



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 (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

STATE AGENCY: California High-Speed Rail Authority

A written comment period has been established commencing on **November 22, 2013** and closing on **January 6, 2014**. Written comments should be directed to the Fair Political Practices Commission, Attention Cyndi Glaser, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

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

tor of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **January 6, 2014**. 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 code 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 Cyndi Glaser, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

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

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture intends to amend subsection 3406(b) of the regulations in Title 3 of the California Code of Regulations pertaining to the Mediterranean Fruit Fly Interior Quarantine.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to Stephen.Brown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on January 6, 2014. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

Anticipated Benefits from This Regulatory Action

One of the Department's broad statutory objectives is to prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds (FAC section 403), and it may adopt regulations as are reasonably necessary to achieve this (FAC section 407). The Department is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (FAC section 5321) and may establish and maintain quarantine regulations (FAC section 5322).

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. The amendment of this regulation benefits the almond, apple, apricot, avocado, blueberry, cherry, citrus, date, fig, grape, guava, kiwi, nectarine, olive, peach, pear, peppers, persimmon, plums, pomegranate and tomato industries (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having a quarantine program to prevent the spread of Mediterranean fruit fly should it be introduced as an incipient population.

The Department is also obligated to protect the general welfare and economy of the State and to seek to maintain the economic well-being of agriculturally dependent rural communities in this State (FAC Section 401.5). The activities authorized by this amendment of this regulation are preventing the establishment and potential spread of the Mediterranean fruit fly to uninfested areas of the State, including agriculturally dependent rural communities. Historically, most Mediterranean fruit fly quarantines in California have been associated with introductions into the urban environment.

Should it be necessary to establish a quarantine for Oriental fruit fly, the California, national and international consumers of California host fruit benefit by hav-

ing high quality fruit available at lower cost. It is assumed that any increases in production costs would ultimately be passed on the consumer.

The amendment of this regulation benefits homeowners and community gardens that grow their own host fruits for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

This regulation will benefit the public's general welfare by providing authority for the State to perform quarantine activities against Mediterranean fruit fly in the State.

The implementation of this regulation will prevent:

- Direct damage to the agricultural industry growing host fruits outside the quarantine area.
- Indirect damage to the agricultural industry growing host fruits due to the implementation of quarantines by other countries and loss of export markets.
- Increased production costs to the affected agricultural industries.
- Increased pesticide use by the affected agricultural industries.
- Increased costs to the consumers of host fruits.
- Increased pesticide use by homeowners and others.
- The need to implement an unnecessary federal regulation for the entire State.

There is no existing, comparable federal regulation or statute.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and this is the only State agency which can implement these eradication areas for plant pests. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

AMENDED TEXT

The amendment of this regulation will establish the process for adding and removing quarantine areas for Mediterranean fruit fly, how to determine the initial size of the area, how the area may be expanded if there are additional detections of Mediterranean fruit fly within the quarantine area, where the quarantine boundary description will be located on our website, an appeal process which may be used by any interested party, a list serve option to receive automatic notification and the life cycle for Mediterranean fruit fly.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.
 Cost or savings to any state agency: None.

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

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

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

Cost impacts on a representative private person or business: The 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.

Small Business Determination

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

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

Amendment of these regulations will not:

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

The Department has determined the amendment of this regulation benefits:

- The general public
- Homeowners and Community Gardens
- Agricultural industry
- The State's general fund

There are no known specific benefits to worker safety or the health of California residents. The Department is not aware of any specific benefits the amendment of this regulation will have to the protection of public safety of California residents or worker safety. Based upon the economic analysis, the Department believes the amendment of this regulation benefits the general welfare of California residents. [Gov. Code sec. 11346.3(b)].

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing State regulations. There are no other comparable existing State regulations [Gov. Code sec. 11346.5(a)(3)(D)].

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend subsection 3406(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

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

CONTACT

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

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its

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

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture intends to amend subsection 3417(b) of the regulations in Title 3 of the California Code of Regulations pertaining to the Mexican Fruit Fly Interior Quarantine.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to Stephen.Brown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on January 6, 2014. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

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

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

Anticipated Benefits from This Regulatory Action

One of the Department’s broad statutory objectives is to prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds (FAC section 403), and it may adopt regulations as are reasonably necessary to achieve this (FAC section 407). The Department is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (FAC section 5321) and may establish and maintain quarantine regulations (FAC section 5322).

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. The amendment of this regulation benefits the apple, apricot, avocado, citrus, nectarine, peach, pear, persimmon, plum and pomegranate industries (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having a quarantine program to prevent the spread of Mexican fruit fly should it be introduced as an incipient population.

The Department is also obligated to protect the general welfare and economy of the State and to seek to maintain the economic well-being of agriculturally dependent rural communities in this State (FAC Section 401.5). The activities authorized by this amendment of this regulation are preventing the establishment and potential spread of the Mexican fruit fly to uninfested areas of the State, including agriculturally dependent rural communities. Historically, most Mexican fruit fly

quarantines in California have been associated with introductions into the urban environment.

Should it be necessary to establish a quarantine for Mexican fruit fly, the California, national and international consumers of California host fruit benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs would ultimately be passed on to the consumer.

The amendment of this regulation benefits homeowners and community gardens that grow their own host fruits for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

This regulation will benefit the public’s general welfare by providing authority for the State to perform quarantine activities against Mexican fruit fly in the State.

The implementation of this regulation will prevent:

- Direct damage to the agricultural industry growing host fruits outside the quarantine area.
- Indirect damage to the agricultural industry growing host fruits due to the implementation of quarantines by other countries and loss of export markets.
- Increased production costs to the affected agricultural industries.
- Increased pesticide use by the affected agricultural industries.
- Increased costs to the consumers of host fruits.
- Increased pesticide use by homeowners and others.
- The need to implement an unnecessary federal regulation for the entire State.

There is no existing, comparable federal regulation or statute.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and this is the only State agency which can implement these eradication areas for plant pests. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

AMENDED TEXT

The amendment of this regulation will establish the process for adding and removing quarantine areas for Mexican fruit fly, how to determine the initial size of the area, how the area may be expanded if there are additional detections of Mexican fruit fly within the quarantine area, where the quarantine boundary description will be located on our website, an appeal process which

may be used by any interested party, a list serve option to receive automatic notification and the life cycle for Mexican fruit fly.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

Cost impacts on a representative private person or business: The 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.

Small Business Determination

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

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

Amendment of these regulations will not:

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

The Department has determined the amendment of this regulation benefits:

- The general public
- Homeowners and Community Gardens
- Agricultural industry
- The State's general fund

There are no known specific benefits to worker safety or the health of California residents. The Department is not aware of any specific benefits the amendment of this regulation will have to the protection of public safety of California residents or worker safety. Based upon the economic analysis, the Department believes the amendment of this regulation benefits the general welfare of California residents. [Gov. Code sec. 11346.3(b)].

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing State regulations. There are no other comparable existing State regulations [Gov. Code sec. 11346.5(a)(3)(D)].

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend subsection 3417(b) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

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

CONTACT

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

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture intends to amend subsection 3423(b) of the regulations in Title 3 of the California Code of Regulations pertaining to the Oriental Fruit Fly Interior Quarantine.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

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INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322).

Anticipated Benefits from This Regulatory Action

One of the Department's broad statutory objectives is to prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds (FAC section 403), and it may adopt regulations as are reasonably necessary to achieve this (FAC section 407). The Department is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (FAC section 5321) and may establish and maintain quarantine regulations (FAC section 5322).

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. The amendment of this regulation benefits the apple, apricot, avocado, cherry, citrus, cucumber, date, fig, grape, nectarine, peach, pear, pepper, persimmon, plum, pomegranate and tomato industries (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having a quarantine program to prevent the spread of Oriental fruit fly should it be introduced as an incipient population.

