



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulations at a public hearing on or after **December 11, 2008**, at the offices of the Fair Political Practices Commission, 428 J Street, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m. on December 9, 2008.**

BACKGROUND/OVERVIEW

The Political Reform Act (the "Act")¹ defines the term "expenditure" as "any payment made for a political purpose." (Section 82025; Regulation 18225.) An independent expenditure" is defined as "an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the candidate or committee." (Section 82031.) A communication "expressly advocates" a position if the communication "contains express words of advocacy such as 'vote for,' 'elect,' 'support,' 'cast your ballot,' 'vote against,' 'defeat,' 'reject,' 'sign petitions for' or otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election." (Regulation 18225(b)(2).)

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Interpreting the Act's definition of expenditure, Regulation 18225(b) provides that the term "expenditure" includes payments "used for communications which expressly advocate . . . the qualification, passage or defeat of a clearly identified ballot measure." While nothing in Regulation 18225 necessarily precludes payments made for communications not expressly advocating the qualification, passage or defeat of a ballot measure from the statutory definition of the term expenditure, Regulation 18225 has been misconstrued to require communications by governmental agencies relating to ballot measures to contain express advocacy before the communications are considered expenditures under Section 82025.

However, the term expenditure encompasses all payments for a political purpose, and a committee filing a required campaign statement must provide "[t]he total amount of expenditures made during the period covered by the campaign statement and the total cumulative amount of expenditures made." (Section 84211(b).) For governmental agencies, Regulation 18420 expressly requires an agency making expenditures or contributions to file campaign statements under Chapter 4 of the Act if the agency qualifies as a committee under Section 82013. Thus, a governmental agency qualifying as a committee must report payments made by the committee for a political purpose even if the payment is for a communication that does not contain express advocacy.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. Section 18420.1:

Regulation 18420.1 is proposed to clarify that a governmental agency making a payment for a communication relating to a ballot measure and directed to voters has made a payment for a political purpose that is an expenditure under the Act even if the communication does not contain express advocacy. Moreover, this expenditure must be reported on any required campaign statement if the governmental agency qualifies as a committee under Section 82013.

Specific proposals the Commission may consider include, but are not limited to the following:

- Providing a safe harbor for agencies making a payment of public moneys for a communication relating to a ballot measure if the communication provides a fair and impartial presentation of facts.
- Defining when a communication relates to a ballot measure.

- Specifying types of payments for communications which shall and shall not be considered expenditures. In determining the types of payments for communications that are and are not expenditures, the Commission will consider whether to include payments for all types of communications or to narrow the definition to include or exclude payments for specified types of communications. In addition, the Commission may consider the size and nature of the audience to whom the communication is directed.

SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or any related issues.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of this regulation is to implement, interpret, and make specific Government Code Sections 82013, 82025, and 84200, et seq.

CONTACT

Any inquiries should be made to Brian G. Lau, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/index.html?ID=247#2>.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulations at a public hearing on or after **December 11, 2008**, at the offices of the Fair Political Practices Commission, 428 J Street, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m. on December 9, 2008.**

BACKGROUND/OVERVIEW

Candidates commonly control four kinds of recipient committees, as that term is defined at Government Code Section 82013(a). Permissible activities for three of these four kinds of recipient committees are prescribed in Commission regulations. There are, however, no explicit rules governing the operation of candidate controlled ballot measure committees, whose numbers have increased in recent years, resulting in a substantial flow of unlimited contributions to committees controlled by candidates for elective state office. A regulation is needed to establish clear rules ensuring that contribution limits are observed where applicable to such committees, that they are formed to support or oppose ballot measures likely to be presented to the electorate within the foreseeable future, and that funds contributed to support or oppose ballot measure campaigns are not diverted to campaigns for elective office.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. § 18521.5: The Commission will consider adoption of proposed Regulation 18521.5, requiring that candidate controlled ballot measure committees be organized as “primarily formed” committees within the meaning of Government Code Section 82047, and that they be established in anticipation of a particular measure or measures, with further guidelines governing committee naming conventions, the permissible use of committee funds, and application of contribution limits.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs.
This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of this regulation is to implement, interpret and make specific Government Code sections 82015, 82025, 82047.5, 84504, 85303, and 85310.

CONTACT

Any inquiries should be made to Lawrence T. Woodlock, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at www.fppc.ca.gov.

ADDITIONAL COMMENTS

After the hearing, the Commission may adopt or repeal the proposed regulations if they remain substantially the same as described or as in the text originally made available to the public. The Commission may make changes to the proposed regulation before its adoption or repeal.

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: Victor Valley Community College District
Muroc Joint Unified School District
Butte-Glenn Community College District
Solano County Water Agency
San Francisco Bay Area Water Transit Authority
Eastern Sierra Transit Authority
Cooperative Personnel Services

A written comment period has been established commencing on **November 7, 2008**, and closing on **December 22, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention Sarah Olson, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **December 22, 2008**. 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 Sarah Olson, 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 Sarah Olson, 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 Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulations at a public hearing on or after **December 11, 2008**, at the offices of the Fair Political Practices Commission, 428 J Street, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m. on December 9, 2008**.

BACKGROUND/OVERVIEW

Government Code Section 82028 defines a gift as any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater bene-

fit is not received. Tickets to entertainment events provide an inherent personal benefit and qualify as gifts unless consideration of equal or greater value is provided.

Proposed regulation 18944.1 would amend the so called "gift of tickets to an agency" regulation by providing rules under which tickets that are provided to agency officials are not considered gifts, in that adequate consideration is provided. The regulation would make it clear that it does not apply if the tickets are provided as part of the compensation package for the duties of the office, as this would qualify as income and not be subject to the gift rules. The proposed amendments would furthermore provide exceptions for which tickets that would otherwise be considered gifts would not be treated as a gift if the use was to further a valid governmental or public purpose.

Additionally, proposed new regulation 18944.3 would clarify that any payment that is not a lawful use of public funds will be treated as a gift under the Political Reform Act.

REGULATORY ACTION

Amend 2 Cal. Code Regs. § 18944.1: The Commission may consider the proposed changes to Regulation 18944.1 that would provide that tickets to entertainment events that are not provided as income for the official's position are a gift to the official, whether provided by the official's agency or by an outside source, unless the use of the ticket furthers a governmental or public purpose. The regulation would further provide that the agency publish its distribution policy, including who received the ticket and a description of the governmental or public purpose furthered by the distribution of the ticket.

Adopt 2 Cal. Code Regs. § 18944.3: The Commission may consider adopting proposed Regulation 18944.1 that would clarify that a payment made by an agency to an official that is not a lawful expenditure of public moneys is a gift under the Political Reform Act.

SCOPE

The Commission may delete provisions, adopt the language noticed herein, or choose new language to implement its policy regarding tickets to agency officials under Regulation 18944.1 and payments to agency officials under Regulation 18944.3.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. These regulations will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. These regulations will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. These regulations will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of these regulations is to implement, interpret, and make specific the procedures for valuing gifts to nonprofit and political fundraisers.

CONTACT

Any inquiries should be made to William J. Lenkeit, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at www.fppc.ca.gov.

TITLE 4. CALIFORNIA HORSE RACING BOARD

TITLE 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1690.1. TOE GRABS PROHIBITED

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

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1690.1, Toe Grabs Prohibited. The proposed amendment of Rule 1690.1 would change the height limitation on toe grabs on the front shoes of thoroughbred horses participating in a race from the current four millimeters maximum to a maximum of two millimeters.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Wednesday, January 14, 2009**, or as soon after that as business before the Board will permit, at the **Arca-dia City Hall, 240 West Huntington Drive, Arca-dia, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on December 22, 2008**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Colleen Germek, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 274-6049
Fax: (916) 263-6042
E-mail : colleeng@chr.ca.gov

AUTHORITY AND REFERENCE

Authority cited: sections 19420 and 19562, Business and Professions Code. Reference: section 19481, Business and Professions Code.

Business and Professions Code sections 19420 and 19562 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific section 19481, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the Board. Business and Professions Code section 19562 states the Board may prescribe rules, regulations, and conditions under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19481 provides that the Board shall establish safety standards governing equipment for horse and rider.

