risk to the public is minimal. The Criteria codify a clear standard of post-conviction behaviors that give strong indicators of a person’s capacity not just to behave well, but to atone for wrongdoing and rebuild the trust of his or her community.

¹ Because the two existing Criteria for Rehabilitation sections largely duplicate one another, most of the amendments of this proposal are word-for-word duplicated in both sections. Rather than repetitively address sections 2911 and 2912, this discussion will distinctly note where only one of the two regulations sections is being amended.

The need for amendment was precipitated by the holding in *Singh v. Davi* (211 Cal.App.4th 141 (2012)), which highlighted a specific weakness in the existing Criteria. Practical experience has identified other problematic issues in the Criteria that should be addressed. This amendment will correct all those issues. Candidates for rehabilitation will have a clearer “road map” to licensure, and those who cannot meet the strengthened standard will be subject to license discipline or denial of their application. Both these results will generate greater public protection.

NECESSITY OF THIS AMENDMENT

While the *Singh* decision stands, uncorrected by regulatory action, the Real Estate Commissioner cannot consider the nature and severity of the respondent’s offenses when determining whether the rehabilitation presented is sufficient to protect the public. The most egregious of felonies is equivalent to a misdemeanor, and the same is true in reverse.

This reality for CalBRE stands in contrast to the standard employed by most other licensing bodies in California², which include provisions allowing consideration of the nature and severity of the crime(s) and/or act(s) committed by the applicant or licensee. When surveying the standards applied by other licensing bodies, CalBRE staff noted another protection embodied in those Criteria, specifically, the Contractors State Licensing Board’s incorporation³ of the *In re Gossage* holding regarding the date upon which rehabilitation begins. *In re Gossage* is also relevant and applicable to the public protection function of CalBRE. That additional protection is incorporated into this proposal.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date CalBRE adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after

² Some examples: The Medical Board addresses the nature and severity of the crime in its Regulations at 16 CCR 1309(a); the Board of Professional Engineers and Land Surveyors at 16 CCR 418(a)(1); the Contractors State Licensing Board at 16 CCR 869(a)(2)(A). One notable exception is the Bureau of Real Estate Appraisers (“BREA”), whose Criteria for Rehabilitation appear in the California Code of Regulations, Title 10, Section 3723. BREA’s Criteria were modeled on CalBRE’s Criteria and suffer the same fault identified by *Singh*.

³ See 16 CCR 869(a)(1)(A) and (B).

the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from the Sacramento offices of CalBRE. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. These documents are also available at CalBRE’s website at www.bre.ca.gov. As required by the Administrative Procedure Act, CalBRE’s Sacramento Legal Office maintains the rulemaking file. The rulemaking file is available for public inspection at the Bureau of Real Estate, 1651 Exposition Boulevard, Sacramento, California.

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 website listed above.

CONSIDERATION OF ALTERNATIVES

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

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

(Pursuant to Government Code Section 11346.3(b))

The Commissioner has conducted an Economic Impact Assessment, and that document is relied upon in reaching these results:

- The proposal does not affect the creation or elimination of the number of jobs available within the State of California. The proposal only relates to individuals' eligibility for licensure.
- The proposal does not affect the creation of new businesses or the elimination of existing businesses within the State of California.
- The proposal does not affect the expansion of businesses currently doing business within the State of California.
- The proposal will not adversely affect the health and welfare of California residents, worker safety, or the State's environment. The proposal directly impacts those individuals already subject to license discipline or denial of an application under the Real Estate Law. Indirectly, the public will benefit via a strengthened public protection standard.

INITIAL DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Will have no fiscal impact on the Bureau of Real Estate. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost nor impose a mandate (nondiscretionary cost or savings) on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. (Statements of Determination required by Government Code section 11346.5(a)(6).)
- Does not create a cost or savings to any state agency as well as federal funding to the state. (Statement of Determination required by Government Code section 11346.5(a)(6).)
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

EFFECT ON SMALL BUSINESS

The Commissioner has determined that there is no fiscal impact to small businesses resulting from this proposed regulatory amendment because the amendments serve only to clarify and reinforce post-conviction standards for real estate licensees and license applicants, rather than impose a substantial change in those standards.

CONTACT PERSON

Inquiries concerning this action may be directed to Daniel Kehew at (916) 263-8681, or via email at CalBRERegulations@dca.ca.gov. The backup contact person is Mary Clarke at (916) 263-7303.

TITLE 13. AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER 2015 MODIFICATIONS TO THE ZERO EMISSION VEHICLE REGULATION

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider approving for adoption proposed amendments to the California Zero Emission Vehicle (ZEV) Regulation.

DATE: December 17, 2015
TIME: 9:00 a.m.
PLACE: California Environmental Protection Agency
Air Resources Board
Byron Sher Auditorium
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., December 17, 2015, and may continue at 8:30 a.m., on December 18, 2015. This item may not be considered until December 18, 2015. Please consult the agenda for the hearing, which will be available at least 10 days before December 17, 2015, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION
AND POLICY STATEMENT OVERVIEW
PURSUANT TO GOVERNMENT
CODE 11346.5(a)(3)

Sections Affected: Proposed amendments to California Code of Regulations, title 13, section 1962.1, and to the following document Incorporated by Reference therein: California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as adopted December 17, 2008, and as last amended September 3, 2015. (The 2014 ZEV rulemaking action was approved by the Office of Administrative Law and filed with the Secretary of State on October 12, 2015, and will become effective on January 1, 2016.)

Background and Effect of the Proposed Rulemaking:

The ZEV Regulation sets production requirements based on manufacturers' California sales volumes, which manufacturers must meet by generating credits through the sale of ZEVs to California drivers. Battery Electric Vehicles (BEV) and Fuel Cell Electric Vehicles (FCEV) are awarded credits based on zero emission range and fast refueling capability and documentation of actual use. Fast refueling requirements award additional credits to vehicles demonstrating replacement of 95 percent of a vehicle's range in fewer than 15 minutes. The fast refueling provision's purpose is to provide a credit-earning mechanism for ZEVs that refuel at a rate analogous to traditional gasoline or diesel-fueled vehicles.

In October 2013, staff proposed to exclude battery swap from qualifying under the fast refueling provisions of the ZEV Regulation.¹ After considering input from stakeholders, the Board directed staff to amend the regulation to ensure any additional ZEV credits awarded to vehicles under the fast refueling provisions are fuel neutral and are awarded for demonstration of actual battery exchange events.

Before the amendments that went into effect in July 2014, some BEVs received ZEV credits for fast refueling based on their capability for battery swap. However, it had not been demonstrated that any battery swap events had occurred on the vehicles earning credits. Accordingly, ARB amended the ZEV Regulation in May 2014 to require actual fast refueling events (e.g., actual

battery swaps) for such credits. Those amendments required manufacturers to submit data sufficient to demonstrate that eligible Fast Refueling ZEVs conducted actual fast refueling events. Those amendments also allowed an individual vehicle to earn additional ZEV credits under the fast refueling provisions for up to 25 other fast refueling vehicles within a manufacturer's fleet for a given model year. The additional credits earned could not exceed the total number of fast refueling eligible vehicles in a manufacturer's fleet for a given model year.

At the October 2014 Board Meeting, Board members expressed concern that allowing manufacturers of battery swap capable BEVs to apply up to 25 battery swap events from an individual vehicle toward the total number of qualifying fast refueling vehicles for that manufacturer would not be representative of the overall fleet's use of fast refueling as a means of range extension. The Board requested additional modifications to the ZEV Regulation to ensure that every model year (MY) 2015–2017 vehicle earning additional ZEV credits under the fast refueling provisions performs a qualifying fast refueling event.