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This regulation will benefit the public's general welfare by providing authority for the State to perform quarantine activities against Oriental fruit fly in the State.

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- Direct damage to the agricultural industry growing host fruits outside the quarantine area.
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- Increased production costs to the affected agricultural industries.
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- Increased costs to the consumers of host fruits.
- Increased pesticide use by homeowners and others.
- The need to implement an unnecessary federal regulation for the entire State.

There is no existing, comparable federal regulation or statute.

The Department considered any other possible related regulations in this area, and we find that these are the only regulations dealing in this subject area, and the only State agency which can implement these eradication areas for plant pests. As required by Government Code Section 11346.5(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

AMENDED TEXT

The amendment of this regulation will establish the process for adding and removing quarantine areas for Oriental fruit fly, how to determine the initial size of the area, how the area may be expanded if there are additional detections of Oriental fruit fly within the quarantine area, where the quarantine boundary description will be located on our website, an appeal process which may be used by any interested party, a list serve option to receive automatic notification and the life cycle for Oriental fruit fly.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.
 Cost or savings to any state agency: None.

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

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

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

Cost impacts on a representative private person or business: The 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.

Small Business Determination

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

Significant effect on housing costs: None.

Results of the Economic Impact Analysis

Amendment of these regulations will not:

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

The Department has determined the amendment of this regulation benefits:

- The general public
- Homeowners and Community Gardens
- Agricultural industry
- The State's general fund

There are no known specific benefits to worker safety or the health of California residents. The Department is

not aware of any specific benefits the amendment of this regulation will have to the protection of public safety of California residents or worker safety. Based upon the economic analysis, the Department believes the amendment of this regulation benefits the general welfare of California residents. [Gov. Code sec. 11346.3(b)].

The Department has evaluated and determined that the amendment of this regulation is not inconsistent with existing State regulations. There are no other comparable existing State regulations [Gov. Code sec. 11346.5(a)(3)(D)].

ALTERNATIVES CONSIDERED

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to amend regulations contained in California Code of Regulations, Title 4, Division 9, Chapter 1, Article 1, Section 4001. Exceptions, by listing additional exceptions. The Department also proposes to amend Section 4002. Additional Requirements, by adding Section 4002.9 Hydrogen Gas-Measuring Devices.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written period. Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Department, upon its own motion or at the insistence of any interested person, may thereafter adopt the proposal substantially as set forth without further notice.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Food and Agriculture, Division of Measurement Standards (Division), 6790 Florin Perkins Road, Suite 100, Sacramento, California 95828. Comments may also be submitted to Steven Cook, Chief, Enforcement Branch, by facsimile (FAX) at (916) 229-3026 or by e-mail at DMS@cdfa.ca.gov. Comments must be submitted prior to 5:00 p.m., January 6, 2014.

AUTHORITY AND REFERENCE

California Business and Professions Code Division 5 (BPC) Section 12027 authorizes the Secretary to promulgate necessary rules and regulations to carry out the provisions of this division. BPC Section 12100 authorizes the Department to provide general supervision over weights and measures and the weighing and measuring devices sold or used in the state. Authority and reference for these regulations is provided in BPC Section 12107, which requires the Secretary to adopt specifications and tolerances for weighing and measuring devices used commercially in California.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Legislature has charged the Department with the responsibility of supervising weights and measures activities in California (BPC 12100). Furthermore the Secretary is authorized to make such rules and regulations that are necessary to carry out weights and measures laws (BPC 12027). BPC Section 12107 states that the Secretary shall adopt, by reference, the latest standards as recommended by the National Conference on Weights and Measures (NCWM) and published in the National Institute of Standards and Technology Handbook 44 “Specifications and Tolerances, and other Technical Requirements for Weighing and Measuring Devices,” (NIST Handbook 44) except as specifically modified, amended, or rejected by regulation adopted by the Secretary.

In 2010, the NCWM adopted by reference the “*Hydrogen Gas-Measuring Devices (3.39.) — Tentative Code*” which was first published in the 2011 edition of NIST Handbook 44. The Department has determined that amendments are necessary for the following reasons:

- 1) A tentative code has only trial or experimental status and is not enforceable. Removal of these qualifying words will make clear that this regulation is the basis of enforcement for hydrogen gas-measuring devices.
- 2) Amending the regulations would clarify and make specific some technical requirements for hydrogen gas-measuring devices, recognizing and accommodating existing and emerging technologies. The most significant amendment however, is the temporary relaxation of accuracy tolerances from $\pm 2\%$ to $\pm 10\%$ until 2018.

Agency Authority:

There is no existing, comparable federal regulation or statute regulating hydrogen gas-measuring devices. The Department is the only agency which can implement regulations pertaining to weighing and measuring devices used for commercial purposes. NIST Handbook 44 is not a federal regulation. The Department of Commerce, through NIST, has an Office of Weights and Measures (OWM), a non-regulatory agency, which serves to coordinate the activities of states. The NCWM is a professional organization of state and local weights and measures officials and representatives of business, industry, consumer groups, and Federal agencies. When a State or local government adopts these standards, they become mandatory. Such is the case in BPC section 12107, where the Department adopts NIST Handbook 44 (except as specifically modified, amended, or rejected by regulation adopted by the Secretary). On a national level, more than 40 states adopt Handbook 44 by reference on an annual basis.

Anticipated Benefits of the Proposed Regulation:

The broad objective of the regulation is to facilitate the Governor’s Zero Emissions Vehicle (ZEV) initiatives and open up the marketplace for hydrogen fuel. Fuel cell vehicles do not emit greenhouse gases and are therefore beneficial to the environment. A hydrogen-powered vehicle emits only water vapor, warm air, and some hydrogen, which are not concerns for air quality. Cleaner air will benefit all Californians, especially those with asthma or other breathing disorders.

Another benefit of this regulation is the establishment of achievable specifications and accuracy tolerances for commercial hydrogen gas-measuring devices. This facilitates the legal retail sale of hydrogen by the kilogram. Commercial hydrogen gas-measuring devices in the marketplace allow businesses to sell hydrogen by the amount actually dispensed. This mirrors the current marketplace, giving consumers a customary fueling experience. It also promotes fairness and equity among competing fueling stations.

Consistency with Other State Regulations:

The Department has determined that this proposed regulation is not inconsistent or incompatible with other state regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that a modification of the tentative code listed in NIST Handbook 44 in order to put in place an enforceable requirement concerning the specifications and tolerances of hydrogen gas-measuring devices is acceptable and appropriate. This is based in part on the fact that all commercial weighing and measuring devices are regulated by the Department, and BPC Section 12107 requires the Secretary to adopt specifications and tolerances for all commercial devices. The Department has the authority and responsibility to institute the same protocols for hydrogen fuel. Without the existence of such legally defined standards, confusion and unfair competitive practices can quickly evolve and potentially harm the consumer's perception of hydrogen as a viable alternative fuel.

FISCAL IMPACT/COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that this proposal does not impose a mandate on local agencies or school districts.

The Department also has determined that this action will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Department has made an initial determination that the proposed regulations 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. However, there will be a statewide impact on businesses that

manufacture, repair or use these devices because commercial devices used in the marketplace must meet the minimum tolerances and specifications as put forth in these regulations for hydrogen gas-measuring devices. By relaxing the accuracy tolerances currently found in the NIST Handbook 44, "Hydrogen Gas-Measuring Device — Tentative Code," the cost to purchase and install approved devices will decrease as the current listed standard is too stringent to make manufacture of these devices cost-effective.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has made an initial determination that the proposed regulation (1) will not eliminate jobs within California; (2) will not cause the elimination of businesses in California; and (3) will not cause the contraction of businesses currently doing business within California. The proposed regulations will likely (1) create an unknown number of jobs in California for service agencies to expand into this technology; (2) create an unknown number of opportunities for businesses selling hydrogen gas-measuring devices in California; and/or (3) create opportunities for existing fueling stations operating within California to expand their business to include hydrogen fuel or the expansion of new businesses.