The proposed regulation would prohibit the use of toe grabs with a height greater than two millimeters on the front shoes of thoroughbred horses participating in a race. A toe grab is a type of horseshoe that is used to provide added traction for a horse. Toe grabs elevate the toe of the shoe, and can range in height from eight millimeters (high) to two millimeters (low). In February 2006 the Board added Rule 1690.1, Toe Grabs Prohibited, to prevent the use of toe grabs over four millimeters in height on the front shoes of thoroughbreds while racing. The toe grab prohibition for thoroughbreds was based on several studies conducted by the California Veterinary Diagnostic Laboratory System (CVDLS) at the University of California, Davis. The CVDLS examined shoeing and catastrophic injury in racehorses. The shoes of the injured horses were compared to those of uninjured horses to identify types of shoes associated with increased risk of injury. The toe grab was the type of traction device found on 90 percent of the injured horses and 30 percent of uninjured horses. The conclusion was that there appeared to be an association between toe grabs and increased risk of catastrophic injury in thoroughbred racehorses. The higher the toe grabs — the greater the risk. In June 2008 the Jockey Club Thoroughbred Safety Committee (JCTSC) recommended an immediate ban on toe grabs other than horseshoes with a height no greater than two millimeters while racing or training on all racing surfaces. Following the recommendation of the JCTSC, in July 2008 the State of Kentucky approved an amendment to its regulations that prohibits toe grabs with a height greater than two millimeters on front horseshoes of thoroughbred horses while racing or training. At the September 18, 2008 regular meeting, the Board determined that the height limitation on toe grabs on the front shoes of thoroughbred horses participating in a race should be changed from the current four millimeters to a maximum of two millimeters. The proposed amendment to Rule 1690.1 is in line with the recommendation made by the JCTSC.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

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

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

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

The Board has made an initial determination that the proposed amendment of Rule 1690.1 will not have a significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

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

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1690.1 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1690.1 does not affect small businesses because horse racing is not a small business under Government Code section 11342.610.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSON

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

Colleen Germek, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6049
E-mail: colleeng@chr.ca.gov

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

Harold Coburn, Regulation Analyst
Policy and Regulation Unit
Telephone: (916) 263-6397

AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices 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 regulation, and the initial statement of reasons. Copies may be obtained by contacting Colleen Germek, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulation. Requests for copies of any modified regulations should be sent to the attention of Colleen Germek at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has

adopted the proposed regulation in its current or modified form, should be sent to the attention of Colleen Germek at the address stated above.

BOARD WEB ACCESS

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

**TITLE 27. STATE WATER RESOURCES
CONTROL BOARD**

DIVISION 5. CHAPTER 1.

**ON-SITE WASTEWATER TREATMENT
SYSTEMS REGULATIONS**

The State Water Resources Control Board (State Water Board) proposes to adopt regulations described below after considering reasonable comments, objections, and recommendations regarding the possible action.

PROPOSED REGULATORY ACTION

The State Water Board proposes to adopt new regulations (Section 30000 thru 30040) in Title 27 of the California Code of Regulations (CCR). These new sections establish requirements for discharges from onsite wastewater treatment systems (OWTS) for the protection of water quality.

PUBLIC HEARING

Notice is hereby given that the State Water Board is requesting comments on this rulemaking and will hold a public hearing on this matter as well as a number of public workshops at multiple locations across the State. Workshops will be conducted at the following dates and times:

| City | Date; Time | Address |
|-------------------------|---------------------------------|---|
| Bishop | January 13, 2009; 7:00 p.m. | Tri County Fairgrounds Sierra St. and Fair Dr. Bishop, CA |
| Eureka | January 28, 2009; 7:00 p.m. | Eureka High School Auditorium 1915 J Street Eureka, CA |
| Fresno | January 22, 2009; 7:00 p.m. | Fresno Unified School District Board Chamber 2309 Tulare Street Fresno, CA |
| Malibu | January 15, 2009; 7:00 p.m. | Malibu High School 30215 Morning View Dr. Malibu, CA |
| Mariposa | December 8, 2008; 7:00 p.m. | Board Of Supervisors Chambers Government Center 5100 Bullion St. Mariposa, CA |
| Nevada City | December 10, 2008; 7:00 p.m. | Board of Supervisors Chambers Eric Rood Administrative Center 950 Maidu Avenue Nevada City, CA |
| Redding | December 18, 2008; 7:00 p.m. | Board of Supervisors Chambers Shasta County Admin. Center 1450 Court Street Redding, CA |
| Riverside | January 14, 2009; 7:00 p.m. | Riverside County Supervisors Chambers 4080 Lemon Street Riverside, CA 92501 |
| Sacramento (Hearing) | February 9, 2009; 1:30 p.m. | Bryon Sher Auditorium Cal EPA Building 1001 I Street Sacramento, CA |
| Santa Rosa | January 27, 2009; 7:00 p.m. | Wells Fargo Center for the Arts Merlot Theatre 50 West Mark Springs Road Santa Rosa, CA |
| San Andreas | December 9, 2008; 7:00 p.m. | Board Of Supervisors Chambers 891 Mountain Ranch Road San Andreas, CA |
| Susanville | December 11, 2008; 7:00 p.m. | Lassen County Fairgrounds Jenson Hall 195 Russell Ave. Susanville, CA 96130 |

Persons wishing to make oral presentations may do so at the public hearing in Sacramento or at the workshops around the State. Presenters are encouraged to submit written comments, since time limits may be imposed on the length of presentations at the hearing or workshops. In circumstances where lengthy presentations are warranted, presenters should summarize pertinent points of the testimony or presentations and submit written comments before the comment period expires.

DOCUMENT ACCESSIBLE BY MAIL, THE INTERNET, OR A LIBRARY

A separate Notice of Public Hearing and related documents are available online at http://www.waterboards.ca.gov/water_issues/programs/septic_tanks/ and will be distributed to known interested parties and the public by request to the contact below. The documents are also available at the libraries listed in this Notice.

WRITTEN COMMENT PERIOD

Any person may submit written comments relevant to the proposed regulatory action to the State Water Board. All written comments must be received or postmarked by 5:00 p.m. on February 9, 2009. The State Water Board will consider all comments received at the State Water Board by the aforementioned time limits. Comments should be submitted to:

Todd Thompson, P.E.,
State Water Resources Control Board
Division of Water Quality
P.O. Box 2231
Sacramento, CA 95812-2231
email: AB885@waterboards.ca.gov

Comments may also be hand-delivered to 1001 I Street, Sacramento, CA or faxed to (916) 341-5463.

To be added to the mailing list for this rulemaking, and to receive notification of updates to this rulemaking, please send your name and address to Todd Thompson at the above postal address or e-mail address. Individuals who receive this notice by mail are already on the mailing list.

AUTHORITY AND REFERENCE

Section 1058 of the California Water Code authorizes the State Water Board to adopt the proposed regulations which would implement, interpret, or make specific the following State statute sections: California Water Code Sections 1058, 13260, 13263, 13267, 13269, 13290, 13291, 13291.7.

INFORMATIVE DIGEST

Summary of Existing Law

California is one of only two States in the nation without statewide OWTS regulations. Currently, OWTS are regulated by California regional water quality control boards and by local government. This approach, lacking any statewide standards or requirements, has resulted in great variation in a regulatory framework for OWTS and is neither consistent nor up-to-date across the State.

Background

Under the California Water Code, the State Water Board and Regional Water Quality Control Boards (Regional Water Boards) are charged with protecting the waters of the State from unreasonable degradation and impairment resulting from discharges of waste to land. The scope of this mandate includes addressing adverse effects on water quality resulting from discharges of wastewater from OWTS. California has approximately 1.2 million OWTS serving as sewage treatment and disposal systems for approximately 10% (3.4 million people) of the State's population. The cumulative wastewater flow from these systems is estimated at 420 million gallons-per-day. In several counties, more than 40% of the housing units use OWTS.

Proper treatment of OWTS wastewater is important because the majority of the wastewater will pass through the soils underlying the OWTS to recharge groundwater. In California, some groundwater pollution is due to discharges from OWTS. In specific locations, it is clear that the observed decrease in groundwater quality and/or surface water quality is a result of the poor performance of OWTS operating pursuant to the current regulatory scheme.

In September 2000, Assembly Bill 885 (Chapter 781, Statutes of 2000) was approved by the California State Legislature and signed into law. Assembly Bill 885 (AB 885) added Chapter 4.5 (Sections 13290–13291.7) to Division 7 of the California Water Code and requires that the State Water Board establish regulations or standards for permitting and operation of OWTS. This mandate requires that the State establish regulatory standards that have previously been left to local agencies (counties and cities) and the Regional Water Boards. The proposed draft regulations are intended to satisfy the requirements of AB 885. The Water Boards seek to adopt an effective set of regulations that are also cost-effective, to eliminate or minimize the impairment of waters of the State caused by discharges from OWTS. It is necessary to allow use of OWTS in areas of the State not serviced by a publicly owned community wastewater treatment system, where protective of the environment and where it is determined to be in maximum

benefit to the people of the State. Without public sewers or OWTS, there are few alternatives for the proper treatment and disposal of sewage associated with human activities.