Staff's current proposal seeks to address these concerns by amending the ZEV Regulation to require each individual vehicle earning additional ZEV credits under the fast refueling provision to document use of fast refueling. The proposed amendment would be effective for MY 2017 vehicles because MY 2015 and MY 2016 vehicles are already on the road in California.

Objectives and Benefits of the Proposed Regulatory Action:

Objectives

The proposed amendments were developed to help meet the goals of the ZEV Regulation's fast refueling credit provision. These amendments are required to ensure that ZEV credits awarded for battery swap events are issued for extension of range and utility of actual in-use vehicles.

Benefits

The goal of the ZEV Regulation's fast refueling provisions is to encourage ZEV manufacturers to offer fast refueling capabilities such that ZEV drivers can obtain a similar level of utility as conventional gasoline or diesel-powered vehicle users. The fast refueling provisions are intended to reward manufacturers for providing the necessary technology to enable ZEV fueling with electricity or hydrogen at approximately the equivalent speed of conventional petroleum fuels. Ultimately, the proposed action furthers ARB's goal of promoting cleaner air.

¹ Battery swap, battery exchange and fast swap may be used interchangeably throughout all documents associated with this rulemaking.

DETERMINATION OF INCONSISTENCY AND
INCOMPATIBILITY WITH EXISTING
STATE REGULATIONS

While developing the proposed regulatory action, ARB conducted a search of any similar regulations on this topic and concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATED BY FEDERAL LAW
OR REGULATIONS

This regulation is not mandated by federal law or regulations.

COMPARABLE FEDERAL REGULATIONS

There are no comparable federal regulations.

STATE IMPLEMENTATION PLAN REVISION

If adopted by ARB, ARB plans to submit the proposed regulatory action to the United States Environmental Protection Agency (U.S. EPA) for approval as a revision to the California State Implementation Plan (SIP) required by the federal Clean Air Act (CAA). The adopted regulatory action would be submitted as a SIP revision because it amends regulations intended to reduce emissions of air pollutants in order to attain and maintain the National Ambient Air Quality Standards promulgated by U.S. EPA pursuant to the CAA.

AVAILABILITY OF DOCUMENTS AND
AGENCY CONTACT PERSONS

ARB staff prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal, and all information upon which the proposed regulation is based. The report is entitled: "Proposed 2015 Modifications to the Zero Emission Vehicle Regulation".

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on October 27, 2015.

Final Statement of Reasons Availability

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

Agency Contact Persons

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ian Cullity, Air Resources Engineer, (916) 322-4380 or Elise Keddie (back-up contact), ZEV Implementation Section Manager, (916) 323-8974.

Non-substantive inquiries concerning the proposed administrative action may be directed to Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board staff compiled a record for this proposed rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Internet Access

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2015/zev2015/zev2015.htm>.

DISCLOSURES REGARDING THE
PROPOSED REGULATION

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below.

Fiscal Impact / Local Mandate

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

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete

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

Cost Impacts on Representative Private Persons or Businesses

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statement of the Results of the Standardized Regulatory Impact Analysis pursuant to Gov. Code sec. 11346.3(c)

The Standardized Regulatory Impact Assessment (SRIA) for this rulemaking was submitted to the Department of Finance (DOF) on June 22, 2015. Comments received from DOF on July 22, 2015 did not require changes to the regulation. Appendix C of the 2015 ZEV ISOR contains a list of DOF Comments and ARB response.

A summary of the economic impacts of the proposed regulatory action presented as part of the SRIA can be found in the Economic Impacts/Assessment section of the 2015 ZEV ISOR.

Effect on Jobs/Businesses:

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Economic Impact Analysis in the ISOR.

Competitive Advantages/Disadvantages for Current Businesses:

Based on the direct cost estimation, the proposed amendment would not change the competitiveness of directly regulated entities. The underlying purpose of the fast refueling provision of the ZEV Regulation is to level the playing field between gas-powered and zero emission vehicles and is unaffected by the proposed amendment. Thus, ZEV manufacturers are not expected to face competitive disadvantages as a result of the proposed amendment.

Increase/Decrease of Investment in California:

As modeled in the SRIA, the proposed amendment would produce very small impacts on California private business investment from 2017 through 2020. The change in private investment can be linked to decreased cash flow of ZEV manufacturers resulting from reduced ZEV credit revenue, restricting potential investment in capital equipment.

Incentives for Innovation in Products, Materials, or Processes:

The proposed amendment does not change the opportunity to generate ZEV credits for manufacturing zero emission vehicles, nor would it eliminate the opportunity to generate fast refueling credits through a battery exchange program. ZEV manufacturers are still encouraged and awarded credits for innovative technologies and methods that allow for fast refueling. Implementation of the proposed amendment would only serve to ensure the integrity of the ZEV credit market.

Benefits of the Proposed Regulation:

The objective of the proposed amendments to the ZEV Regulation is to make changes to the fast refueling provisions. The proposed regulatory changes would ensure that fast refueling credits are awarded for extension of vehicle range and utility. Continued compliance with the ZEV Regulation will create a positive impact on emission benefits and air quality throughout California.

A summary of these benefits is provided. Please refer to "Objectives and Benefits", under the Informative Digest of Proposed Action and Policy Statement Overview Pursuant to Government Code 11346.5(a)(3) discussion on page 1981.

Effect on Small Business

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because small businesses are not regulated parties under these regulations.

Housing Costs

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

Business Reports

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

Alternatives

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

Summary of DOF Comments to the Proposed 2015 ZEV Regulation Amendment SRIA prepared for the Proposed 2015 Modifications to the ZEV Regulation and ARB Response to Comments

ARB summarized the comments received from DOF on July 22, 2015 in response to the SRIA prepared as part of the proposed amendments to the ZEV Regulation.

DOF Comment 1:

As proposed ZEV Regulation amendments were not attached, DOF is unable to conclude if the SRIA covers all impacts that may occur as a result of the amendments that will be submitted to the Office of Administrative Law for public comment.

ARB Response: ARB acknowledges that the complete proposed ZEV Regulation amendments were not available at the time the DOF reviewed the SRIA for those proposed amendments. Regulatory language will be included in Appendix A of the ISOR, and additional information and analysis will be found within the ISOR when it is available for public review.

DOF Comment 2:

Impacts of the amendments are sensitive to the assumption that manufacturers would generate credits from battery swaps on a small subset of ZEVs under the baseline.

ARB Response: ARB recognizes that the impacts are sensitive to the assumptions made in the SRIA, particularly that credits would be generated by a small subset of ZEVs. That sensitivity is the basis for the proposed amendment, as the Board directed staff to reduce the amount of credits that could be generated by a small subset of the fleet.

DOF Comment 3:

The SRIA should include a discussion of the impact of fewer ZEV credits available on the ZEV credit market and the resulting costs and/or benefits.

ARB Response: Manufacturers that cannot be considered independent and produce more than 4,500 vehicles per year in California, as averaged over the previous three years, are subject to the Zero Emission Vehicle Regulation. The same requirements apply to independent low volume manufacturers that produce 10,000 vehicles per year in California averaged over the previous three years. For manufacturers subject to the ZEV Regulation requirement, the amount of a manufacturer's ZEV credit requirement is dependent on the volume of its vehicle sales for that year.

Manufacturers that are not subject to the ZEV requirement may generate ZEV credits through sales of certified ZEV vehicles in California in the same way their larger, regulated counterparts are required to do. Those manufacturers not subject to the requirement may then choose to sell ZEV credits to other manufacturers with a ZEV credit requirement. Furthermore, manufacturers subject to the ZEV Regulation requirement may also generate more ZEV credits than their requirement through sales of vehicles. Those manufacturers may sell excess ZEV credits to other manufacturers in the same way that small volume and independent low volume manufacturers may sell their ZEV credits. Manufacturers subject to the ZEV requirement may choose to purchase those surplus ZEV credits and use them to comply with the regulation instead of producing ZEV vehicles that would generate credits.