Statement of benefits:

With the proposed modifications to Handbook 44, Section 3.39, businesses interested in developing and selling devices to meter hydrogen would be able to do so because it will establish formal specifications and tolerances. Businesses that repair these types of devices would also have needed guidance on the specific requirements for maintaining them.

Currently, the transportation sector is the biggest contributor to California's greenhouse gas emissions, accounting for approximately 40 percent of this pollution, and transportation emissions are the primary source of particulates, air toxics and smog in California. Reducing vehicle emissions through increased use of ZEVs will result in fewer respiratory illnesses and premature deaths in California. These regulations will facilitate the Governor's Executive Order to develop and implement technology that will allow for more low-carbon fuel options in the marketplace. Hydrogen vehicles do not emit carbon gasses and will help improve California's air quality, thus reducing medical risks associated with pollution caused by high carbon-emitting vehicles.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

COST IMPACTS (Representative Private Person)

Hydrogen vehicles emit water vapor instead of greenhouse gasses and will help improve air quality, thus reducing the medical risks to Californians associated with pollution caused by high carbon-emitting vehicles. By reducing greenhouse gasses, the overall health of all citizens increases, and health care costs due to air pollution decrease.

Currently, hydrogen gas is sold using a flat rate charge to fuel vehicles. Persons who own a hydrogen fuel vehicle are frequently paying for a product they are not receiving under the flat rate method of sale. By paying for fuel that is sold through a meter, consumers pay only for the fuel they receive, which may reduce an individual's costs, creating an economic benefit to the California motorist.

COST IMPACTS (Business)

The proposed regulations will affect three primary types of businesses: device manufacturers, fueling station owners, and registered service agencies. Most of the costs these businesses will pay are based on the statutes that govern all commercial devices, not the direct result of these regulations. The cost impacts will be both positive and negative.

Device manufacturers will be required to reimburse the Department approximately \$25,000 to cover the expense of testing and certification of each type of hydrogen gas-measuring device submitted for evaluation. At this time there are no devices approved by the Department.

Fueling station owners that use these devices will be required to purchase only those devices that meet type approval requirements and to register them with their local weights and measures office. Most counties charge a device registration fee that includes a location fee, administrative fee, and device fee. The ongoing cost for the registration of two devices would be approximately \$142 per year assuming that each station would have two dispensers.

Although these devices are currently less accurate than gasoline meters, the metering of hydrogen is superior than paying a flat rate. Additionally, the meters presently being used are not being tested by weights and measures officials for accuracy. This regulation will protect the business owner by making sure hydrogen gas-measuring devices deliver fuel within tolerances and assuring that any variations in the measurement do not cause undue financial harm to either the buyer or the seller.

The economic benefits to stations owners is that the devices meet type and that only those that meet the minimum requirements are installed for use in California. Availability of approved devices in sufficient numbers will benefit the station by reducing the expense of new meters.

Registered Service Agencies install, maintain, and repair commercial weighing and measuring devices. The Department believes that some of the approximately 50 registered service agencies that currently service compressed gas equipment will expand into this area. The total costs for these agencies will not change if they add hydrogen gas-measuring devices to the scope of devices they service since they are already registered.

These regulations will assist automobile manufacturers who are preparing to sell hydrogen fuel cell vehicles in larger numbers. One of the challenges to the marketplace is the limited number of stations. Hydrogen gas-measuring devices installed in these stations are a significant piece of the needed infrastructure.

EFFECT ON SMALL BUSINESS

The Department has determined that this regulation will have no effect on small business as the device owner that would supply hydrogen gas for fuel does not meet the definition of small business in Government Code Section 11342.610.

ALTERNATIVES CONSIDERED

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

In the Governor's ZEV 2013 Action Plan, the Department is directed to ensure that hydrogen can legally be sold as a retail transportation fuel. Specifically, the Department is instructed to "investigate possible interim solutions in advance of permanent regulatory changes, including . . . relaxing accuracy requirements for hydrogen dispensers."

If the Department chooses to do nothing, hydrogen gas-measuring devices will not be presented for type evaluation. If fueling stations use untested and unapproved devices to sell hydrogen based upon quantity, they will be in violation of State law. Stations may continue to sell hydrogen on a contract basis, but there is potential for significant financial harm to either the buyer or seller.

Other than the directive in the Governor's ZEV 2013 Action Plan, no other alternatives have been submitted to the Department. The Department has determined that if it does not temporarily relax hydrogen gas dispenser tolerances, this inaction will prevent the establishment of a hydrogen fueling infrastructure in California, hampering the Governor's objective to introduce ZEVs and zero emission fuels in the State. Automobile manufacturers will not be able to market their vehicles in the State due to the lack of fueling stations.

The Department has considered the alternatives to this regulatory proposal and has determined that temporarily relaxing hydrogen gas-measuring device tolerances is the most effective means to facilitate the establishment of hydrogen fuel in the marketplace.

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

CONTACT PERSON

Inquiries about the notice may be directed to Steven Cook, Chief, Enforcement Branch, Division of Measurement Standards or Kathy de Contreras, Supervising Special Investigator, Enforcement Branch, Division of Measurement Standards at (916) 229-3000.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons, and the proposed regulations in strikeout and underline form may be obtained upon request. The rulemaking file and all information on which the proposal is based are located at the Division of Measurement Standards, 6790 Florin-Perkins Road, Suite 100, Sacramento, California 95828, and may be obtained upon request. Additionally, all documents relating to this rulemaking file are available on the Department's web site located at <http://www.cdfa.ca.gov/dms/regulations.html>.

Following the written comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulations adopted by the Department differ from, but are sufficiently related to, the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting Steven Cook, Chief, Enforcement Branch, Division of Measurement Standards, at (916) 229-3000.

TITLE 8. CALIFORNIA APPRENTICESHIP COUNCIL

CALIFORNIA CODE OF REGULATIONS, TITLE 8, CHAPTER 2, PART IV, SECTIONS 205, 206, 207, 212, 212.2, 212.3

The California Apprenticeship Council ("Council") proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

Notice is hereby given that the California Apprenticeship Council ("Council"), pursuant to rulemaking authority derived from Labor Code section 3071, in order to implement, interpret and make specific sections 3073.1, 3075.5, 3075.6 and 3075.7 of the Labor Code, proposes to amend Part IV, Sections 205, 206, 207, 212, 212.2, and 212.3 in Chapter 2 of Title 8 of the California Code of Regulations ("CCR") concerning 1) the procedures for audits of general apprenticeship programs, and building and construction trades apprenticeship programs, 2) the procedure for submitting information to the Division of Apprenticeship Standards, 3) the procedure for approval of new or expanded apprenticeship programs.

PUBLIC HEARING

The Council will hold a public hearing on January 13, 2014 from 10 a.m. to 2 p.m., at the Milton Marks Conference Center, Santa Barbara Room, Hiram Johnson State Building, 455 Golden Gate Avenue, San Francisco, California, 94102, and on January 8, 2014, from 10 a.m. to 2 p.m., at the Auditorium, 320 West 4th Street, Los Angeles, California, 90013. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest (below). The Council requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action by mail or personal delivery to Glen Forman, Acting Chief, Division of Apprenticeship Standards, 455 Golden Gate Avenue, 10th Floor,

San Francisco, California 94102. Written comments may also be sent to Jane Reza (1) via electronic email to csuggest@dir.ca.gov or (2) via fax to (415) 703-5227. To be considered, written comments must be received by the Council no later than 5:00 p.m., January 13, 2014.