The existing regulatory framework surrounding installation, operation, and maintenance of OWTS is complex and varies at the regional and local levels throughout California. This section provides a brief overview of this setting to illustrate the intent of AB 885.

A broad network of federal and State laws exist that provide the State Water Board and Regional Water Boards the authority to protect beneficial uses of water through the regulation of the discharge of waste, including the discharge of waste from OWTS. These laws include the Federal Water Pollution Control Act of 1972 (Clean Water Act), and its subsequent amendments; California's Porter-Cologne Water Quality Control Act of 1969 (Water Code Section 13000 et seq.) and subsequent amendments; and related State policies and regulations.

The State Water Board is responsible for water quality planning, implementation procedures, and the overall budgeting for the State and Regional Water Boards. The Regional Water Boards work independently in establishing regional water quality plans and water quality protection requirements but often in cooperation with the environmental and public health agencies of counties, cities, and, in some cases, special districts. As further described below, the Regional Water Boards often rely upon these local agencies to help them implement and enforce OWTS-related policies and regulations.

In accordance with Section 13260 of the Water Code, anyone proposing to discharge waste that may adversely affect surface waters or groundwater in California must file a report of waste discharge with the applicable Regional Water Board. As a waste discharge that may adversely affect surface waters and groundwater of the State, OWTS discharges are subject to regulation by the appropriate Regional Water Board. However, the Regional Water Board may issue waste discharge requirements (WDRs) with terms and conditions pursuant to Section 13263 of the Water Code in order to protect beneficial uses and applicable water quality objectives or, as allowed under Water Code Section 13269, waive the WDRs provided specific conditions are met.

The State or Regional Water Boards may adopt waivers of reports of waste discharge for individual discharges or for categories of waste discharges. Prior to 2003, Regional Water Boards often informally waived many WDRs, especially for discharges from small (single family) OWTS and required no additional oversight, monitoring, or subsequent evaluations to verify that the OWTS were operating in a manner that would avoid causing pollution. In accordance with CWC Sec-

tion 13269, waiver of regulatory oversight is allowed by statute, where such waivers are found to be in the public interest. However, recent amendments to Section 13269 essentially terminated all pre-existing waivers effective January 1, 2003 and changed how waivers are addressed. As part of those changes, Section 13269 was amended to require that waivers of WDRs include monitoring to support the implementation of any adopted waivers.

The State Water Board fully expects that, although some changes may occur as a result of these proposed regulations, waivers of WDRs for smaller OWTS handling domestic wastewater will remain an integral part of the State's water pollution prevention. As such, in a separate but related action, the State plans to adopt a general statewide waiver of WDRs for OWTS. The action to adopt a statewide general waiver will occur concurrently with the proposed rulemaking, including the public comment period and adoption.

SMALL BUSINESS DETERMINATION

The State Water Board has determined that the proposed regulations may, in some cases, affect small business owners when such a business constructs a new facility using OWTS. However, these cases are expected to be few and to not increase the overall cost of construction and operation for such structures significantly.

PLAIN ENGLISH POLICY OVERVIEW

The purposes of the proposed regulations are:

- (a) to require that all new or replaced OWTS be designed and reviewed by qualified professionals;
- (b) to require that all OWTS be designed so that they are reasonably expected to operate as designed;
- (c) to require proper operation and maintenance of all OWTS;
- (d) require performance monitoring to support the continued long-term use of OWTS; and
- (e) require OWTS that contribute to the pollution of surface water to be upgraded to improve the level of treatment to abate pollution.

PROPOSED RULEMAKING

Article 1 of Chapter 1, Division 5 of Title 27 addresses siting, design, and operation of OWTS. The first Section addresses the technical terms requiring a definition because they are not within the common usage of

the society at large or have special meaning within the context of these regulations. Section 30001 establishes which OWTS are subject to the rule and which new and replaced OWTS designs require review for compliance. Section 30002 establishes basic standards for new and replaced OWTS and establishes basic actions that must be taken by owners of OWTS.

Section 30000 includes definitions of terms used for specific purposes in this rulemaking, to improve clarity. The definitions establish narrow meanings for these terms as they are used in the proposed regulations, in order to avoid lengthy or repetitive descriptions.

Section 30001 This Article establishes which OWTS are subject to the proposed rule, and which new and replaced system may be reviewed for compliance.

Section 30002 creates a regulatory scheme that permits use of all types of OWTS, so long as they function, and continue to function, without resulting in pollution of groundwater or surface water. To achieve this goal, the section outlines the following new requirements:

- ▶ **Competent Site-Specific Design** — The homeowner or business-owner must engage an OWTS professional to identify relevant site-specific conditions, waste type, other unique conditions with the site and/or facility and who is capable of designing systems that will work well under site specific conditions, despite the identified challenges;
- ▶ **Owner's Manual Required** — By requiring the contractor to provide an owner's manual for new and replacement OWTS, the regulation will provide the homeowner with full disclosure of the workings of his/her system. In addition, the homeowner will be able provide the O & M manual to service personnel who might need the information to provide service or repair.
- ▶ **Professional Installation** — The OWTS must be designed and installed by an OWTS professional, who must include an as-built plan in the Owner's Manual (see below).
- ▶ **Owner Records Retention** — The OWTS owner is required to retain the record plan ('as-built drawings') and any inspection records.
- ▶ **Contract Service Providers** — OWTS with supplemental treatment components require that the owner enter into a maintenance contract with a service provider.

- ▶ **Monitoring** — OWTS are required to be monitored for solids accumulation. Also, OWTS with supplemental treatment components must be maintained by a service provider under contract. Where domestic wells are located onsite, the owner of the OWTS must conduct groundwater monitoring using their domestic well or a groundwater monitoring well system.

The regulatory scheme outlined in this Section does not reject any existing OWTS design or potential future design. Instead, it requires that any OWTS be designed, installed, operated, and maintained properly. This constitutes a reasonable approach to assuring that OWTS prevent the gross introduction of pollutants and/or pathogens into California’s valuable surface water and groundwater bodies.

Article 2 establishes acceptable methods for determining high groundwater for all types of OWTS construction.

Section 30012 establishes when depth to groundwater must be determined. It also describes who is qualified to determine high groundwater and what other sources and acceptable methodologies are allowed for use in making groundwater determinations.

Article 3 establishes performance requirements for supplemental treatment technology and dispersal systems. This includes performance requirements for supplemental treatment components and minimum siting, sizing and design of dispersal systems.

Section 30013 establishes the requirements for supplemental treatment systems. All OWTS consist of a treatment component (e.g. septic tank or supplemental treatment system) and a soil-based disposal system (dispersal system). The language in this Section specifies certification criteria for use of supplemental treatment and for monitoring of these systems to ensure proper operation.

Section 30014 establishes the requirements for dispersal systems. This language specifies criteria for placement, design and for monitoring of these systems to ensure proper operation.

Article 4 establishes water quality protection standards for OWTS located adjacent to waters listed as impaired pursuant to the Section 303(d) of the Clean Water Act where OWTS have been determined to be contributing to the impairment.

Section 30040 requires that where OWTS have been identified as contributing to the impairment of a surface water body, performance requirements are required for all OWTS at the earliest practical time, both for new and existing OWTS. Maximum timelines are established.

DISCLOSURES REGARDING THE PROPOSED ACTION

The State Water Board has made the following determinations:

Local Mandate: This rulemaking imposes no mandate upon local government. However, this rulemaking may cause some modification in the way local government permits OWTS and may result in phone calls from the public. It also may require local agency assistance to homeowners who find water quality problems as a result of the required groundwater monitoring. However, frequency of such occurrences is difficult to estimate and a determination of the overall effect is speculative.

Fiscal Impact

- **Cost to any local agency or school district which must be reimbursed under Part 7 (commencing with Section 17500) of Division 4:** None. Public school districts are regulated and/or already managed in a manner consistent with these draft regulations. State Water Board Staff does not expect any significant fiscal effects School Districts.
- **Cost or savings to any State agency:** Since most State owned OWTS are regulated and/or already managed in a manner consistent with these draft regulations, State Water Board Staff does not expect any significant fiscal effects on other State Departments.
- **Other non-discretionary costs or savings imposed on local agencies:** None
- **Cost savings in Federal funding to the State:** None

Housing Costs

- **Significant effect on housing costs:** Overall, these regulations are expected to increase housing costs across the State, for those houses using OWTS for wastewater discharge.

Significant Statewide Adverse Economic Impact Directly Affecting business, including ability to compete: None.