Due to the nature of the ZEV credit market and the producers and users of credits, the market is difficult to fully characterize. ARB does not regulate the ZEV credit market beyond ensuring only users and producers of credits have ownership of those credits, and that manufacturers subject to the ZEV credit requirement are meeting it. Given sufficient demand for ZEV credits, if the supply shrinks, it can be expected that the price per credit will increase. The inverse of that can also be true. If supply increases, but demand stays fixed, then the price per credit should decrease. However, all manufacturers with a ZEV requirement may choose to comply with the regulation by producing the requisite number of credit-earning vehicles. This could effectively reduce demand for ZEV credits in the market to zero.

ARB has no knowledge of the financial agreements made between manufacturers to buy and sell ZEV credits. The data that ARB does have regarding reporting numbers and compliance is considered confidential and cannot be used to characterize the market on a manufacturer by manufacturer basis. It is possible that if an unregulated manufacturer begins earning fewer ZEV credits due to regulatory change, the market may respond by increasing the value of a ZEV credit. This scenario may then induce an increase in the production of ZEVs. However, for reasons given in the explanations above, there is not sufficient publically available information to show the impact to the ZEV credit market and ZEV vehicle sales.

DOF Comment 4:

The impact assessment focused primarily on regulatory costs, but should also include a more substantial discussion of regulatory benefits.

ARB Response: ARB agrees with DOF in that an overall decrease in surplus credits could induce faster adoption of ZEVs, and the emissions reductions from the faster adoption do have health benefits. However, due to the nature of the ZEV market, potential changes in the adoption rate can be difficult to project and quantify. The number of credits awarded per vehicle is dynamic and depends on the technology. Different technologies earn more or fewer ZEV credits, on a per vehicle basis, depending on several factors. If a fleet mix were to change from ZEVs that earn fewer ZEV credits to favor ZEVs that earn more ZEV credits, there would be a reduction in the total number of ZEV if manufacturers choose only to meet their compliance requirement. For example, the fast refueling provision allows certain ZEVs to earn more ZEV credits than their non-fast refueling counterparts. Those extra ZEV credits would increase the supply of credits to the market where those credits would be purchased by another manufacturer to comply as opposed to producing the required vehicles. This effectively reduces the number of vehicles that may be on the road in the future.

On the other hand, all manufacturers can produce enough ZEVs to comply with their ZEV credit obligation regardless of any surplus ZEV credits that may be on the market. It is likely that manufacturers will produce enough ZEVs to meet each of their individual obligations, thus keeping them from having to purchase credits from another manufacturer. The number of credits on the market may have no bearing on the number of vehicles, resulting in no change in the projected number of vehicles on the road.

Environmental Analysis

When the ZEV Regulation was proposed to the Board as part of the package of regulations referred to as the Advanced Clean Cars (ACC) Program in January of 2012, ARB prepared an environmental analysis (EA) under its certified regulatory program (California Code of Regulations, title 17, sections 60000 through 60008) to comply with the requirements of the California Environmental Quality Act (CEQA; Public Resources Code section 21080.5). The EA, included in Appendix B of the 2012 ACC ISOR entitled Appendix B: Environmental Analysis for Advance Clean Cars Regulation Package, dated December 7, 2011, determined the ACC Program could result in adverse impacts to aesthetics,

air quality, and noise (both related to construction), biological resources, cultural resources, geology/soils, hazards/hazardous materials (related to accidental releases), hydrology/water quality, traffic and utilities due to construction and operation of new battery manufacturing facilities. Staff has determined that no additional environmental review is required for the current proposed amendments because there are no changes that involve new significant environmental effects or a substantial increase in severity of previously identified significant effects than previously identified in the prior 2011 ACC EA. The basis for reaching this conclusion is provided in Chapter IV of the 2015 ISOR.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on October 30, 2015. To be considered by the Board, written comments not physically submitted at the hearing, must be submitted on or after October 30, 2015 and received **no later than 5:00 p.m. on December 14, 2015**, and must be addressed to the following:

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

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

Please note that under the California Public Records Act (Gov. Code, § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

ARB requests that written and email statements on this item be filed at least 10 days prior to the hearing so that ARB staff and Board members have additional time to consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Board requests but does not require that persons who submit written comments to the Board reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in Health and Safety Code, sections 39600, 39601, 43013, 43018, 43101, 43104 and 43105. This action is proposed to implement, interpret, and make specific sections 38562, 39002, 39003, 39667, 43000, 43009.5, 43013, 43018, 43018.5, 43100, 43101, 43101.5, 43102, 43104, 43105, 43106, 43204, 43205, 43205.5 and 43206.

HEARING PROCEDURES

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

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

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

SPECIAL ACCOMMODATION REQUEST

Consistent with California Government Code Section 7296.2, special accommodation or language needs may be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service. Consecuente con la sección 7296.2 del Código de Gobierno de California, una acomodación especial o

necesidades lingüísticas pueden ser suministradas para cualquiera de los siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alternativo u otro idioma.
- Una acomodación razonable relacionados con una incapacidad.

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

TITLE 17. AIR RESOURCES BOARD

NOTICE OF PUBLIC COMMENT PERIOD ON PROPOSED AMENDMENTS TO THE LIST OF EQUIPMENT DEFECTS THAT SUBSTANTIALLY IMPAIR THE EFFECTIVENESS OF GASOLINE VAPOR RECOVERY SYSTEMS

The Executive Officer of the Air Resources Board (ARB or Board) is proposing to amend the list of equipment defects that substantially impair the effectiveness of gasoline vapor recovery systems used in motor vehicle refueling operations. Health and Safety Code (Health and Saf. Code) Section 41960.2(c) requires the Executive Officer to adopt and periodically update the Vapor Recovery Equipment Defects List (VRED List), which is incorporated by reference in California Code of Regulations (CCR), Title 17, Section 94006(b). Such defects are sufficiently egregious to warrant the removal of the fueling point or the entire station from service until the defect is repaired.

Written comments on the proposed regulatory amendments must be received by December 14, 2015, in order to be considered by the Executive Officer. A public hearing is not currently scheduled; however, you may request the Executive Officer to conduct a public hearing. The process for requesting a public hearing is explained in the Written Comment Period and Submittal of Comments section of this notice. If a request for a public hearing is received by November 30, 2015, the public hearing will be conducted by the Executive Officer or his delegate pursuant to the authority set forth in Health and Saf. Code Sections 39515 and 39516. The time, date, and place of the hearing will be provided by separate notice.

Following the close of the comment period, the Executive Officer may adopt the regulatory language as originally proposed or with non-substantial or grammatical modifications. The Executive Officer may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for additional written comment, at least 15 days before it is adopted. The public may request a copy of the modified regulatory text, if applicable, from ARB's Public Information Office, Visitor and Environmental Services Center, 1001 I Street, First Floor, Sacramento, California 95814, (916) 322-2990.

INFORMATIVE DIGEST OF PROPOSED ACTION
AND POLICY STATEMENT OVERVIEW
PURSUANT TO GOVERNMENT
CODE 11346.5(a)(3)

Section Affected: Proposed amendment to CCR, Title 17, Section 94006(b), and the VRED List (adopted on September 23, 2002, and last amended June 11, 2012) that is incorporated by reference therein, date to be determined upon Executive Officer approval for adoption.

Existing Laws and Effect of the Proposed Rulemaking

Health and Saf. Code section 41954 requires ARB to certify systems for the control of gasoline vapors, including storage and transfer, resulting from gasoline marketing operations, which include motor vehicle fueling operations. The certification is accomplished by the issuance of an Executive Order (EO) identifying the system that is certified and the conditions of certification. The sale or installation of an uncertified system is prohibited.