AUTHORITY AND REFERENCE

Labor Code section 3071, et seq., authorizes the Council to adopt these proposed regulations. The proposed regulations implement, interpret and make specific sections 205, 206, 207, 212, 212.2, and 212.3 in Chapter 2 of Title 8 of the California Code of Regulations (“CCR”) in order to comport with recent legislative changes to sections 3073.1, 3075.5, 3075.6 and 3075.7 of the Labor Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action seeks to clarify and make specific (1) the procedures for audits of general apprenticeship programs, and building and construction trades apprenticeship programs, (2) the procedure for submitting information to the Division of Apprenticeship Standards, and (3) the procedure for approval of new or expanded building and construction apprenticeship programs to comport with recent legislative changes to the Labor Code.

The recent legislative changes to sections 3073.1, 3075.5, 3075.6 and 3075.7 of the Labor Code require changes to the procedure for auditing apprenticeship programs, the method for submitting information about apprenticeship agreements to DAS and the procedure for approval of new and expanded apprenticeship programs in the building and construction trades. The broad objective of the recent legislative changes is to streamline and improve the audit process. The specific benefits anticipated from the regulation are that the regulations will comport with the changes to the Labor Code, and the changes to the approval process such as the submission of information to the Chief of the Division of Apprenticeship Standards will include more factual information, make it easier to submit program information and that the submitted information will be easier to access. All the proposed changes work towards a more efficient audit and program approval process.

The Council has determined that changes to sections 205, 206, 207, 212, 212.2, and 212.3 in Chapter 2 of Title 8 of the California Code of Regulations (“CCR”) are in order to ensure compatibility and consistency with these new legislative changes to the Labor Code.

No comparable federal regulations or statute exists. Please see the Initial Statement of Reasons for further information.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Council has made the following initial determinations:

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- Local Mandate: None.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Other nondiscretionary costs/savings imposed upon local agencies: None.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Impact on the creation or the elimination of jobs or businesses, and the expansion of businesses within the State of California, or effect on small businesses: None.
- Significant effect on housing costs: None.
- Cost impacts on representative private person or small business: None. The agency is not aware of any cost impacts that a representative private person or small business would necessarily incur in reasonable compliance with the proposed action. The proposed action involves updating auditing procedures for apprenticeship programs which do not have a fiscal impact on small businesses.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The Board concludes the following: (1) it is unlikely that the proposed changes will create or eliminate any jobs, (2) it is unlikely that the proposed changes will create new businesses or eliminate existing businesses within the State of California, (3) it is unlikely the proposed changes will expand businesses currently doing business, and (4) the proposed changes will not impact the regulation of health and welfare of California residents and worker safety.

BENEFITS OF THE PROPOSED ACTION

The proposed changes to the audit process will allow a better and more efficient allocation of resources and

will help programs identify areas for improvement. The regulations will make the transmittal of information to DAS more efficient and will allow participants in apprenticeship programs easier access to information about their programs. The regulations implement legislative changes to the new program or expanded program approval process by making specific some of the requirements for program approval. By requiring applicant programs to set out specific budget and planning metrics the actual ability of the proposed program to provide training will be more easily assessed. By improving the approval process the overall quality of training will be improved and both applicants and the public will benefit.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Jane Reza
California Apprenticeship Council
455 Golden Gate Ave, 9th Floor
San Francisco, CA 94122
Telephone: (415) 355-5468

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, or other information upon which the rulemaking is based to Ms. Reza at the above address.

The backup contact person for these inquiries is:

Glen Forman, Deputy Chief
Division of Apprenticeship Standards
Secretary, California Apprenticeship Council
455 Golden Gate Ave, 9th Floor
San Francisco, CA 94122
Telephone: (415) 703-4939

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The Council will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at the above address. Rulemaking records may be accessed through the agency's Internet website at www.dir.ca.gov. As of the date of this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Jane Reza at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Council may adopt the proposed regulations substantially as described in this notice. If the Council makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Council adopts the regulations as revised. Any such modifications will also be posted on the Council's website.

Please send requests for copies of any modified regulations to the attention of the contact person(s) listed above. The Council will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from Ms. Reza at the above address, or may be accessed on the website listed above.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2,

142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING: On **January 16, 2014**, at 10:00 a.m. in the Council Chambers of the Costa Mesa City Hall 77 Fair Drive, Costa Mesa, California.

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

PUBLIC HEARING: On **January 16, 2014**, at 10:00 a.m. in the Council Chambers of the Costa Mesa City Hall 77 Fair Drive, Costa Mesa, California.

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

BUSINESS MEETING: On **January 16, 2014**, at 10:00 a.m. in the Council Chambers of the Costa Mesa City Hall 77 Fair Drive, Costa Mesa, California.

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

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

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation re-

quests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

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

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Electrical Safety Orders, Telecommunication Safety Orders, and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **January 16, 2014**.

1. TITLE 8: **ELECTRICAL SAFETY ORDERS**
Sections 2940.2 and 2940.7
TELECOMMUNICATION SAFETY ORDERS
Sections 8602, 8610, 8611, and 8615
Fed OSHA DFR, Revision to CDAC Scope: Exception For Digger Derricks
2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 5001, Plate I
Update and Harmonization of Crane Hand Signals Standards and Illustrations

Descriptions of the proposed changes are as follows:

1. TITLE 8: **ELECTRICAL SAFETY ORDERS**
Sections 2940.2 and 2940.7
TELECOMMUNICATION SAFETY ORDERS
Sections 8602, 8610, 8611, and 8615
Fed OSHA DFR, Revision to CDAC Scope: Exception For Digger Derricks

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

On May 29, 2013, federal OSHA issued a final rule revising the exemption for digger derricks in the construction standard. Digger derricks used by electrical and telecommunication industries for auguring holes for poles carrying electric and telecommunication lines, placing and removing poles, and for handling associated materials to be installed or removed from the

poles were excluded from the crane and derrick requirements of the construction standard, 29 CFR 1926 Subpart CC — Cranes and Derricks in Construction. Digger derricks engaged in the above-mentioned tasks are now governed under Subpart R and Subpart S of 29 CFR 1910 relating to telecommunication and electrical safety standards.

Since California standards already include a similar exemption, Board staff reviewed California’s electrical and telecommunication orders that correspond with the federal standards to ensure that equivalent safety is provided. The most significant change addressed in this proposal is the adoption of a table on minimum approach distances with a known anticipated overvoltage and a table to adjust the minimum approach distances for work locations at higher altitudes. This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board “is the only agency in the state authorized to adopt occupational safety and health standards.” When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- Is relying on the explanation of the provisions of the federal regulation(s) in Federal Register, Vol. 78 No. 103, Pages 32110–16, May 29, 2013 as the justification for the Board’s proposed rulemaking action.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as: (1) the requirement of the federal government and the Labor Code to the effect that the state’s regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).
- Will clarify regulatory language pertaining to digger derricks and will provide consistency by eliminating the discrepancy between existing Title 8 and its Federal counterpart standards.

Section 2940.2. Clearances.

This section prescribes clearances for qualified electrical workers performing live-line work. Table 2940.2–1 was amended for clarity and change in format. Table 2940.2–2 and Table 2940.2–4 were added to adopt tables found in 29 CFR 1910.269: Table R–7 (AC Live-Line Work Minimum Approach Distance with Overvoltage Factor Phase to Ground Exposure) and Table R–10 (Altitude Correction Factors). The existing standard does not have a table for minimum approach distances with a known maximum anticipated transient overvoltage. It also does not have a table for altitude correction.