Assessment Regarding Effect on Jobs/Businesses: Businesses in the OWTS industry will be affected positively by this rulemaking through the creation of an esti-

mated 10,674 new jobs and nearly 500 new businesses. Adoption of these regulations is expected to:

- create jobs in the OWTS industry;
- create new businesses in the State;
- not eliminate existing businesses within California; and
- not affect the expansion of businesses currently doing business within California.

Cost Impacts on Representative Person or Business: Businesses will incur costs associated with monitoring an OWTS and any construction of new OWTS. Private persons may incur additional costs for monitoring an OWTS and in cases where existing OWTS adjacent to impaired (polluted) waters are found to be contributing to the pollution. Monitoring septic tank solids levels (once every five years), as required by the rule, is a new cost and is estimated at \$67 annually for businesses and \$32 annually for private residences. Some properties will also be required to monitor groundwater and monitor their OWTS more closely, activities estimated to cost \$32 annually. In the worst-case scenario, these costs will range from \$25,000 to \$40,000 (midpoint of \$35,000) for OWTS found polluting waters of the State, depending on the size and type of system required. This and all other costs, once summed up and annualized, are ultimately estimated to cost \$339 million dollars annually.

Business Report: Businesses using OWTS and an onsite domestic well will have to test groundwater (most likely at the domestic well) for a variety of pollutants. The laboratory will then submit the data for inclusion in a State Water Board database. This information is important for the immediate and long-term goals of protecting water quality.

The Board finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed regulation, which requires a report, apply to businesses.

Small Business: Small businesses constitute over 97 percent of all businesses. For the purposes of the cost to businesses in this disclosure, the term “business” means large and small businesses. The requirements and costs will be the same for both groups and is addressed above, although the impact on specific businesses will vary.

ALTERNATIVES STATEMENT

In accordance with Government Code section 11346.5, Subdivision (a)(13), the State Water Board must determine that no alternative it considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Todd Thompson, P.E., (Primary Contact)
State Water Resources Control Board
Division of Water Quality
P.O. Box 2231
Sacramento, CA 95812-2231
(916) 341-5518
email: TThompson@waterboards.ca.gov

Lisa Babcock, P.G.
State Water Resources Control Board
Division of Water Quality
P.O. Box 2231
Sacramento, CA 95812-2231
(916) 341-5687
email: LBabcock@waterboards.ca.gov

The proposed text of the regulations and the Initial Statement of Reasons is available at http://www.waterboards.ca.gov/water_issues/programs/septic_tanks/. Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Mr. Thompson at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The State Water Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date that 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 the documents filed in compliance to the California Environmental Quality Act. Copies may be obtained by going to the above website or contacting Mr. Thompson as listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the hearing and considering all timely and relevant comments received, the State Water Board may adopt the proposed regulations substantially described in this Notice. If the State Water Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text available for public comment for at least 15 days before the State Wa-

ter Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mr. Thompson at the address indicated above. Any modified version will also be available on the website listed above. The State Water Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF FINAL STATEMENT
OF REASONS**

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.

**LIBRARY LOCATIONS WHERE DOCUMENTS
HAVE BEEN SENT**

Pertinent documents associated with this proposed action have been sent to the following libraries:

| | |
|--|---|
| San Diego Public Library | Modesto–Stanislaus Central Library |
| Orange County Public Library | Sacramento Central Library |
| Los Angeles Public Library | Fairfield–Suisun Community Library |
| Fresno County Public Library | Central Sonoma County Library |
| Riverside Central Library | Shasta County Library |
| Riverside County Library — Palm Desert Branch | San Francisco Public Library Stegner Environmental Center |
| Palmdale City Library | Humboldt County Library |
| Norman Feldheim Central Library — San Bernardino | San Luis Obispo City–County Library |
| Kern County Library | Salinas Public Library |

GENERAL PUBLIC INTEREST

**CALIFORNIA GAMBLING
CONTROL COMMISSION**

**NOTICE OF RESCHEDULED PUBLIC
HEARING AND EXTENSION OF THE PUBLIC
COMMENT PERIOD CONCERNING
MINIMUM INTERNAL CONTROL
STANDARDS (MICS) FOR GAMBLING
ESTABLISHMENTS
CGCC–GCA–2008–R–3**

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) has re-scheduled the public hearing previously set for Novem-

ber 18, 2008, in the Notice of Proposed Action duly published in the *California Regulatory Notice Register* (Z–2008–0916–07, Register 2008, No. 39–Z, 09/26/2008). The new date and location of the public hearing is November 25, 2008, at 1:30 p.m., at 2399 Gateway Oaks Drive, First Floor Hearing Room, Suite 100, Sacramento, CA 95833–4231.

PUBLIC COMMENT PERIOD

The written comment period has also been extended. Written comments relevant to the proposed regulatory action, including those sent by mail, facsimile, or e-mail, may be submitted to the Commission at any time during the public comment period, or may be received by the Commission at the above referenced hearing. To be eligible for the Commission’s consideration, all written comments must be **received at its office no later than 5:00 p.m. on November 25, 2008**. Written comments not submitted at the hearing should be directed to the contact person named below.

CONTACT PERSON

All comments and inquiries concerning the substance of the proposed action should be directed to the following contact person:

James B. Allen, Regulatory Actions Coordinator
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833–4231
Telephone: (916) 263–4024
Fax: (916) 263–0452
E-mail: Jallen@cgcc.ca.gov

**DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING**

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

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

Bay Recycling
800 77th Avenue
Oakland, CA 94621

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

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

Fries Landscaping
25421 Clough
Escalon, CA 95320

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

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

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

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

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

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

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

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

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

PROPOSITION 65

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY**

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT
SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)**

NOTICE TO INTERESTED PARTIES

November 7, 2008

**Announcement of the Availability of Additional
Information on Chlorpyrifos for the November 20,
2008 Developmental and Reproductive Toxicant
Identification Committee Meeting**

On September 5, 2008, the Office of Environmental Health Hazard Assessment (OEHHA) released for public review and comment hazard identification materials on the chemical chlorpyrifos. Chlorpyrifos will come before the Developmental and Reproductive Toxicant Identification Committee on November 20, 2008, for the Committee to determine if it should be added to the Proposition 65 list of chemicals known to the State to cause reproductive toxicity.

A U.S. Environmental Protection Agency Issue Paper on the Toxicity Profile of Chlorpyrifos was released on August 27, 2008. Appendix D: Human Epidemiology: Effects in Children of that paper includes relevant data and analyses conducted by the original researchers after discussion with U.S. EPA and not available elsewhere. In order to provide the Committee with access to those data and analyses, a copy of the Issue Paper is being sent to the Committee.

The Issue Paper on the Toxicity Profile of Chlorpyrifos can be accessed at http://www.epa.gov/scipoly/sap/meetings/2008/091608_mtg.htm#frn, or can be obtained from the Proposition 65 Implementation Office by calling (916) 445-6900.

**RULEMAKING PETITION
DECISIONS**

**DEPARTMENT OF FOOD AND
AGRICULTURE**

**NOTICE OF DECISION ON PETITION
FOR RULEMAKING
(Government Code Section 11340.7)**

By letter dated August 21, 2008, Chris Tan, GMSX LLC dba Gelateria Naia (Petitioner) petitioned the Department of Food and Agriculture (Department) of the State of California to add new regulation under Title 3 of the California Code of Regulations. The proposed new regulation would establish a temporary standard for labeling and analytical methods for “gelato” as a milk food product pursuant to section 36631 et seq., of the Food and Agricultural Code.

**PROVISIONS OF THE CODE OF REGULATIONS
REQUESTED TO BE AFFECTED**

Title 3, California Code of Regulations, Chapter 1, Division 2, Article 5.

**AUTHORITY AND REFERENCE CITED
IN THE PETITION**

Section 36631 et seq., Food and Agricultural Code.

DEPARTMENT DECISION

Notice is hereby given that the Department accepts the petition, in part, for the reasons set forth below.

**REASONS SUPPORTING THE
DEPARTMENT’S DETERMINATION**

On September 12, 2008, the Department responded to the Petitioner specifying its findings on a preliminary review of the petition. The petition shall be considered and noticed for public comment according to the hearing procedures specified in Food and Agricultural Code section 36634. Following the hearing, if temporary approval is granted of the milk food product “Gelato” as specified in the petition, the Department may proceed with the emergency regulatory proceeding pursuant to section 36637 of the Food and Agricultural Code and section 11346.1 of the Government Code.

AGENCY CONTACT PERSON

Kristen Dahl, Agriculture Program Supervisor
Department of Food and Agriculture
1220 N Street, Room A-170
Sacramento, CA 95814
(916) 654-0773

AVAILABILITY OF THE PETITION

Interested persons may obtain a copy of the petition for rulemaking by requesting a copy from the agency contact person.