Health and Saf. Code Section 41960.2(c) requires the Executive Officer to 1) identify and list equipment defects in systems for the control of gasoline vapors resulting from motor vehicle fueling operations that substantially impair the effectiveness of the systems in reducing air contaminants, and 2) periodically update the list to reflect changes in equipment technology or performance. The initial list of defects was developed in 1982 and was last amended on June 11, 2012. The current VRED List identifies each certified system by its EO number and lists defects that substantially impair the effectiveness of the system.

Objectives and Benefits of the Proposed Amendments to the Regulation

ARB staff are proposing amendments to the VRED List in order to improve the clarity and effectiveness of the vapor recovery program; thereby, enhancing the ability of enforcement personnel and gasoline dispensing facility (GDF) operators to identify and repair those defects that will significantly impact the effectiveness of the vapor recovery system. Inspectors from air districts periodically inspect GDFs to ensure they are in good working order. When a component on the VRED List is documented by an inspector to contain a listed defect, Health and Saf. Code Section 41960.2(d) requires that the equipment be removed from service until it has been replaced, repaired, or adjusted and re-inspected by air district personnel.

The proposed amendments would update the current VRED List in the following three ways: 1) include the defects for equipment certified in EOs signed since the last amendment to the existing VRED List; 2) add new defect verification procedures; and 3) make editorial changes to remove minor inconsistencies and improve clarity. The amendments to the current VRED List will enhance the ability to identify, repair, or replace equipment where those defects could significantly affect the effectiveness of the vapor recovery system.

The regulation will ensure continued benefits to public health and safety, workers at and around GDFs, and the environment. The proposed action also increases the openness and transparency in businesses and government by clearly specifying the defects that air districts should look for when inspecting GDFs. The proposed action would have no effect on discrimination, fairness, or social equity.

DETERMINATION OF INCONSISTENCY AND
INCOMPATIBILITY WITH EXISTING
STATE REGULATIONS

During the process of developing the proposed amendments, ARB staff has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

COMPARABLE FEDERAL REGULATIONS

There are no federal regulations that are directly comparable to California's VRED program.

AVAILABILITY OF DOCUMENTS AND
AGENCY CONTACT PERSONS

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed action, which includes a detailed explanation of the proposed amendments and a summary of the potential environmental and economic impacts of the proposal. The report is titled, *Staff Report: Initial Statement of Reasons for Proposed Amendments to the List of Equipment Defects that Substantially Impair the Effectiveness of Gasoline Vapor Recovery Systems*.

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on ARB's website listed below under the Internet Access section, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322-2990, on October 27, 2015.

Final Statement of Reasons Availability

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

Agency Contact Persons

Inquiries concerning the substance of the proposed amendments may be directed to the designated agency contact persons, Ms. Melinda Weaver, Air Pollution Specialist, Monitoring & Laboratory Division at (916) 322-8918 or Ms. Merrin Wright, Air Resources Supervisor, Monitoring & Laboratory Division at (916) 324-6191.

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed is Ms. Sadie Macali, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Internet Access

This notice, the ISOR and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB website for this rulemaking at www.arb.ca.gov/regact/2015/vrdef15/vrdef15.htm.

DISCLOSURES REGARDING THE
PROPOSED REGULATION

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulations are presented below.

Fiscal Impact / Local Mandate

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

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete

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

Cost Impacts on Representative Private Persons or Businesses

In developing this regulatory proposal, ARB staff evaluated the potential economic impacts on representative private persons or businesses. ARB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Results of the Economic Impact Analysis/ Assessment Prepared Pursuant to Government Code Section 11346.3(b)

Effect on Jobs/Businesses:

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

Benefits of the Proposed Amendments to the Regulation

The objectives of the proposed amendments to the regulation are to comply with statutory requirements, to encourage and facilitate uniform enforcement across the State, to provide preventative maintenance guid-

ance for GDF operators, and to ensure that committed emission reductions associated with the vapor recovery program will, in fact, occur.

A summary of these benefits is provided under “Objectives and Benefits,” in the Informative Digest of Proposed Action and Policy Statement Overview pursuant to Government Code 11346.5(a)(3) discussion on page 1987 of this notice.

Effect on Small Business

The Executive Officer has determined, pursuant to CCR, title 1, section 4, that the proposed regulatory action would not adversely affect small businesses. Better detection of defective equipment may result in cost savings to GDFs because the defective equipment may be replaced while under warranty. A greater understanding of the defects for vapor recovery systems will reduce the need for more stringent standards in the future, thereby lowering compliance costs to California operators.

Housing Costs

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

Alternatives

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board (which includes during preliminary workshop activities), would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Environmental Analysis

ARB, as the lead agency for the proposed regulatory action, has reviewed the proposed regulatory action and concluded that it is exempt pursuant to CEQA Guidelines section 15308 — Actions Taken by Regulatory Agencies for Protection of the Environment; and by CEQA Guidelines Section 15061(b)(3) (the general rule or “common sense” exemption). The basis for reaching this conclusion is provided in Section IV of the ISOR.

WRITTEN COMMENT PERIOD AND
SUBMITTAL OF COMMENTS

Interested members of the public may provide comments in writing by postal mail or by electronic submittal. A public hearing is currently not scheduled. The public comment period for this regulatory action will begin on October 30, 2015. To be considered by the Executive Officer, written comments must be submitted on or after October 30, 2015, and received **no later than 5:00 p.m., December 14, 2015**, and must be addressed to the following:

- Postal mail: Clerk of the Board,
Air Resources Board
1001 I Street,
Sacramento, California 95814
- Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

If a public hearing is not scheduled, any interested person may request a public hearing pursuant to section 11346.8 of the Cal. Government Code, no later than 15 days before the close of the written comment period. A public hearing will be scheduled if any interested person or his or her duly authorized representative requests such a hearing in writing by November 30, 2015. The request for a hearing may be submitted in the same manner as written comments.

Please note that under the California Public Records Act (Government Code, Section 6250 et seq.), your written comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request or as part of the public review process for this regulatory action.

Additionally, ARB requests, but does not require, that persons who submit written comments to the Executive Officer reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

This regulatory action is proposed under the authority granted in Health and Saf. Code, Sections 39600, 39601, and 41960.2. This action is proposed to implement, interpret, and make specific Health and Saf. Code Sections 41954 and 41960.2.

SPECIAL ACCOMMODATION REQUEST

PUBLIC HEARING

If you need this document in an alternate format (i.e., Braille, large print, etc.) or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo (por decir, sistema Braille, o en impresión grande) u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. In 1998, the Board adopted Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to implement, interpret, and make specific the Diesel Fuel Tax Law (RTC, § 60001 et seq.) by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds, under RTC section 60501, subdivision (a)(4), of diesel fuel tax paid on such fuel. The proposed amendments update the regulation by deleting ambiguous language, defining “equipment used to operate a motor vehicle upon a highway” and “auxiliary equipment,” providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, and specifying that approved fuel use studies are valid for five years after the date of approval and must be updated upon expiration.

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on December 16-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on December 16-17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1432.

AUTHORITY

RTC section 60601.

REFERENCE

RTC sections 60016, 60019, 60026, 60501 and 60502.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (RTC, § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law. (Stats. 1994, ch. 912)

Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
- Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
- Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to an unregistered person; or
- Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058). In 1998, the State Board of Equalization (Board) adopted Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle* (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The Board adopted Regulation 1432, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that “[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling” and “no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway.”