Minimum approach distances are based on the formula found in 29 CFR 1910.269 Appendix B. These distances found in Table R–7 of the federal standard were calculated to be able to withstand a specific range of transient overvoltage (spike in voltage). Table R–7 prescribes an approach distance dependent on the maximum anticipated per-unit (kilovolt) transient overvoltage. This table will inform employers that they can utilize a minimum approach distance different from the Table 2940.2–1 of Section 2940.2, if they have determined the anticipated transient overvoltage of their system through engineering analysis.

Altitude correction factors are necessary to obtain the correct distances adjusted for higher altitude. At elevations above 3,000 feet mean sea level, the minimum approach distance increases due to the increase in the conductivity of air at higher altitudes. Table 2940.2–4 contains the necessary correction factors to calculate minimum approach distances at elevations above mean sea level. This will prevent employers failing to consider altitude as a factor that would affect the minimum approach distance.

Section 2940.7. Mechanical Equipment.

The subject of this section is mechanical equipment such as derrick trucks, cranes, and other lifting equipment that are used by electric and telecommunication companies to install and maintain overhead lines. The proposal corrects an oversight by including Article 101 in Section 2940.7(c)(1). Cranes and other hoisting equipment are covered by Articles 91 through 101 of the General Industry Safety Orders.

The other proposed change is for editorial clarification. It divides subsection 2940.7(c)(1)(A) into two sentences and thus requires renumbering for a subsequent subparagraph. These changes are necessary to describe more clearly the two different types of clearances that are mentioned in the section. Amendments are necessary to clarify that clearances in Section 2940.2 are for qualified electrical workers performing work on or

in proximity to high voltage lines, and clearances in Section 2946 are for workers not qualified to encroach in clearances specified in Section 2940.2 or other trades performing work in proximity to high voltage power lines.

Section 8602. General.

Proposed amendments to this section are for editorial clarification. Alternating Current was added to the title of Table TC-1. The header of the table was amended to read as nominal voltage to make it consistent with the electrical safety orders.

Section 8610. Vehicle-Mounted Material Handling Devices and Other Mechanical Equipment (General).

This section contains requirements for inspections, rollover protection, and testing of brakes for vehicles used by the telecommunication industry to handle materials. The proposal is to add subsection (c) which requires securing the vehicle from inadvertent movement by using parking brakes, stabilizers and chocking the wheels when situated on a grade. The text in subsection (c) was adopted from 29 CFR 1910.268(j)(4)(iv)(C). The amendment is proposed to ensure that the vehicle remains stationary after it is staged for work. Unanticipated movement can cause accidents such as dropping of a load, displacement of a load, or contact with an overhead power line.

Section 8611. Hoisting Equipment.

Board staff proposes a title change to clarify that this section also applies to derrick trucks and cranes. Subsection (a) was added to reference safety requirements for digger derricks to the General Industry Safety Orders. The effect of this is to provide safety equivalent to the federal standard.

Section 8615. Overhead Lines.

Section 8615 contains work procedures and required personal protective equipment relating to installation, maintenance and removal of power lines and/or poles. Subsection (i)(4) was amended to reference Section 2940.6 to clarify the phrase “suitable insulating glove.” The proposal is to add subsection (i)(6) relating to placing, moving, or removing power poles during rain, sleet or snow. This requirement will render the state standard equivalent to the federal standard. The text in subsection (i)(6) was adopted verbatim from the federal standard 29 CFR 1910.268(n)(11)(ii). This requires that overhead lines be guarded during placement and removal of poles during rain or snow conditions to prevent contact with energized conductors.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

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

Impact on Housing Costs

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

Impact on Businesses/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal amends the various sections that affect digger derricks performing a specific task related to line and pole installation and removal. It does not add additional regulatory requirements, and thus, will not have an economic impact. On the contrary, this rulemaking is related to the exemption of digger derricks used in pole handling by the utility and telecommunication industry from the larger regulatory requirements of Article 15 of the Construction Safety Orders, which is equivalent to the Federal 1926 Subpart CC.

Cost Impact on Private Persons or Businesses

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

Costs or Savings in Federal Funding to the State

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

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

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

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

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

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. There are no costs to any lo-

cal government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small businesses. No economic impact is anticipated. This rulemaking would affect large electrical and telecommunication companies.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The proposed regulation will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

BENEFITS OF THE REGULATION

The amendments to the regulation would provide equivalent safety as the federal standards. Standards were amended to help prevent accidents related to the use and operation of digger, derricks.

ALTERNATIVES STATEMENT

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

- 2. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Section 5001, Plate I
Update and Harmonization of Crane Hand Signals Standards and Illustrations

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

Board staff proposes amendments to Plate I (illustrative drawings) of General Industry Safety Orders (GISO), Section 5001 that depict the various hand signals given by a signalperson to the crane operator to communicate various types of crane action (e.g., raise,

lower boom, stop, rotate). The Construction Safety Orders, Section 1617.1(d)(1) refers to the hand signals found in GISO, Section 5001.

The proposal is to adopt Appendix A of Subpart CC of 29 CFR Part 1926 of the federal Crane and Derrick regulations and retain the other hand signals that are not part of the federal standard. This regulatory proposal is intended to provide worker safety at places of employment in California.

This proposed rulemaking action:

- Is based on the following authority and reference: Labor Code Section 142.3, which states, at subsection (a)(1) that the Board “is the only agency in the state authorized to adopt occupational safety and health standards”. When read in its entirety, Section 142.3 requires that California have a system of occupational safety and health regulations that at least mirror the equivalent federal regulations and that may be more protective of worker health and safety than are the federal occupational safety and health regulations.
- In conformance with Government Code Section 11346.9(c), the Board provides the following information. Federal OSHA promulgated regulation addressing crane hand signals on August 9, 2010, as 29 CFR Part 1926, Subpart CC Appendix A. The Board is relying on the explanation of the provisions of the federal regulations in Federal Register, Volume 75, No. 152, pages 48173–48175, August 9, 2010, as the justification for the Board’s proposed rulemaking action.
- Is not inconsistent or incompatible with existing state regulations. This proposal is part of a system of occupational safety and health regulations. The consistency and compatibility of that system’s component regulations is provided by such things as (1) the requirement of the federal government and the Labor Code to the effect that the state’s regulations be at least as effective as their federal counterparts, and (2) the requirement that all state occupational safety and health rulemaking be channeled through a single entity (the Standards Board).
- Would update the recommended hand signals to reflect the current hand signals used in general and construction industries.

Section 5001. Signals

Plate I — Recommended Hand Signals for Controlling Crane Operations

Section 5001 speaks of general requirements for the signaling operation between the signal person and crane operator. It contains a reference to illustrative drawings

depicting the recommended hand signals. Updating the illustrative drawings will clarify to employers and employees a set of standardized hand signals to facilitate safe handling and movement of the crane and loads. These amendments would reflect the current hand signals used in industry and make the illustrative drawings consistent with federal standard.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

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

Impact on Housing Costs

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

Impact on Businesses/Significant Statewide Adverse Economic Impact Directly Affecting Businesses Including the Ability of California Businesses to Compete

The Board has made a determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposal amends the illustrations depicting the recommended hand signals for crane operations for clarity. It does not add additional regulatory requirement, and thus will not have an economic impact.

Cost Impact on Private Persons or Businesses

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

Costs or Savings in Federal Funding to the State

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

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

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

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

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

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. There are no costs to any lo-

cal government or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses. However, no economic impact is anticipated. The clarification of the recommended hand signals will likely improve the communication between signalperson and crane operator.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The proposal concerns recommended, non-mandatory hand signals. As a result, the proposal will not have any effect on the creation or elimination of California jobs or the creation or elimination of California businesses or affect the expansion of existing California businesses.

BENEFITS OF THE REGULATION

The clarification of the recommended hand signals would benefit the employer because it would improve communication between the hand signal person and crane operator. This would facilitate the safe movement and handling of loads, thereby preventing accidents and costs incurred due to property damage and medical costs.