**OFFICE OF THE STATE FIRE
MARSHAL**

October 24, 2008

Vincent B. Mori, Project Manager
BRK Brands, Inc. DBA First Alert
Radiation Safety Officer
Product Development
3901 Liberty Street
Aurora, IL 60504-8122

Subject: SFM-P-10-08 Petition for regulatory change relating to Non-rechargeable Portable Aerosol Fire Extinguisher

Dear Mr. Mori:

In accordance with California Government Code, Section 11340.6 and 11340.7, the Office of the State Fire Marshal (OSFM) has reviewed the public petition to amend the California Code of Regulations (CCR) Title 19, Sections 561.2 and 557, Authority 13160 Health and Safety Code, relating to the classification (certification) and labeling of non-rechargeable portable aerosol fire extinguishers.

The OSFM has reviewed this petition and is denying your proposed regulation request for the following reasons:

1. Health and Safety Code Section 13160 requires the State Fire Marshal (SFM) to consider the standards of the National Fire Protection Association (NFPA) to control the servicing, including charging and testing, of all portable fire extinguishers. NFPA is a nationally recognized code body in the United States (US) and their standards are nationally recognized. The proposed Korean Standard KOFEIS 0108 and British Standard BS 6165 are not nationally recognized and consensus standards in California or the United States.
2. The translation for Korean standard KOFEIS 0108 is not officially recognized and the document is protected by copy right.

- 3. Korean standard KOFEIS 0108 has several references to Korean laws. There is no correlation between California's laws and Korean laws to determine if this standard will be suitable for California.
- 4. Under the Korean standard KOFEIS 0108, the marking requirements are not consistent with adopted standards in SFM regulations (CCR, Title 19).
- 5. The British Standard BS 6165 has several references that are not recognized by California regulations. There is no correlation between the standard recognized by California's regulations and British standards.

Interested parties may contact this office to obtain a copy of the petition and may request a reconsideration of any part or all of this decision. Request shall be submitted in accordance with California Government Code, Section 11340.6 and no later than 60 days after the date of this letter.

Should you have any questions or clarification is needed please contact me at (916) 324-9592 or diane.arend@fire.ca.gov.

Sincerely,

/s/
 DIANE K. AREND
 Senior Deputy State Fire Marshal
 Code Development and Analysis

cc: Mark Dippner, First Alert
 Kevin Reinertson, Supervising Deputy
 Ben Ho, Division Chief Fire Engineering
 James Parsegian, Supervising Deputy
 Office of Administrative Law (OAL)

**ACCEPTANCE OF PETITION
 TO REVIEW ALLEGED
 UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**ACCEPTANCE OF PETITION TO REVIEW
 ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the
 California Code of Regulations)**

DEPARTMENT OF MENTAL HEALTH

Agency being challenged:

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Kathleen Eddy, Senior Counsel
 Office of Administrative Law
 300 Capitol Mall, Ste. 1250
 Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Michael St. Martin
 CO-000414-3, RRU-7
 P.O. BOX 5003
 Coalinga, CA 93210

Agency contact:

Stephen Mayberg, Ph.D., Director
 Department of Mental Health
 1600 9th Street
 Sacramento, CA 95814

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

**PETITION TO THE OFFICE OF
 ADMINISTRATIVE LAW**

RE: **ALLEGED UNDERGROUND REGULATION**
Department of Mental Health
Special Order No.: 228 "Research Proposal Review Policy"

FROM: MICHAEL GEORGE ST.MARTIN,
 Petitioner

DATE: October 14, 2008

This is a computer generated petition based on the optional OAL form supplying the information required by Title 1, California Code of Regulations, §280, for a petition challenging an alleged underground regulation.

1. **Identifying Information: Petitioner**

Your Name: MICHAEL GEORGE
ST.MARTIN
CO-000414-3, RRU-10

Your Address: P.O. Box 5003, Coalinga,
CA 93210

Your Telephone Number: (559) 935-0493 or
(559) 935-0638

Your E-Mail
(if you have one): michaelst.martin@hotmail.com

2. **State Agency or Department being challenged:**

**California Department of Mental
Health ("DMH")**

3. **Provide a complete description of the purported underground regulation. Attach a written copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible.**

Description of alleged Underground Regulation

Petitioner alleges the ENTIRE California Department of Mental Health ("DMH") Operation Manual is an Underground Regulation, as there is no evidence that any portion of the DMH Operation Manual has been promulgated pursuant to the Administrative Procedures Act.

By this action, Petitioner specifically alleges the section of the DMH Operation Manual known as *Special Order No.: 228 "Research Proposal Review Policy"* is an underground regulation, as there is no evidence that this Special Order has been promulgated pursuant to the Administrative Procedures Act.

Department of Mental Health Special Orders are written Orders which are issued by the Deputy Director, Long Term Care Services, Department of Mental Health. Special Orders are mandatory and direct each State Hospital within the Department of Mental Health system to take specific actions. Because these mandated specific actions are required of all State Hospitals, they affect all persons in California detained at State Hospitals operated by the Department of Mental Health.

Special Order No.: 228 sets the standards for research conducted by or within the California Department of Mental Health on both present and former per-

sons detained or evaluated by the Department of Mental Health, its employees, agents, and/or contractors.

Special Order No.: 228 requires the use of a particular format, it sets timeline standards, discusses funding requirements, and consultations.

A true and correct copy of
Special Order No.: 228
is attached hereto as EXHIBIT A.

4. **Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation.**

Special Order No.: 228 is applied to research conducted at State Hospitals, by its employees, agents, and/or contractors, and affects all persons, no matter what their classification, who are both present and former persons detained or evaluated by the Department of Mental Health. Its existence and use are not in controversy.

As a result of *Special Order No.: 228*, each State Hospital has a Research Administrative Directive., along with various related policies and procedures. For example, Coalinga State Hospital ("CSH") *Administrative Directive Number 414, AD-414; Research, Administrative Directive Number 154, AD-154, Public Relations; and Administrative Directive Number 438, AD-438, Clinical Outcome Evaluation System*, are cross referenced in other documents to *Special Order No.: 228*.

It should be noted that Coalinga State Hospital ("CSH") *Administrative Directive Number 414, AD-414, Research; Administrative Directive Number 154, AD-154, Public Relations; and Administrative Directive Number 438, AD-438, Clinical Outcome Evaluation System*, are each the subject of separate petitions being filed with the OAL.

Petitioner alleges that the DMH can not justify or legitimize the use of one *Special Order* or *Administrative Directive* which has not been legally promulgated pursuant to the Administrative Procedures Act by cross referencing or citing as its authority some other Rule, Regulation, Manual, Instructions, Administrative Directive, or Special Order, which itself is also an underground regulation which has not been legally promulgated pursuant to the Administrative Procedures Act.

The DMH has taken the firm position that none of its Manuals, Instructions, Administrative Directives, or Special Orders are regulations subject to the provisions of the APA.

Petitioner alleges that *Special Order No.: 228* is a regulation within the meaning of the APA.

5. State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code that no express statutory exemption to the requirements of the APA is applicable.

***SPECIAL ORDER NO.: 228*
IS A REGULATION WITHIN THE
MEANING OF THE APA**

Prior to implementation, or revision thereof, the Department was required to adopt *Special Order No.: 228*, or any revision thereof, but failed to do so, and thus, pursuant to the law the current version now being utilized is invalid and an “Underground Regulation.”

Though the Director may prescribe rules and regulations such as *Special Order No.: 228*, they must be promulgated and filed per Chapter 3.5 of art. 1 of Division 3 of Title 2 of the Administrative Procedures Act, government Code, section 11340 et seq. There is no evidence that DMH has ever promulgated any version of *Special Order No.: 228*.

Special Order No.: 228 is a regulation. Chapter 3.5, article 5, of the Administrative Procedure Act, Govt. Code sections 11346 et seq., governs adoption, amendment and repeal of regulations by administrative agencies known as rulemaking. Govt. Code section 11342.600 provides that:

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

Syngenta Crop Protection, Inc. v. Helliker (2d Dist. 2006) 138 Cal.App. 4th 1135, 1175–77, 42 Cal.Rptr.3d 191, 221–222, quotes *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal. 4th 557, 59 Cal.Rptr.2d 186, which explains:

“[The APA] establishes ‘minimum procedural requirements’ for rulemaking. ([Govt. C.] § 11346(a).) The agency must provide notice of the proposed action (*Id.* §§ 11346.4, 11346.5), the complete text of the proposal (§ 11346.2(a)), and an initial statement of reasons for the proposal (§ 11346.2(b)), and a final statement of reasons (§ 11346.9(a)). The agency must provide a public hearing if an interested person timely requests a hearing (§ 11346.8(a)), provide an opportunity for interested persons to submit written comments if no hearing is held (*ibid.*), and respond in writing to comments in the final statement of reasons

(§ 11346.9(a)(3)). The agency must submit the entire rulemaking file to the Office of Administrative Law (§§ 11347.3(c), 11342.550), which reviews the regulation for compliance with the law and other criteria and approves or disapproves the regulatory action. (§§ 11349.1, 11349.3 . . .” (14 Cal. 4th 557, 59 Cal.Rptr.2d 186.)