Also, currently, under Regulation 1432, a business must substantiate the amount of fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)–(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in

fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business’s refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1432

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff determined that there were issues with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined that there are ambiguities in the regulation’s definition of the term PTO equipment, the application of the regulation’s provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation’s provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles’ auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle’s diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles’ diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

PTO Equipment & Auxiliary Equipment

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the

safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment, companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However, Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentages were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still

be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Fuel Use Studies

BTC staff's draft amendments recommended adding clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Off-Highway Use

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in sub-

division (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

Refunds & Records

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

Idle Time

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

April 10, 2015, letter from Mr. Jacob Bholat

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment,

as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

April 14, 2015, First Interested Parties Meeting

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its draft amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

May 6, 2015, letter from Mr. Leonard Finegold of Waste Management

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term "incidental off-highway use" to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term "incidental off-highway use" in BTC staff's draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase "[o]ff-highway use, as defined in subdivision (b)" in BTC staff's revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled "Off-Highway Use," were added back to staff's revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of "off highway" and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a re-

fund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of "auxiliary equipment" as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term "auxiliary equipment." For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as "auxiliary equipment": automated side loaders, dual drive front end loaders, single drive front end loaders, roll-off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the "garbage truck" safe harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-olet truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-olet trucks in parenthesis after "super sucker" in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to "block boom" trucks after the references to "boom trucks," in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add "transfer trailers," which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle's fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

Waste Management also suggested that the Board simplify the refund calculation process and allow a refund for a weighted average percentage of all the diesel fuel used by an entity. Staff reviewed the proposed methods; however, all of the methods presented were based on aggregate fuel purchased, not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel "used" not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods were adopted.

June 16, 2015, Second Interested Parties Meeting

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

July 1, 2015, letter from Mr. Leonard Finegold of Waste Management

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date.

This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

September 16, 2015 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board proposes to adopt BTC's staff's draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that far more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;
3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to

operate auxiliary equipment while off the highway or while idling;

4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary to have the effect and accomplish the objective of addressing the issues referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1432 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1432 is the only state regulation that provides specific guidance about when diesel fuel is used for a purpose other than operating a motor vehicle on the highway and provides provisions for claiming refunds of diesel fuel tax paid on fuel used in such a nontaxable manner. In addition, the Board has

determined that there are no comparable federal regulations or statutes to Regulation 1432 or the proposed amendments to Regulation 1432.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1432 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulation 1432 will result in no direct or indirect 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 title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1432 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1432 may affect small business.

NO COST IMPACTS TO 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.

RESULTS OF THE ECONOMIC IMPACT
ASSESSMENT REQUIRED BY GOVERNMENT
CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed amendments to Regulation 1432 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1432 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1432 will not affect the benefits of Regulation 1432 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON
HOUSING COSTS

The adoption of the proposed amendments to Regulation 1432 will not have a significant effect on housing costs.

DETERMINATION REGARDING
ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Kevin B. Smith, Tax Counsel III, by telephone at (916) 323-3152, by e-mail at Kevin.Smith@boe.ca.gov, or by mail at State Board of Equalization, Attn: Kevin B. Smith, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed

administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Smith.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1432 during the December 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1432. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF
REASONS AND TEXT OF
PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 1432 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1432, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES
PURSUANT TO GOVERNMENT CODE
SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1432 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result

from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1432, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

TITLE 18. FRANCHISE TAX BOARD

NOTICE OF INTENTION TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE FRANCHISE TAX BOARD

NOTICE IS HEREBY GIVEN that the Franchise Tax Board, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its Conflict-of-Interest Code. All inquiries should be directed to the contact listed below.

The Franchise Tax Board proposes to amend its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

Changes to the Conflict-of-Interest Code include: Some positions previously designated in the Conflict-of-Interest Code have been removed, and other new positions have been added. The disclosure categories have also been modified and there are other technical changes.

Information on the code amendment is available on the Franchise Tax Board's intranet site.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than December 14, 2015, or at the conclusion of

the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than November 27, 2015.

The Franchise Tax Board has determined that the proposed amendments:

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

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Dennis Haase, Tax Counsel IV, (916) 845-3187, dennis.haase@ftb.ca.gov.

TITLE 22. DEPARTMENT OF CHILD SUPPORT SERVICES

NOTICE OF PROPOSED RULEMAKING TO AMEND THE CONFLICT-OF-INTEREST CODE OF THE DEPARTMENT OF CHILD SUPPORT SERVICES

NOTICE IS HEREBY GIVEN that the Department of Child Support Services (DCSS) proposes to amend its Conflict-of-Interest Code. The amendment is to update the Conflict-of-Interest Code due to position reclassifications and changes to duties that have occurred since the last amendment in 2013. The provisions of the DCSS Conflict-of-Interest Code that will be amended include Appendix A which lists the positions with reporting requirements and the reporting requirement categories.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The DCSS Conflict-of-Interest Code including proposed amended text of the appendices for this rulemaking are posted to the DCSS public website at:

<http://www.childsup.ca.gov/Resources/ChildSupportRegulations.aspx>

Any further revised version of the text and the Final Statement of Reasons will be posted to this webpage when they become available. The department has available all of the information upon which this rulemaking is based. That information is too voluminous to include here. If you do not have internet access, copies of the amended DCSS Conflict-of-Interest Code and Initial Statement of Reasons may be secured from the contact person listed below.

CONTACT PERSON

Any inquiries regarding this action to amend the DCSS Conflict-of-Interest Code may be directed to:

Name: Alejandra Serratos
 Telephone: 916-464-5344
 Fax: 916-464-5066
 Email
 Address: alejandra.serratos@dcss.ca.gov
 Postal
 Address: Dept. of Child Support Services
 Human Resources Branch
 MS - 631
 Attn: Alejandra Serratos
 P.O. Box 419064
 Rancho Cordova, CA 95741-9087

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the DCSS. All comments should be submitted to the contact person named above at the addresses or phone number provided. The written comment period shall begin on October 30, 2015 and end on December 14, 2015 at 5:00 p.m. The DCSS shall consider only comments received by the contact person at the DCSS Human Resources Branch by the deadline.

PUBLIC HEARING

The DCSS has not scheduled a public hearing for this proposed action. Any interested person or his or her representative may request a public hearing. If DCSS receives a written request for a public hearing from any interested person or his or her authorized representative no later than 15 days before the close of the written comment period, the DCSS will conduct a public hearing on this proposed action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department of Child Support Services (DCSS) adopted its original Conflict-of-Interest Code in 2001 and amended it in 2013. DCSS has subsequently increased its workforce, restructured organizationally, and reclassified positions and duties. The DCSS Conflict-of-Interest Code must be amended to properly reflect departmental positions requiring disclosure of personal financial interest with potential for conflict with duties and the type of personal financial interests that must be disclosed. Government Code section 87306 authorizes this amendment of the DCSS Conflict-of-Interest Code.

The DCSS Conflict-of-Interest Code is a regulation under Title 22 of the California Code of Regulations, section 123000, the Designated Positions Appendix and the Disclosure Categories Appendix.

The text of section 123000 essentially functions to incorporate by reference the comprehensive Conflict-of-Interest Code adopted by the Fair Political Practices Commission (FPPC). The complex requirements of the FPPC's Conflict-of-Interest Code have been carefully developed and departments are encouraged to incorporate them by reference rather than draft their own language for this complex area of law. Section 123000 does not require any amendment at this time.

The Designated Positions Appendix A requires amendment due to position reclassifications and changes to duties that have occurred since the amendment in 2013.

The Disclosure Categories Appendix B conforms with FPPC Conflict-of-Interest Code requirements and requires no changes.

AUTHORITY AND REFERENCE

Authority: Family Code sections 17306, 17310 & 17312; Government Code section 87306.

Reference: Government Code sections 87300-87302 & 87306.