ALTERNATIVES STATEMENT

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

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

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified

alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than **January 10, 2014**. The official record of the rule-making proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on **January 16, 2014**, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposals substantially as set forth without further notice.

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

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

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

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

TITLE 10. DEPARTMENT OF INSURANCE

MENTAL HEALTH PARITY

The Insurance Commissioner proposes to adopt the regulations described below after considering com-

ments from the public. The Commissioner proposes to add to Title 10, Chapter 5, Subchapter 3 of the California Code of Regulations the new Article 15.2: Mental Health Parity, consisting of new sections 2562.1, 2562.2, 2562.3, and 2562.4. The regulations set forth prohibitions on limits for medically necessary treatments and services, including behavioral health treatment for individuals with autism.

PUBLIC HEARING

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

Date and Time: **January 8, 2014 10:00 a.m.**

Location: **San Diego Room
300 Capitol Mall, 2nd Floor
Sacramento, CA 95814**

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

ACCESS TO HEARING ROOMS

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

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on January 8, 2014**. Please direct all written comments to the following contact person:

Lisa Marshall, Attorney
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, California 94105
Telephone: (415) 538-4192

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

Diane Pinney, Legal Assistant
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3456

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact person at her address listed above, no later than 5:00 p.m. on January 8, 2014. Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY EMAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by email provided they are sent to the following email address: Lisa.Marshall@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Lisa Marshall and sent to the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers may not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret, and make specific the provisions of Insurance Code Sections 10144.5 and 10144.51.

Insurance Code Sections 10144.5, 10144.51, 12921, and 12926 provide authority for this rulemaking, as do the following decisions of the California Supreme Court: *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989); *20th Century Ins. Co. v. Garamendi*, 8 Cal.4th 216 (1994).

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW

Existing Law Interpreting the Scope of and Insurer Obligations Under the Mental Health Parity Act

California's Mental Health Parity Act (MHPA), codified at Insurance Code 10144.5, requires that every policy that covers hospital, medical, or surgical expenses shall provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses of a person of any age and severe emotional dis-

turbances of a child. Autism is an enumerated severe mental illness to which the law applies. The MHPA lists required categories of benefits, and specifies financial terms and conditions that must be applied equally to all benefits under the policy.

The Department of Managed Health Care (DMHC) has promulgated Title 28 California Code of Regulations section 1300.74.72 in 2003, interpreting the MHPA, which is also codified in Health & Safety Code section 1374.72. That regulation construes the MHPA as a mandate for all medically necessary treatment required for the diagnosis and treatment of the enumerated conditions. It provides in subsection (a):

The mental health services required for the diagnosis, and treatment of conditions set forth in Health and Safety Code section 1374.72 shall include, when medically necessary, all health care services required under the Act including, but not limited to, basic health care services within the meaning of Health and Safety Code sections 1345(b) and 1367(i), and section 1300.67 of Title 28. These basic health care services shall, at a minimum, include crisis intervention and stabilization, psychiatric, inpatient hospital services, including voluntary psychiatric inpatient services, and services from licensed mental health providers including but not limited to, psychiatrists and psychologists.

Subsection (h) of that regulation further underscores that medical necessity is the test of whether services must be covered and provided. It specifies that "[n]othing in this section shall be construed to mandate coverage of services that are not medically necessary or preclude a plan from performing utilization review in accordance with the Act."

The Department of Insurance (the "Department" hereinafter) has construed the virtually identical statute in Insurance Code section 10144.5 to require all medically necessary treatment be covered for insureds with the listed severe mental conditions, subject only to conditions stated in the proposed regulations.

The Department's interpretation of the MHPA was based on the statutory language, legislative history and a California appellate case holding that the language of the MHPA makes clear that parity is a mandate. *Yeager v. Blue Cross of California*, 175 Cal. App. 4th 1098 (2009). At issue in *Yeager* was the interpretation of a provision of the California Health and Safety Code that provides a checklist of benefits that are legally required to be offered by a plan and includes coverage for fertility treatment. In *Yeager*, the plaintiff's insurance carrier offered infertility coverage that plaintiff challenged as inadequate, alleging that the applicable Health and

Safety Code section was a mandate on insurance carriers to offer full coverage for fertility treatment.

Yeager, construing the statutory language and reviewing the legislative intent, held that the statute's wording only required insurers to offer fertility coverage for purchase and not to actually provide full coverage for treating infertility. The court reasoned that if the legislature had wanted to create a mandate for insurers to provide coverage for fertility treatment, they knew how to do so and would have enacted a statute similar to the MHPA. The court described the MHPA as a mandate to provide coverage, not merely to require that coverage be available.

The Ninth Circuit Court of Appeal recently reconsidered and reissued its decision in *Harlick v. Blue Shield*, 686 F.3d 699 (9th Cir. 2012) on June 12, 2012. The plaintiff sought residential treatment under her ERISA plan for anorexia, one of the severe mental illnesses enumerated in the MHPA. Her plan covered treatment for mental illnesses, including inpatient services, but excluded coverage for residential care. The Ninth Circuit found that the plan did not provide coverage for residential care for anorexia but that the MHPA mandated it, reasoning:

Some medically necessary treatments for severe mental illness have no analogue in treatments for physical illnesses. For example, it makes no sense in a case such as *Harlick's* to pay for time in a Skilled Nursing Facility — which cannot effectively treat her anorexia nervosa — but not to pay for time in a residential treatment facility that specializes in treating eating disorders.

The court concluded that the MHPA requires that a plan within the scope of the act must pay for all medically necessary residential treatment for anorexia, whether or not such benefits are covered for physical illnesses. The court further concluded that the only limitation on coverage for mental illness permitted under the MHPA is that insurers may impose financial “terms and conditions” on mental illness coverage, which are limited to “monetary conditions, such as copayments and deductibles.” The court accordingly required the plan to provide coverage for *Harlick's* residential treatment for anorexia.

In reaching its conclusion about the scope of the MHPA, the court cited and relied on the DMHC's implementing regulation. That regulation construed the MHPA, as the Department does in the proposed regulations, to require that all medically necessary treatment for parity diagnoses be covered, subject to the stated statutory condition.

SB 946, which became Insurance Code section 10144.51, makes it indisputable that behavioral health treatment must be covered whenever it is medically necessary therapy for autism, subject only to financial

terms and conditions applicable to all benefits under the policy. The bill was needed because health plans and insurers had consistently failed to provide and cover medically necessary behavioral health treatment. As the DMHC explained in the documents supporting its 2012 emergency rulemaking, plans and insurers resisted providing such treatment arguing first that it was experimental and investigational, so was not covered. More recently, health plans and insurers have contended that behavioral therapy is educational in nature, rather than medical treatment, so is not covered. Finally, even though California has no license for behavioral therapists, health plans and insurers assert that if the treatment is or could be provided by an unlicensed individual, the treatment is not “medical” so will not be covered.

Insurance Code section 10144.51 expands the definition of qualified autism service provider and mandates that private health plans and insurance companies provide behavioral health treatment for autism spectrum disorders no later than July 1, 2012. It further requires that every health insurer must maintain an adequate network that includes qualified autism service providers, who are defined to include individuals certified by a national entity such as the Behavior Analyst Certification Board, as well as those licensed in California.

However, in July, 2012, a Los Angeles Superior Court Judge sustained a demurrer to a complaint under the MHPA in *Rea v. Blue Shield of California* declining to follow *Harlick* and holding that the MHPA requires only equality of benefits between mental and physical conditions and is not a mandate of all medically necessary treatment, subject only to equivalent financial terms and conditions. Although the decision is unpublished, therefore not citable as authority, and is also on appeal, its existence makes it more difficult for the Department to assert that the MHPA may be interpreted in only one way. Hence, the proposed regulations are necessary.