“No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.” (Govt. Code § 11340.5(a).)

“A substantial failure to comply with chapter 3.5 of the APA renders the regulation invalid. § 11350(a); *Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4th at 576, 59 Cal.Rptr.2d 186.”

“A regulation subject to the APA thus has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided . . . Second, the rule must ‘implement, interpret, or make specific, the law enforced or administered by [the agency], or . . . govern [the agency’s] procedure.’ ([Former] Govt. Code § 11342(g) [now § 11342.601].) Of course, interpretations that arise in the course of case-specific adjudication are not regulations, though they may be persuasive as precedents in similar subsequent cases . . . Similarly, agencies may provide private parties with advice letters, which are not subject to the rulemaking provisions of the APA. ([Former] Govt. Code § 11343(a)(3), 11346.1(a) [now § 11340.9(I)].) Thus, if an agency prepares a policy manual that is no more than a summary, without commentary, of the agency’s prior decisions in specific cases and its prior advice letters, the agency is not adopting regulations . . . A policy manual of this kind would of course be no more binding on the agency in subsequent agency proceedings or on the courts when reviewing agency proceedings than are the decisions and advice letters that it summarizes.”(Emphasis added.) (*Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4th at 571, 59 Cal.Rptr.2d 186.)”

Morning Star Co. v. State Bd. Of Equalization (2006), 38 Cal. 4th 324, 333–334, 42 Cal.Rptr.3d 47, 53–54, confirms the Syngenta/Tidewater analysis, especially that a regulation must be intended to apply generally, and that it must implement, interpret or make specific the law administered by the agency, or govern the agency’s procedure.

Special Order No.: 228 is a regulation. It is applied to all persons, no matter what their classification, who are both present and former persons detained or evaluated by the Department of Mental Health. Its use is mandatory. Thus the mandate of **Special Order No.: 228** implements, enforces or otherwise makes specific various provisions of the Welfare and Institutions Code, and other laws, that deal with research on persons with mental illness.

**NO EXCEPTION EXCLUDES
SPECIAL ORDER NO.: 228
FROM THE APA PROCEDURES.**

Clearly inapplicable are the provisions of Govt. Code § 11340.9 excluding:

“(d) A regulation that relates only to the internal management of the state agency. . . .”

“(f) A regulation that embodies the only legally tenable interpretation of a provision of law. . . .”

“(I) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.”

Armistead v. State Personnel Bd. (1978) 22 Cal.3d 198, 204–205, 149 Cal.Rptr. 1, 4 quoting from the First Report of the Senate Interim Committee on Administrative Regulations to the 1955 Legislature, documents the necessity for strict adherence to the APA. The court found this necessary so as to prevent state agencies from avoiding obedience to the APA by denominating rules as “ ‘policies,’ ‘interpretations,’ ‘instructions,’ ‘guides,’ ‘standards,’ or the like,” and by containing them “in internal organs of the agency such as manuals, memoranda, bulletins, or [directing them] to the public in the form of circulars or bulletins.”

Armistead underlined that “[R]ules that interpret and implement other rules have no legal effect unless they have been promulgated in substantial compliance with the APA” (emphasis added), thus provision of state personnel transactions manual governing withdrawal of resignation by state employee merited no weight as agency interpretation where such provision had not been duly promulgated and published.

The Special Order in question here fits the above description perfectly. It is referred to as “Special Order,” and is replete with mandatory words such as “shall” and

“will” in regard to actions to be taken. It contains mandatory language thus making it much more than simple policies, interpretations, instructions, guides, standards, or the like. Instead, it is a forbidden underground regulation which has not been adopted pursuant to the Administrative Procedures Act.

The authority for issuing **Special Order No.: 228** is stated in that document as, “By order of the Deputy Director, Long Term Care Services.”

Petitioner alleges that no authority exists in statutory law, or in the Constitutions of California or the United States, which would grant the Deputy Director, Long Term Care Services, of the Department of Mental Health the autocratic authority to issue, utilize, enforce, or attempt to enforce any rule or regulation by denominating it a **Special Order**, unless it has first been promulgated pursuant to the Administrative Procedures Act.

Special Orders apply statewide to all DMH facilities. These **Special Orders** mandate what each facility **must** mandate in its own version of an **Administrative Directive**. Having each DMH facility issue its own mandated version of a **Special Order** under the label of an **Administrative Directive** is just the sort of “avoiding obedience to the APA” that is discussed in *Armistead v. State Personnel Bd.*

**SPECIAL ORDER NO.: 228 APPLIES
GENERALLY TO RESEARCH ON ALL
PERSONS WHO ARE BOTH PRESENT AND
FORMER PERSONS DETAINED OR
EVALUATED BY THE DEPARTMENT
OF MENTAL HEALTH.**

Modesto City Schools v. Education Audits Appeal Panel, (3d Dist. 2004) 123 Cal.App. 4th 1365, 1381, 20 Cal.Rptr.3d 831, 842, holds that to be deemed an underground regulation, which would be invalid because it was not adopted in substantial compliance with the procedures of the APA, the agency must intend it to apply generally rather than in a specific case, and the agency must adopt it to implement, interpret, or make specific the law enforced by the agency.

“The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. . . . (*Tidewater Marine Western, Inc. v. Bradshaw, supra*, 14 Cal. 4th at 571, 59 Cal.Rptr.2d 186.)” (*Morning Star Co. V State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 55).

Kings Rehabilitation Center, Inc. V Premo, (3rd Dist. 1999) 69 Cal.App. 4th 215, 217, 81 Cal.Rptr.2d 406, notes:

“The APA is partly designed to eliminate the use of ‘underground’ regulations; rules which only the government knows about. If a policy or procedure falls within the definition of a regulation within the meaning of the APA, the promulgating agency must comply with the procedures for formalizing such regulations, which include public notice and approval by the Office of Administrative Law (OAL). Failure to comply with the APA nullifies the rule. (Govt. Code § 11350(a); *Armistead v. State Personnel Bd.* (1978) 22 Cal.3d 198, 204, 149 Cal.Rptr. 1, 4”) (Emphasis added.)

Special Order No.: 228 is neither intended nor utilized to make specific determinations but is utilized generally when determining the type and extent of research that may be performed on all present and former persons detained or evaluated by the Department of Mental Health, and thus affects the treatment received by all persons detained by the department of Mental Health. Therefore, *Special Order No.: 228* is a regulation that must be promulgated as a regulation but otherwise is a null and void underground regulation.

6. Provide information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.

Special Order No.: 228 is at odds with the due process rights, conveyed by the California and United States Constitutions, to all persons detained by the DMH because it mandates actions that affect their liberty interests but has never been legally promulgated.

Special Order No.: 228, and its progeny must be subject to public oversight to avoid the perception of secret draconian research being performed on California’s mentally ill.

The state authorized enforcement by state employees of the numerous statutory and constitutional violations contained in each and every un-promulgated, underground,” Manual, Instructions, Administrative Directive, or Special Order has resulted in a great deal of litigation at great expense to the taxpayers of California. The OAL, pursuant to its regulatory duties, is in a position to bring these underground regulations into the oversight process, and has a duty to the taxpayers to do so.

Public comment and OAL oversight is needed in order to halt the “bureaucratic tyranny” warned of in *Tidewater* and *Morning Star*.

Morningstar reiterates, “[2] These requirements promote the APA’s goals of bureaucratic responsiveness and public engagement in agency rulemaking. ‘One purpose of the APA is to ensure that those persons or entities whom a regulation will affect have a voice in its creation [citation], as well as notice of the law’s requirements so that they can conform their conduct accord-

ingly [citation]. The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation. Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]’ [132 P.3d 255] (*Tidewater, supra*, 14 Cal.4th at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)” (*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

7. (Optional) Please attach any additional relevant information that will assist OAL in evaluating your petition.

Notwithstanding numerous requests, grievances, complaints to the DMH, and even petitions submitted to the OAL, the Department of Mental Health has steadfastly refused and failed to follow the law as set forth in the Administrative Procedures Act and promulgate its guidelines, criteria, bulletins, manuals, instructions, orders, standards of general application, or other rules.