DISCLOSURES REGARDING THE PROPOSED ACTION

The DCSS has determined that the adoption of the proposed amendments to the DCSS Conflict-of-Interest Code will not impose a cost or savings on any state agency, 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; will not result in any nondiscretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate

on local agencies or school districts; and will not have any potential cost impact on private persons or businesses including small businesses.

CONSIDERATION OF ALTERNATIVES

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

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND WILDLIFE

CESA CONSISTENCY DETERMINATION REQUEST FOR

Palo Corona Regional Park Safe Harbor Agreement
(2089–2015–003–04)
Monterey County

California Department of Fish and Wildlife (CDFW) received a notice on October 16, 2015, that Monterey Peninsula Regional Park District proposes to rely on a federal safe harbor agreement to carry out a project that may provide a net conservation benefit to species protected by the California Endangered Species Act (CESA). The proposed project involves habitat restoration and enhancement at the enrolled property where the state and federally threatened California tiger salamander (*Ambystoma californiense*) occurs. The proposed project will occur at Palo Corona Regional Park in Monterey County, California.

The October 16, 2015, notice requested a CDFW determination pursuant to California Fish and Game Code

Section 2089.22, that the enhancement of survival permit (TE41554A–0) issued by the United States Fish and Wildlife Service (Service) and safe harbor agreement (SHA) issued by the Service to the Applicant on December 9, 2011, are consistent with CESA for purposes of the proposed project. If CDFW determines the federal SHA is consistent with CESA for the proposed project, the Applicant will not be required to obtain a California state safe harbor agreement under Fish and Game Code section 2089 for the project.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

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

NOTICE OF INTENT TO LIST PENTACHLOROPHENOL AND BY-PRODUCTS OF ITS SYNTHESIS (COMPLEX MIXTURE)

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) intends to list “*pentachlorophenol and by-products of its synthesis (complex mixture)*” as known to the state to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986.¹ This action is being proposed under the authoritative bodies listing mechanism.²

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

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

Chemical (CAS No.)	Endpoint	Reference	Occurrence and Uses
<p><i>Pentachlorophenol^a and by-products of its synthesis^b (complex mixture)</i></p> <p>Pentachlorophenol (87-86-5), and Pentachlorophenol, sodium salt (131-52-2)</p>	Cancer	NTP ^c (2014)	<p>The commercially available complex mixture of pentachlorophenol and by-products of its synthesis is a restricted-use pesticide and registered as a heavy-duty wood preservative for utility poles, cross arms, pilings, fence posts, and construction. It is also used as a competitive inhibitor of sulfotransferase in the laboratory. The complex mixture was used in the past as a biocide in ropes, paints, adhesives, leather, canvas, insulation, and brick walls. Indoor uses were cancelled in 1984. Non-wood preservative uses were cancelled and restricted in 1987.</p>

^a Pentachlorophenol is currently listed as known to the state to cause cancer under Proposition 65. This listing includes the byproducts of pentachlorophenol synthesis, which are found in varying amounts in pentachlorophenol and the sodium salt formulations.

^b The commonly found by-products of pentachlorophenol synthesis include polychlorinated phenols (trichlorophenols and tetrachlorophenols), hexachlorobenzene, polychlorinated dibenzofurans (hexachlorodibenzofurans, heptachlorodibenzofurans, and octachlorodibenzofuran), polychlorinated dibenzo-*p*-dioxins (hexachlorodibenzo-*p*-dioxins, heptachlorodibenzo-*p*-dioxins, and octachlorodibenzo-*p*-dioxin), whereas 2,3,7,8-tetrachlorodibenzo-*p*-dioxin is a less commonly found by-product. Among them, 2,4,6-trichlorophenol, hexachlorobenzene, hexachlorodibenzodioxin, polychlorinated dibenzo-*p*-dioxins, and polychlorinated dibenzofurans are listed as known to the state to cause cancer under Proposition 65.

c. NTP = National Toxicology Program

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

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

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

The National Toxicology Program (NTP) is one of several institutions designated as authoritative for the identification of chemicals as causing cancer (Section

25306(m)). OEHHA is the lead agency for Proposition 65 implementation. After an authoritative body has made a determination about a chemical, OEHHA evaluates whether listing under Proposition 65 is required using the criteria contained in the regulations.

OEHHA's determination: *Pentachlorophenol and by-products of its synthesis (complex mixture)* meet the criteria for listing as known to the state to cause cancer under Proposition 65, based on the findings of NTP (2014).

Formal identification and sufficiency of evidence for pentachlorophenol and by-products of its synthesis (complex mixture): In 2014, NTP published the Thirteenth Edition of the *Report on Carcinogens* (NTP, 2014). This report satisfies the formal identification and sufficiency of evidence criteria in the Proposition 65 regulations for *pentachlorophenol and by-products of its synthesis (complex mixture)*. NTP concluded that "The complex mixture pentachlorophenol and by-

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

products of its synthesis is *reasonably anticipated to be a human carcinogen* based on limited evidence of carcinogenicity from studies in humans and sufficient evidence of carcinogenicity from studies in experimental animals” (emphasis in original). Additionally, NTP states that “People exposed to pentachlorophenol are also exposed to its by-products; therefore, the listing is for this complex mixture,” and that “the evidence from studies in experimental animals indicates that the observed carcinogenicity cannot be fully explained by either the presence of by-products alone or pentachlorophenol alone.”

OEHHA is relying on NTP’s discussion of data and conclusions in the report that *pentachlorophenol and by-products of its synthesis (complex mixture)* causes cancer. Evidence described in the report includes studies showing that *pentachlorophenol and by-products of its synthesis (complex mixture)* increased the incidences of malignant liver tumors in male mice, combined malignant and benign liver tumors and combined malignant and benign adrenal-gland tumors in male and female mice, malignant tumors of the blood vessels of the spleen and/or liver in female mice, malignant tumors in the tunica vaginalis of the testes in male rats, and malignant tumors of the nose to an unusual degree with respect to tumor type in male rats.

“The combined incidence of benign and malignant liver tumors (hepatocellular adenoma and carcinoma) was significantly increased in mice of both sexes following dietary exposure to Dowicide EC-7⁴ and in males following exposure to technical-grade pentachlorophenol. In males exposed to either formulation, the separate incidence of malignant liver tumors also was significantly increased” (footnote not in original).

“The incidences of benign and malignant adrenal-gland tumors (pheochromocytoma) combined, benign adrenal-gland tumors, and preneoplastic adrenal-gland lesions (medullary hyperplasia) were significantly increased in mice of both sexes exposed to Dowicide EC-7.”

“The incidence of malignant tumors of the blood vessels (hemangiosarcoma) of the spleen and/or liver was significantly increased in female mice exposed to technical-grade pentachlorophenol or Dowicide EC-7.”

“In male F344 rats (Chhabra et al. 1999, NTP 1999), increased incidences of tumors were observed in the tunica vaginalis of the testes and in the nose. In a stop-exposure study, the incidence

of malignant mesothelioma of the tunica vaginalis was significantly increased after dietary exposure to 99% pure pentachlorophenol for one year, followed by one year of observation. Although the increased incidence of squamous-cell carcinoma of the nose was not statistically significant, this is a rare tumor, and its incidence exceeded the range for historical controls.”

Thus, NTP (2014) found that *pentachlorophenol and by-products of its synthesis (complex mixture)* causes increased incidences of malignant liver tumors in male mice, combined malignant and benign liver tumors and combined malignant and benign adrenal-gland tumors in male and female mice, malignant tumors of the blood vessels of the spleen and/or liver in female mice. The title of the NTP Substance Profile includes sodium pentachlorophenate (pentachlorophenol, sodium salt) and its CAS number and it is discussed in the NTP Substance Profile as a water-soluble formulation of pentachlorophenol. It dissociates to pentachlorophenol in aqueous solution. Pentachlorophenol, sodium salt is included in this proposed listing.