The Department's proposed regulations are consistent with the regulations DMHC promulgated in 2003. Both sets of regulations require that medically necessary treatment be provided and covered for severe mental illnesses and serious emotional disturbances of a child. That interpretation by a sister administrative agency of a parallel statute, which it is charged with implementing, must be given great weight. As the California Supreme Court has concluded, “The Department's interpretation of the Act has presumptive value due to its expertise of related and regulatory issues.” *Yamaha v. State Board of Equalization*, 19 Cal. 4th 1, 11 (1998). Moreover, California appellate courts have repeatedly followed that rule, holding that “[c]onsistent administrative construction of a statute over many years, particularly when it originated with those charged with putting the statutory machinery into effect, is entitled to

great weight and will not be overturned unless clearly erroneous.” *Sara M. v. Superior Court*, 36 Cal. 4th 998, 1012 (2005). See also *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 568 (1996).

The Department’s proposed regulations are also consistent with the interpretation of the MHPA in the Ninth Circuit Court of Appeal’s decision in *Harlick v. Blue Shield*. The consistent interpretation of the MHPA to require that all medically necessary treatment be covered under the MHPA by the Departments of Managed Health Care and Insurance, in accord with the persuasive reasoning of the federal appellate court, is entitled to deference.

Consistency with Other State Laws

The proposed regulations are consistent and compatible with other California laws. Enacted in September 1993, Senate Bill 1085, the California Early Intervention Services Act (IDEA), established a mandate for Regional Centers and local education agencies to provide comprehensive services to infants and toddlers with, or at risk of, developmental delays. The requirements for this program are set forth in Part C of the IDEA, to which the state legislation conforms.

Prior to the passage of the MHPA in 1999, the California legislature adopted a comprehensive public policy of early intervention for children with autism. It found that “[t]here is a need to provide appropriate early intervention services individually designed for infants and toddlers from birth to two years of age, inclusive, who have disabilities or are at risk of having disabilities, to enhance their development and to minimize the potential for developmental delays.” Cal. Gov’t. Code § 95001. Indeed, a whole set of cross-referenced laws outline the various processes governing the early intervention services provided by the state including: (1) early education funding and eligibility and plan approval; (2) early education for infants; (3) early intervention centers and system establishment; (4) procedures for identifying, evaluation and assessment of the need for early intervention; (5) instructional planning procedures; and, (6) review and assessment procedures. Cal. Educ. Code § 56429; Cal. Educ. Code § 56426; Cal. Health & Safety Code § 124118.5; Cal. Educ. Code § 56340.1; Cal. Educ. Code § 56382.

The law created a public network of options and resources for individuals with autism and their families. The Department of Developmental Services (DDS), the Departments of Education, Health Care Services, Social Services, and Alcohol and Drug Programs coordinate services to infants and toddlers and their families. These agencies provide a family-centered, comprehensive, multidisciplinary, interagency, community-based, early intervention system for infants and toddlers with disabilities.

The MHPA and Early Intervention Services Act created multiple points of access for California families of all financial means to receive vital early intervention health care services. These statutes embody public policies favoring early intervention and requiring private insurers to provide coverage for those treatments. The Department’s proposed regulations interpreting the MHPA are entirely harmonious with these salutary public policies and with statutory law and related regulations.

EFFECT OF PROPOSED ACTION

The effects anticipated from adoption of the proposed regulations for children and families include the cessation of improper denials of medically necessary treatment for autism and the elimination of unreasonable delays in providing these treatments, which are more likely to be successful when they are begun early. Coverage of early intervention through behavioral, speech, and occupational therapy will enable children with autism to improve in intelligence quotient, cognitive ability, receptive and expressive language skills, and adaptive behavior; and will lessen maladaptive, tantrum or self-injurious behaviors. Other anticipated benefits from adoption of the proposed regulation include the expectation that children will receive improved diagnoses from autistic disorder to pervasive developmental disorder (PDD), and a significant minority of children will recover from autism, resulting in lessening their needs for governmental services throughout their lifetimes.

Providing Clear Guidance to Industry, Stakeholders and Consumers on the Requirements of the MHPA

The proposed regulations have the primary objective of helping to bring an end to the pattern of improper insurer delay and denial of medically necessary treatment for individuals with autism. The proposed regulations make clear the obligations of private insurers under the MHPA to provide medically necessary treatment and services, subject to financial terms and conditions applicable to all benefits under the policy. Furthermore, the regulation seeks to provide guidance to industry, stakeholders and consumers about the scope of the MHPA’s provisions as they relate to autism treatment specifically.

Establishing Medical Necessity as the Metric of What Services Must Be Covered

While the MHPA applies to several different diagnoses, the proposed regulations are limited to PDD or autism. Substantively, the proposed regulations benefit insurers and enhance fairness and consistency of decision making by clarifying that medical necessity is the test of whether services must be covered — if treatment or services are not medically necessary, neither the pro-

posed regulations nor the MHPA require that the services or treatment be covered. However, it is conceivable that the regulation could be construed to require coverage when the treatment or services are not medically necessary. Therefore, the proposed regulations expressly do not preclude insurers from utilizing case management, utilization review, and similar techniques.

Prohibition on Annual Visit and Dollar Limits for Medically Necessary Treatment

The proposed regulations further seek to ensure that individuals with autism receive speech and occupational therapy as well as behavioral health treatment subject to certain prohibitions on limiting such services. The proposed regulations specifically prohibit annual visit limits, which are not financial terms or conditions as illustrated in subdivision (c) of the MHPA. Additionally, the proposed regulations prohibit annual dollar limits on such treatments and services which are not equally applicable to all benefits under the policy. Thus, the proposed regulations prohibit these two limitations with respect to autism and counteract insurers' continued imposition of unreasonable visit and dollar limits on ABA therapy, speech and occupational therapies and other vital treatments and services necessary to the health of individuals with autism.

Prohibition on Denials of Behavioral Health Treatment (BHT)

The proposed regulations also help ensure that behavioral health treatment for PDD or autism shall be covered in the same manner and subject to the same requirements. The proposed regulations make clear that BHT for PDD or autism is a requirement under both the MHPA and Insurance Code section 10144.51 (SB 946) and further require that coverage for BHT of a patient diagnosed with PDD or autism must be provided if it is medically necessary, subject to only financial terms and conditions that are equally applicable to all benefits under the policy. The proposed regulations specifically prohibit insurers from denying or delaying BHT on the grounds that such treatment is experimental, investigational or educational. Furthermore, a prohibition against conditioning medically necessary BHT on insurer-imposed cognitive, developmental or IQ testing is proposed to ensure that individuals with PDD or autism receive prompt treatment, without unreasonable delays. Such denials and delays of BHT are inconsistent with the MHPA and SB 946 (Insurance Code sections 10144.5 and 10144.51).

Protection of Public Health

The benefits anticipated to result from the adoption of the proposed regulations include the protection of public health as the provision of medically necessary therapies to California consumers with autism will transform

the lives of young children and save state government millions of dollars over the lives of these children as they age. Furthermore, parents of individuals with autism will benefit by being more available to take on full- or part-time work as care for autistic children is coordinated and provided by insurers.

COMPARABLE FEDERAL LAW

Federal Mental Health Parity Efforts, 1996 and 2008

In 1996, Congress passed the federal Mental Health Parity Act of 1996 ("FMHPA"), which required that annual or lifetime dollar limits on mental health benefits be no lower than any dollar limits for medical and surgical benefits offered by a group health plan or health insurance issuer offering coverage in connection with a groups health plan. (29 U.S.C. 1185(a) (1996)). Although insurers had to provide equal annual or lifetime dollar limits for mental health benefits, they could still impose a maximum number of provider visits and caps on the number of days an insurer would cover for inpatient psychiatric hospitalizations. In 2008, Congress enacted the Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA"), to supplement and close loopholes in the 1996 FMHPA. (Pub. L. No 110-343, 122 Stat. 3765 (2008).) Under the interim final rules to the 2008 statute, a group health plan or group health insurance issuer generally could no longer impose a financial requirement (such as copayments or coinsurance) or a quantitative treatment limitation (such as a limit on the number of outpatient visits or inpatient days covered) on mental health or substance use disorder benefits exceeding those applicable to medical and surgical benefits. (29 C.F.R. § 2590.)