This type of obdurate opposition to correcting illegal and unconstitutional content in its Administrative Directives perfectly illustrates why the Legislature established the procedures set forth in the Administrative Procedures Act. This clearly demonstrates the absolute need for oversight and public input to halt the type of bureaucratic tyranny exhibited by the Department of Mental Health by issuing, using, enforcing, or attempting to enforce this type of underground regulation.

CONCLUSION

The Department of Mental Health is not, and has not been, responsive to the public they serve. Nor has the DMH been responsible to the taxpayers who must pay the bills that result from the failure of the DMH to follow the law and serve the public who pays their salaries. The California Supreme Court directed attention to this problem by stating:

“Moreover, public participation in the regulatory process directs the attention of agency policymakers to the public they serve, thus providing some security against bureaucratic tyranny. [Citation.]’ [132 P.3d 255] (*Tidewater, supra*, 14 Cal.4th at pp. 568–569, 59 Cal.Rptr.2d 186, 927 P.2d 296.)” (*Morning Star Co. v. State Bd. Of Equalization* (2006), 38 Cal. 4th 324, 333, 42 Cal.Rptr.3d 47, 53.)

Such bureaucratic tyranny has been a problem throughout the history of this country. Now, it must be stopped once again. The tyrannical bureaucrats in the Department of Mental Health must be directed to follow the law.

The DMH, part of the Executive Branch, lacks Constitutional authority to enact legislation. The Legislature has granted state agencies and departments quasi-legislative powers through the APA providing they follow specific promulgation procedures. However, until and unless the DMH does follow the provisions of the APA to properly promulgate *Special Order No.: 228*, it is an underground regulation which has been implemented in violation of the Separation of Powers Clause, Article III, Section 3, of the California Constitution.

To allow the DMH to continue to utilize a controversial Administrative Directive, such as *Special Order No.: 228*, would be to allow the sort of unfettered power in the Executive Branch that is a step toward a totalitarian concentration of power in the executive; a power to be exercised with inadequate legislative standard, and capable of avoiding judicial review, particularly when done through sleight-of-hand tactics designed to avoid review, has been prohibited from the earliest times. See *Hayburn's Case*, (1792) 2 U.S. (Dall.) 408, 1 L.Ed. 436, and its progeny.

Throughout the negotiation and complaint process prior to filing this petition, the Department of Mental Health has consistently cited "safety and security of the institution" as the justification for implementing the rules and regulations that Petitioner alleges are underground rules.

Petitioner takes the position that the justification for using underground rules and regulations is not relevant to the question presented in this Petition. The questions before the OAL are: (1) Is *Special Order No.: 228* a regulation within the meaning of the Administrative Procedures Act; and, (2) Did the Department of Mental Health promulgate *Special Order No.: 228* pursuant to the Administrative Procedures Act.

Petitioner submits that *Special Order No.: 228* is a regulation within the meaning of the Administrative Procedures Act, and that the Department of Mental Health has not promulgated *Special Order No.: 228* pursuant to the Administrative Procedures Act, and it is therefore an underground regulation that must be declared null and void.

Based on the foregoing, it is clear that there is a need for public participation in the regulatory process which directs the attention of agency policymakers within the Department of Mental Health to the public they serve, and to ensure that those persons or entities whom a regulation will affect have a voice in its creation.

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to:

Stephen W. Mayberg, Ph.D., Director
California Department of Metal Health
1600 9th St., Suite 151
Sacramento, CA 95814
(916) 654-2413 / (916) 654-2309

I certify that all the above information is true and correct to the best of my knowledge.

/s/
MICHAEL GEORGE ST.MARTIN
PETITIONER

October 14, 2008
Date

DISAPPROVAL DECISION

**BUREAU OF BARBERING AND
COSMETOLOGY OF THE
DEPARTMENT OF CONSUMER
AFFAIRS; AND BOARD OF
BARBERING AND COSMETOLOGY**

State of California
Office of Administrative Law

In re:

**Bureau of Barbering and
Cosmetology of the Department of
Consumer Affairs; and Board of
Barbering and Cosmetology**

**Regulatory Action: Title 16
California Code of Regulations**

Amend section: 950.2

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL File No. 2008-0912-01 S

DECISION SUMMARY

On September 12, 2008, the Board submitted to the Office of Administrative Law ("OAL") a proposed amendment to Section 950.2 of Article 7 of Division 9 of Title 16 of the California Code of Regulations ("CCR") regarding cosmetology course curriculum. On October 7, 2008, OAL notified the Board staff that

OAL disapproved the proposed amended regulation for failure to comply with specified standards and procedures of the California Administrative Procedures Act ("APA"). The reasons for the disapproval are summarized below:

A. the proposed regulation fails to comply with the consistency standard of Government Code sections 11349.1(a)(4) and 11349(d)¹;

B. the proposed regulation fails to comply with the clarity standard of sections 11349.1(a)(3) and 11349(c);

C. the proposed regulation fails to comply with the necessity standard of sections 11349.1(a)(1) and 11349(a); and

D. the agency failed to comply with the APA procedures by not responding adequately to certain public comments pursuant to section 11346.9(a)(3).

Date: October 24, 2008

Dale Mentink
Senior Staff Counsel

FOR: SUSAN LAPSLEY
Director

Original: Kristy Underwood
Copy: Stacy Meza

¹ Unless stated otherwise, all California Code references are to the Government Code.

**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# 2008-0926-04
BOARD OF FORESTRY AND FIRE PROTECTION
Emergency Notice for Fuel Hazard Reduction, 2008

These amendments to 14 Cal. Code Regs. section 1052.4 delete redundant language related to wildlife habitat protection, moves language regarding Public Resources Code section 4291 to a separate subsection and clarifies fuel removal spacing standards.

Title 14
California Code of Regulations
AMEND: 1052.4
Filed 10/22/2008
Effective 11/21/2008
Agency Contact:
Christopher Zimny (916) 653-9418

File# 2008-1008-03
CALIFORNIA SEA URCHIN COMMISSION
Conflict of Interest Code

The California Sea Urchin Commission is adopting its conflict of interest code found at title 2, ch. 115, section 59600, California Code of Regulations. The Fair Political Practices Commission approved this adoption for filing on September 8, 2008.

Title 2
California Code of Regulations
ADOPT: 59600
Filed 10/22/2008
Effective 11/21/2008
Agency Contact: Jane McCluskey (916) 444-8194

File# 2008-0915-02
COMMISSION ON PEACE OFFICER STANDARDS
AND TRAINING
POST Courses Test Administration and Security

This regulatory action creates a requirement for written policies and procedures regarding test administration and test security for the Regular Basic Course, the Specialized Investigators' Basic Course, the PC 832 Arrest and Firearms Course, and the Requalification Course.

Title 11
California Code of Regulations
AMEND: 1005, 1007, 1008, 1052
Filed 10/27/2008
Effective 01/01/2009
Agency Contact: Connie A. Paoli (916) 227-4854

File# 2008-0910-03
CORRECTIONS STANDARDS AUTHORITY
Minimum Standards for Local Adult and Juvenile Facilities

AB 478 (Chapter 608, Statutes of 2005) amended Penal Code sections 6030 and 5007.7 and Welfare and Institutions Code section 222 to require the Corrections Standards Authority to establish minimum standards for state and local correctional facilities to ensure that pregnant inmates are provided a balanced, nutritious diet approved by a doctor, necessary vitamins as recommended by a physician, prenatal and postpartum information and health care, information pertaining to childbirth education and infant care, and a dental clean-

ing. The standards are to provide that at no time shall a woman who is in labor be shackled by the wrists, ankles, or both including during transport to a hospital, during delivery, and while in recovery after giving birth, unless deemed necessary for the safety and security of the inmate, the staff, and the public. This regulatory filing is a certificate of compliance for an emergency regulatory action which amended the existing regulations on the minimum standards for local adult and juvenile facilities to implement these changes.

Title 15
 California Code of Regulations
 ADOPT: 1417 AMEND: 1029, 1206, 1248, 1357, 1358, 1461
 Filed 10/23/2008
 Effective 11/22/2008
 Agency Contact: Rebecca Craig (916) 324-2400

File# 2008-1014-05
 DEPARTMENT OF CORRECTIONS AND REHABILITATION
 Sexual Barrier Device Distribution Pilot Program

This pilot program requires CDCR to work with the Department of Public Health to install sexual barrier device ("SBD") (commonly known as a condom) dispensing machines in one prison. The dispensers will be wall mounted in five housing units at California State Prison, Solano, two dispensers per housing unit. Each dispenser will contain 144 SBDs at the start of the program. They will be refilled weekly or as necessary at no cost to the state. Inmates will be allowed one SBD in its original shrink wrap package without being considered in violation of holding contraband, as defined in 15 Cal. Code Regs. section 3000 or section 3006. Currently, SBDs are allowed in a "family visiting setting" pursuant to the DOM. Any other status of the SBD shall be considered contraband unless disposed of in a waste receptacle or flushed down a toilet.