Request for comments: OEHHA is requesting comments as to whether *pentachlorophenol and by-products of its synthesis (complex mixture)* meets the criteria set forth in the Proposition 65 regulations for authoritative bodies listings. In order to be considered, **OEHHA must receive comments by 5:00 p.m. on November 30, 2015.** We encourage you to submit comments in electronic form, rather than in paper form.

Comments transmitted by e-mail should be addressed to P65Public.Comments@oehha.ca.gov with “NOIL — *pentachlorophenol*” in the subject line. Comments submitted in paper form may be mailed, faxed, or delivered in person to the addresses below:

Mailing

Address: Ms. Esther Barajas-Ochoa
Office of Environmental
Health Hazard Assessment
P.O. Box 4010, MS-12B
Sacramento, California
95812-4010

Fax: (916) 323-2265

Street
Address: 1001 I Street
Sacramento, California 95814

Comments received during the public comment period will be posted on the OEHHA website after the close of the comment period. Electronic files submitted should not have any form of encryption.

If you have any questions, please contact Esther Barajas-Ochoa at esther.barajas-ochoa@oehha.ca.gov or at (916) 445-6900.

⁴ Dowicide EC-7 is a technical-grade formulation of pentachlorophenol, which contains approximately 90% pure pentachlorophenol.

References

NTP (2014). Report on Carcinogens, Thirteenth Edition, U.S. Department of Health and Human Services, Public Health Service, NTP, Research Triangle Park, North Carolina. Available at URL: <http://ntp.niehs.nih.gov/pubhealth/roc/roc13/index.html>.

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# 2015-0908-01
AIR RESOURCES BOARD
 Cap and Trade 2014 Rice and Forestry Protocols

The Air Resources Board amended seven sections in title 17 of the California Code of Regulations included in the California cap-and-trade regulations. The amendments add a new offset protocol for certain rice cultivation projects, modify an existing offset protocol for certain forest projects, allow reforestation offset projects to be considered early action offset projects even though they may not have been issued early action offset credits, and consider responses to wildfires as involuntary reversals in the context of forest project reversals.

Title 17
 AMEND: 95802, 95973, 95975, 95976, 95981, 95985, 95990
 Filed 10/20/2015
 Effective 11/01/2015
 Agency Contact: Trini Balcazar (916) 445-9564

File# 2015-0911-01
CALIFORNIA ENERGY COMMISSION
 Alternative and Renewable Fuel and Vehicle Technology Program

This Certificate of Compliance by the California Energy Commission makes permanent the prior emergency regulatory action (OAL file no. 2015-0826-01EE) that amended section 3103 of Title 20 of the California

Code of Regulations to modify existing regulatory text establishing funding restrictions for the Alternative and Renewable Fuel and Vehicle Technology Program. This action removes the requirement to discount the value of any emission credits received in an amount commensurate with the level of funding obtained from the Energy Commission for those that voluntarily opt-in to programs for the purpose of participating in the program's credit market. This change would allow these program participants to receive the full value of any emission credits the funded projects create.

Title 20
 AMEND: 3103
 Filed 10/20/2015
 Effective 10/20/2015
 Agency Contact: Samantha Arens (916) 651-9410

File# 2015-1008-01
CALIFORNIA FILM COMMISSION
 California Film and Television Tax Credit Program

This emergency action re-adopts implementation of the California Film & Tax Credit Program, including the definitions, application process, eligibility determination, qualified expenditures, tax credit allocation, approved applicant responsibility, credit certificate issuance, applicant ranking, and promotional requirements.

Title 10
 ADOPT: 5508, 5509, 5510, 5511, 5512, 5513, 5514, 5515, 5516
 Filed 10/15/2015
 Effective 10/15/2015
 Agency Contact: Terri Toohey (916) 768-5638

File# 2015-0909-01
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
 Training and Testing Specifications

The Commission on Peace Officer Standards and Training is amending three regulations in Title 11 of the California Code of Regulations as well as a document incorporated by reference. These changes are designed to reflect emerging training needs, improve student learning and/or to comply with legislation changes. Some of the changes are in response to the passage of Proposition 47.

Title 11
 AMEND: 1005, 1007, 1008
 Filed 10/20/2015
 Effective 02/01/2016
 Agency Contact: Cheryl Smith (916) 227-0544

File# 2015-1009-03

DEPARTMENT OF CONSERVATION
Aquifer Exemption Compliance Schedule Regulations

This emergency readopt action by the Department of Conservation (DOC) readopts sections 1760.1 and 1779.1 in title 14 of the California Code of Regulations to provide an aquifer exemption compliance schedule for the oil and gas industry. This rulemaking action establishes deadlines for the oil and gas industry to obtain aquifer exemptions in an effort to bring California's Class II Underground Injection Control program into compliance with the federal Safe Drinking Water Act.

Title 14
ADOPT: 1760.1, 1779.1
Filed 10/19/2015
Effective 10/20/2015
Agency Contact: Justin Turner (916) 322-2405

File# 2015-1014-01

DEPARTMENT OF INDUSTRIAL RELATIONS
Workers' Compensation Revolving Fund Assessments

This regulatory action was submitted by the Department of Industrial Relations to amend definitions and the provision dealing with credit for undercollection concerning the following: Workers' Compensation — Administration Revolving Fund Assessment, Uninsured Employers Benefits Trust Fund Assessment, Subsequent Injuries Benefits Trust Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment and Fraud Surcharge. This action is exempt from the rulemaking provisions of the Administrative Procedure Act and OAL review pursuant to Labor Code section 62.5.

Title 8
AMEND: 15600, 15609
Filed 10/21/2015
Effective 10/21/2015
Agency Contact: James Robbins

File# 2015-0909-02

DEPARTMENT OF PUBLIC HEALTH
DPH-15-014 Employee Health Examinations and Records

The Department of Public Health (DPH) submitted this action without regulatory effect, pursuant to title 1, California Code of Regulations, to repeal section 75051 of title 22 of the California Code of Regulations.

Title 22
REPEAL: 75051
Filed 10/20/2015
Agency Contact: Lesya Vorobets (916) 440-7371

File# 2015-0903-02

DEPARTMENT OF RESOURCES RECYCLING
AND RECOVERY
Waste Tire Storage

This change without regulatory effect amends various requirements for storage of waste tires found in sections 17354 and 17356 of title 14 of the California Code of Regulations. These sections are amended pursuant to section 42820 of the Public Resources Code, which mandates consistency with Fire Code standards adopted by the State Fire Marshal.

Title 14
AMEND: 17354, 17356
Filed 10/16/2015
Agency Contact: Heather Hunt (916) 341-6068

File# 2015-0904-03

EMERGENCY MEDICAL SERVICES
AUTHORITY
Lay rescuer epinephrine training certification

This rulemaking by the Emergency Medical Services Authority adopts sections in Title 22 of the California Code of Regulations for the purpose of implementing SB 669. This action expands the number of trained individuals who have access to epinephrine auto-injectors in the event of an emergency, to provide assistance and reduce deaths related to anaphylaxis. Additionally, the regulations provide civil liability protection.

Title 22
ADOPT: 100044, 100044.1, 100044.2, 100044.3, 100044.4, 100044.5, 100044.6, 100044.7, 100044.8, 100044.9, 100044.10, 100045, 100046, 100047, 100048, 100049, 100050, 100051, 100052, 100053, 100054
Filed 10/15/2015
Effective 01/01/2016
Agency Contact: Corrine Fishman (916) 431-3727

File# 2015-0918-01

FAIR POLITICAL PRACTICES COMMISSION
Multipurpose Organization Political Activity
Transparency

This action by the Fair Political Practices Commission makes revisions to California Code of Regulations, title 2, section 18422 relating to multipurpose organization political activity transparency.

Title 2
AMEND: 18422
Filed 10/19/2015
Effective 11/18/2015
Agency Contact: Juanita Lira (916) 322-7762

File# 2015-0918-02
FAIR POLITICAL PRACTICES COMMISSION
 Top Contributor Disclosure

This action by the Fair Political Practices Commission makes revisions to California Code of Regulations, title 2, section 18422.5 relating to top contributor disclosures.

Title 2
 AMEND: 18422.5
 Filed 10/19/2015
 Effective 11/18/2015
 Agency Contact: Juanita Lira (916) 322-7762

File# 2015-0917-04
NEW MOTOR VEHICLE BOARD
 Case Management

This rulemaking action primarily implements California Vehicle Code section 3050.7 to add a formal mechanism for placing before the New Motor Vehicle Board (Board), for consideration at its next meeting, a proposed stipulated decision and order that has been rejected by at least one member of the Board.

Title 13
 ADOPT: 551.22
 AMEND: 550, 551.2
 Filed 10/21/2015
 Effective 01/01/2016
 Agency Contact: Robin Parker (916) 323-1536

File# 2015-0903-01
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT
 OSHPD Data Reporting Program Updates

The action amends inpatient data reporting requirements of hospitals and other covered entities to align state regulations with national standards.

Title 22
 AMEND: 97215, 97216, 97217, 97221, 97222, 97223, 97224, 97228, 97229
 Filed 10/16/2015
 Effective 01/01/2016
 Agency Contact: Anthony Tapney (916) 326-3932

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN May 20, 2015 TO
 October 21, 2015**

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

- 10/19/15 AMEND: 18422
- 10/19/15 AMEND: 18422.5
- 10/12/15 AMEND: 599.500
- 09/24/15 AMEND: 1181.1, 1181.2, 1181.3, 1181.4, 1181.6, 1181.7, 1181.8, 1181.9, 1181.10, 1181.11, 1181.12, 1181.13, 1182.1, 1182.2, 1182.3, 1182.4, 1182.5, 1182.6, 1182.7, 1182.8, 1182.10, 1182.12, 1182.13, 1183.1, 1183.2, 1183.4, 1183.5, 1183.7, 1183.8, 1183.9, 1183.11, 1183.12, 1183.13, 1183.14, 1183.15, 1183.16, 1183.17, 1183.18, 1184.1, 1185.1, 1185.2, 1185.3, 1185.4, 1185.5, 1185.6, 1185.7, 1185.8, 1185.9, 1186.1, 1186.2, 1186.3, 1186.4, 1186.5, 1186.6, 1186.7, 1187.1, 1187.2, 1187.3, 1187.4, 1187.5, 1187.6, 1187.7, 1187.8, 1187.9, 1187.10, 1187.11, 1187.12, 1187.13, 1187.14, 1187.15, 1188.1, 1188.2, 1190.1, 1190.2, 1190.3, 1190.4, 1190.5
- 09/21/15 AMEND: 35101
- 09/16/15 AMEND: 54100
- 09/14/15 AMEND: 55200
- 09/10/15 AMEND: 60000, 60010, 60510, 60550, 60560
- 09/09/15 ADOPT: 59750
- 09/08/15 AMEND: 560
- 08/13/15 AMEND: 1859.163.1
- 08/06/15 AMEND: 18420.1, 18901.1
- 07/30/15 REPEAL: 547.80, 547.82, 547.83, 547.84, 547.85, 547.86, 547.87
- 07/30/15 ADOPT: 599.980, 599.981, 599.982, 599.983, 599.984, 599.985, 599.986 AMEND: 599.980 (renumbered to 599.987), 599.981 (renumbered to 599.988), 599.982 (renumbered to 599.989), 599.985 (renumbered to 599.990), 599.986 (renumbered to 599.991), 599.987 (renumbered to 599.992), 599.988 (renumbered to 599.993), 599.990 (renumbered to 599.994), 599.992 (renumbered to 599.995), 599.993 (renumbered to 599.996), 599.994 (renumbered to 599.997), 599.995 (renumbered to 599.998)
- 07/16/15 AMEND: 548.42, 548.124

CALIFORNIA REGULATORY NOTICE REGISTER 2015, VOLUME NO. 44-Z

07/15/15 AMEND: 59640
07/15/15 AMEND: 18404.2
07/10/15 AMEND: 18700, 18700.1, 18700.3,
18701, 18702, 18702.2, 18702.4, 18747
06/22/15 ADOPT: 18700.3, 18707 AMEND:
18704 REPEAL: 18704.1, 18704.2,
18704.3, 18704.4, 18704.5, 18704.6
06/22/15 AMEND: 18361.7
06/16/15 AMEND: 39000, 39001, 39002
06/02/15 AMEND: 10001, 10002, 10005, 10006,
10007, 10008, 10009, 10011, 10012,
10013, 10015, 10021, 10022, 10024,
10025, 10029, 10030, 10031, 10033,
10035, 10037, 10038, 10039, 10041,
10042, 10046, 10047, 10050, 10053,
10054, 10056, 10057, 10061, 10062,
10063, 10065
05/27/15 ADOPT: 61100, 61101, 61102, 61103,
61104, 61105, 61106, 61107, 61108,
61109, 61120, 61121, 61122, 61130,
61131, 61132, 61140

Title 3

09/30/15 AMEND: 3435(b)
09/30/15 AMEND: 1380.19, 1430.10, 1430.12,
1430.14, 1430.26, 1430.27, 1430.45
09/16/15 AMEND: 3435(b)
08/27/15 AMEND: 3435
08/26/15 AMEND: 6502
08/20/15 AMEND: 3435(b)
08/17/15 AMEND: 2100
08/14/15 ADOPT: 450, 450.1, 450.2, 450.3, 450.4,
451, 452
08/10/15 AMEND: 6148, 6148.5, 6170, 6216
08/10/15 AMEND: 3435(b)
08/10/15 AMEND: 3435(b)
08/06/15 AMEND: 3435(b)
08/04/15 AMEND: 3435(b)
07/21/15 AMEND: 3439(b)
07/08/15 AMEND: 3435(b)
07/01/15 AMEND: 4603(i)
06/24/15 AMEND: 3435(b)
06/24/15 AMEND: 2751(b)
06/22/15 AMEND: 3435(b)
06/02/15 AMEND: 3591.11(a)
05/28/15 AMEND: 3435(b)

Title 4

10/05/15 AMEND: 1843.2
09/08/15 ADOPT: 8130, 8131, 8132, 8133, 8134,
8135, 8136, 8137, 8138
09/08/15 ADOPT: 10091.1, 10091.2, 10091.3,
10091.4, 10091.5, 10091.6, 10091.7,
10091.8, 10091.9, 10091.10, 10091.11,
10091.12, 10091.13, 10091.14, 10091.15
08/31/15 AMEND: 1844

08/19/15 AMEND: 1433
07/31/15 ADOPT: 1866.1 AMEND: 1844
07/28/15 AMEND: 10325
07/23/15 AMEND: 1632
07/22/15 AMEND: 400, 401, 402, 403, 404, 405,
406
07/15/15 AMEND: 1588
07/02/15 AMEND: 5205, 5230, 5170
06/04/15 ADOPT: 1891.1

Title 5

10/06/15 AMEND: 80225
10/05/15 AMEND: 19810
09/10/15 AMEND: 19810
07/30/15 ADOPT: 71105, 71105.5, 71410, 71471,
71775, 71775.5, 74240, 74250, 75140
AMEND: 70000, 71400, 71650, 75150
07/20/15 ADOPT: 80054.1 AMEND: 80054
05/21/15 AMEND: 19810

Title 8

10/21/15 AMEND: 15600, 15609
09/21/15 ADOPT: 14006.1 AMEND: 14003,
14007
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