Title 15
 California Code of Regulations
 ADOPT: 3999.7
 Filed 10/28/2008
 Effective 10/28/2008
 Agency Contact: John McClure (916) 341-6894

File# 2008-1022-01
 DEPARTMENT OF FOOD AND AGRICULTURE
 Gypsy Moth Interior Quarantine

This regulatory action establishes an interior quarantine allowing for a one mile buffer area surrounding the epicenter of an infestation of gypsy moth (*Lymantria dispar*) in the Ojai area of Ventura County.

Title 3
 California Code of Regulations
 ADOPT: 3408
 Filed 10/28/2008
 Effective 10/28/2008
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2008-1027-02
 DEPARTMENT OF FOOD AND AGRICULTURE
 Asian Citrus Psyllid Interior Quarantine

This rulemaking will expand the existing regulated quarantine area approximately 1,953 square miles in Imperial and San Diego counties for the Asian Citrus Psyllid ("ACP") *Diaphorina citri* due to recent discoveries of this pest. Both county agricultural commissioners have requested the action by the Department of Food and Agriculture.

Title 3
 California Code of Regulations
 AMEND: 3435(b)
 Filed 10/29/2008
 Effective 10/29/2008
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2008-0930-07
 DEPARTMENT OF FOOD AND AGRICULTURE
 Oak Mortality Disease Control

This is the certification of compliance with the Administrative Procedure Act of the emergency regulatory action OAL File 2008-0528-04E, which modified the existing oak mortality disease control regulation by adding two new plants, *cercis chinense* (Chinese redbud) and *magnolia figo* (banana shrub) to the list of associated articles stocked in nurseries whose movements are regulated as hosts or potential carriers that may transfer the disease from an infested area. The emergency rulemaking was accomplished in anticipation of a federal order issued May 15, 2008 that became effective on June 9, 2008 which added these two plants to the federal regulations.

Title 3
 California Code of Regulations
 AMEND: 3700(c)
 Filed 10/22/2008
 Effective 10/22/2008
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2008-0919-02
 DEPARTMENT OF PUBLIC HEALTH
 Revised Drinking Water Standard for Arsenic

This action lowers the allowable amount of arsenic in public water systems, making the maximum contaminant level the same as the primary federal standard that was set in 2006.

Title 22
 California Code of Regulations
 AMEND: 64413.1, 64414, 64431, 64432, 64432.2,
 64432.8, 64433.3, 64445.1, 64447.2, 64482
 Filed 10/29/2008
 Effective 11/28/2008
 Agency Contact: Laurel Prior (916)440-7673

File# 2008-0918-05
 DEPARTMENT OF SOCIAL SERVICES
 RCFE Section 100 Renumbering

This is a nonsubstantive action making an editorial change moving section 87102 under Article 1.

Title 22
 California Code of Regulations
 AMEND: 87102, 87105
 Filed 10/28/2008
 Agency Contact: Sandra Ortega (916)657-3174

File# 2008-0918-01
 FISH AND GAME COMMISSION
 Harvest of Herring and Harvest of Herring Eggs

This regulatory action establishes the fishing quota and season dates and times that fishing operations are allowed for the 2008-2009 herring season and herring egg season in San Francisco Bay and the season dates and times for fishing operations for the 2008-2009 herring season in Tomales Bay.

Title 14
 California Code of Regulations
 AMEND: 163, 164
 Filed 10/23/2008
 Effective 11/22/2008
 Agency Contact: Sheri Tiemann (916)654-9872

File# 2008-0909-01
 STATE WATER RESOURCES CONTROL BOARD
 TMDL for Copper, Lead, and Zinc in Chollas Creek

This regulatory action is a basin plan amendment to establish a TMDL and associated load and wasteload allocations for copper, lead and zinc in Chollas Creek in San Diego County.

Title 23
 California Code of Regulations
 ADOPT: 3989.7
 Filed 10/22/2008
 Agency Contact: Nirmal Sandhar (916)341-5571

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN May 28, 2008 TO
 October 29, 2008**

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**
- 10/22/08 ADOPT: 59600
 - 10/21/08 ADOPT: 1859.41.1, 1859.42.1 AMEND: 1859.2, 1859.41, 1859.42, 1859.43, 1859.51, 1859.147, Form SAB 50-01, Form SAB 50-03
 - 10/20/08 ADOPT: 20120, 20121, 20122, 20123, 20124, 20125, 20126, 20127
 - 09/04/08 ADOPT: 18530.45
 - 09/04/08 AMEND: 18946.4
 - 08/14/08 AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129
 - 08/08/08 ADOPT: 21905.5 AMEND: 21903, 21905
 - 07/16/08 ADOPT: 18946.6
 - 07/10/08 AMEND: 1859.76, 1859.83, 1859.104.3
 - 07/10/08 AMEND: 1859.71
 - 07/08/08 AMEND: 2271
 - 06/26/08 AMEND: 554.2, 554.3
 - 06/17/08 ADOPT: div. 8, ch. 112, sec. 59570
 - 06/11/08 AMEND: 18360, 18361
 - 06/11/08 ADOPT: 18421.7 AMEND: 18401
 - 06/11/08 ADOPT: 18944.2 REPEAL: 18944.2

- Title 3**
- 10/29/08 AMEND: 3435(b)
 - 10/28/08 ADOPT: 3408
 - 10/22/08 AMEND: 3700(c)
 - 10/20/08 AMEND: 3433(b)
 - 10/20/08 AMEND: 3434(b)
 - 10/17/08 AMEND: 3423(b)
 - 10/15/08 AMEND: 3433(b)
 - 10/14/08 AMEND: 3434(b)
 - 10/14/08 AMEND: 3423(b)
 - 10/01/08 AMEND: 3434(b)
 - 09/24/08 AMEND: 810.1 REPEAL: 810
 - 09/23/08 AMEND: 3591.20(a)
 - 09/23/08 AMEND: 3434(b)
 - 09/18/08 AMEND: 3591.20(a)
 - 09/17/08 AMEND: 3435(b)
 - 09/11/08 AMEND: 3591.20(a)
 - 09/10/08 AMEND: 3434

| | | |
|----------------|---|---|
| 09/05/08 | ADOPT: 3435 | 12200.17, 12200.18, 12200.20, |
| 09/03/08 | AMEND: 6452.2 | 12200.21, 12201, 12202, 12203, |
| 09/02/08 | AMEND: 3433(b) | 12203A, 12203.1, 12203.2, 12203.3, |
| 09/02/08 | AMEND: 3591.6(a) | 12203.5, 12204, 12205, 12205.1, 12218, |
| 08/26/08 | AMEND: 3434(b) | 12218.1, 12218.5, 12218.7, 12218.11, |
| 08/25/08 | AMEND: 3423(b) | 12220, 12220.3, 12220.13, 12220.14, |
| 08/18/08 | AMEND: 6738, 6739 | 12220.16, 12220.18, 12220.20, |
| 08/18/08 | AMEND: 3434(b) | 12220.20A, 12220.21, 12220.23, 12221, |
| 08/13/08 | AMEND: 3434(b) | 12222, 12223, 12224, 12225, 12225.1, |
| 08/12/08 | AMEND: 3406(b) | 12233, 12234, 12235, 12236, 12300, |
| 08/11/08 | AMEND: 3406(b) | 12301, 12301.1, 12302, 12303, 12304, |
| 08/01/08 | AMEND: 3589(a) | 12305, 12306, 12308, 12309, 12310, |
| 08/01/08 | ADOPT: 3591.22 | 12335, 12341, 12342, 12343, 12344, |
| 07/28/08 | AMEND: 3434(b) | 12345, 12347, 12358, 12359, 12360, |
| 07/25/08 | AMEND: 902.9 | 12370, 12400, 12401, 12402, 12403, |
| 07/24/08 | ADOPT: 3591.21 | 12404, 12405, 12460, 12463, 12464, |
| 07/22/08 | AMEND: 3417(b) | 12466, 12550, 12552, 12554, 12556, |
| 07/16/08 | AMEND: 3700 | 12558, 12560, 12562, 12564, 12566, |
| 07/16/08 | AMEND: 3406 | 12568, 12590 |
| 07/14/08 | AMEND: 3963 | 08/04/08 AMEND: 1843.2 |
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