Federal Health Care Reform and Autism Coverage

On March 23, 2010, President Obama signed the Affordable Care Act (ACA) into law. The ACA significantly reforms the health insurance market. Despite the sweeping extent of the legislative reform, the ACA does not include any reference to autism. Instead, the ACA broadly requires that mental health and substance use disorder services, including behavioral health treatment are mandatory Essential Health Benefits (EHB). (42 USC §18022(b)(1)(E).) Therefore, the ACA does not specifically require insurance carriers throughout the country, including those participating in the state purchasing exchanges, to cover a package of diagnostic, preventive and therapeutic services and products for individuals with autism. In addition, rather than setting a national EHB package, the federal government let each state choose a "benchmark plan" that it would use to determine the EHB in that state. (See 45 CFR § 156.20.) To the extent a state's benchmark plan covered autism treatment, it is an essential health benefit and therefore a mandatory benefit that must be covered

by every individual and small group insurance plan in that state.

The failure of the ACA and subsequent rules to address autism treatment means that there is no national autism coverage mandate and leaves individuals and families largely at the mercy of state insurance mandates and the state EHB package.

California's attempts to implement federal health care reform in the state led to Governor Brown's signing of SB 951, now Insurance Code section 10112.27, which incorporates autism insurance benefits, including ABA therapy coverage, as part of California's EHB package that non-grandfathered individual and small group insurance plans must offer starting in 2014 under the ACA. This includes coverage for benefits required by laws enacted before December 31, 2011, such as Mental Health Parity and SB946, the autism insurance reform law. However, it does not cover grandfathered plans or self-insured plans which are governed under federal law. (Insurance Code section 10112.27; See 10 CCR 2594.1)

POLICY STATEMENT OVERVIEW

The specific policy underlying the proposed action is articulated by the following statement by the bill's author:

The author argues that this bill will prohibit discrimination against people with biologically-based mental illnesses, dispel artificial and scientifically unsound distinctions between mental and physical illnesses, and require equitable mental health coverage among all health plans and insurers to prevent adverse risk selection by health plans and insurers. The author stresses that mental illness is treatable in a cost-effective manner and that the failure of the health care system to provide adequate treatment for persons with mental illness has been costly not only to mentally ill individuals and their families, but to society as a whole and particularly to state and local governments. (Assem. Com. on Health, Rep. on Assem., Bill No. 88 (1999-2000 Reg. Sess.))

The Proposed Regulation Will Help Ensure that Autism Is Treated by Effective, Established Therapies

The benefits anticipated from this proposed regulation are the timely provision and coverage of medically necessary treatments that can ameliorate the core deficits of autism, saving the State enormous sums and enhancing the health and wellbeing of children with autism and their families. Behavioral health treatment is particularly useful in improving the condition of individuals with autism. ABA therapy, a type of behavioral health treatment, is defined as "the design, implementation, and evaluation of systemic instructional and envi-

ronmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction."¹ The remarkable success of behavioral therapy in substantially increasing IQ scores and improving cognitive ability, receptive and expressive language skills, and adaptive behavior, and enabling some children to achieve recovery from autism. The proposed regulation will enable many more children to receive and benefit from this life-changing therapy.

The Proposed Regulation Will Help Curtail or Eliminate Pervasive and Harmful Insurer Delays and Denials of Treatment

Disputes over whether certain types of treatments are medically necessary or a covered health care service often delay necessary treatment for children with autism. The Department has tracked cases involving delays and denials of behavioral health treatment, as well as speech and occupational therapy, for children with this serious disorder since 2009. During that time, the Department has sent 23 cases related to denials of behavioral health and other autism treatment to external clinicians for IMR. Of those, 19 denials were overturned by the reviewers, finding in favor of the insured child receiving treatment. Another 19 IMR cases are currently open involving denials of behavioral, speech and occupational therapy.

Individual delays in obtaining treatment for 40 closed cases average 5.8 months, nearly half a year; delays currently average 10.33 months, or almost a year, for those cases which are still open. Another 12 of those complaints are either awaiting submission of additional information or are in process. The cumulative total delays on open and closed cases combined total 12,864 days, or 35.2 years. These lengthy delays all involve treatment that experts agree is most effective when provided in early childhood. The benefits anticipated from the proposed regulation include significantly lessening or eliminating these delays and denials of treatment and substantially improving treatment efficacy and outcomes.

The Proposed Regulation Will Benefit Children with Autism As Well As State Entities and Taxpayers

California leads the nation with 72,000 individuals with a form of autism spectrum disorder (ASD).² As the numbers of individuals with ASD increase, more burdens and financial demands are placed on the State's budget. Early behavioral intervention treatment not

¹ Cal. Gov't Code § 95021(d)(1) (West 2012).

² Autism Soc'y of Cal., Autism in California 2012 Survey (2012), available at https://autismsocietyca.org/uploads/ASC_Survey_April_2012.pdf. Autism Society of California, *Autism in California 2012 Survey* (April, 2012), https://autismsocietyca.org/uploads/ASC_Survey_April_2012.pdf.

only protects children with autism, but reduces demands on limited public resources and thereby lessens the burden on taxpayer-provided healthcare networks and other support services.

At present, those burdens are enormous, because of the immense need for treatment and services. Between 22% and 41% of individuals with ASD need assistance with basic life skills. The 2012 Autism Society of California survey showed that 41% of individuals with ASD need assistance with dressing, 37% need assistance with toileting and 22% need assistance with feeding. Families also reported communication is an area of struggle for many individuals with ASD: 49% cannot indicate when they are sick; 29% cannot request items they need; and 26% cannot request items they want.³

Moreover, those needs are increasingly unmet because of declining access to Regional Center services. The percentage of families accessing services through the DDS has decreased since 2009. In 2009, 77% of California families said they were Regional Center clients, while only 70% were in 2012.⁴ Navigating the Regional Center service system provides yet another obstacle for parents and children to overcome: 81% of parents rated it moderate to very hard to navigate while 51% gave the medical health insurance system that rating.⁵

Insurer failures and refusals to provide therapy have exacerbated the public health crisis facing California, worsening the current emergency. Despite the 1999 passage of the MHPA, expressing the California Legislature's purpose to shift ASD therapy costs away from state and local governments to private insurers, health insurers still pay the smallest percentage of overall ASD therapy costs. Parents report that school districts are currently funding 48% of ABA, speech, occupation and physical therapies. Regional Centers pay 22% of the bill — yet another significant cost to the State. Parents pay roughly 17% out-of-pocket for ASD therapies. Finally, health insurance companies, despite the MHPA, are still only paying 9–13%.⁶

The need for services for autism continues throughout the affected individuals' lives. The percentage of adults with ASD who are employed or attending day programs has decreased from 29% in 2009, to 20% in 2012. The number of employed ASD adults was 42% in 2009 and dropped to 25% in 2012. This means that there is a sharp increase in the number of ASD adults with no employment or day program. The percentage of ASD adults accessing Adult Services has decreased; only 65% of ASD adults reported being a current Regional

Center client, compared to 90% of individuals under age 18.

When treatment and services are not effectively and timely provided, still further costs accrue from involvement of ASD individuals with yet other governmental entities. California's justice system is now encountering adults and youths with ASD: 14% of families had interactions with police, including school police; 5% reported severe behavior and interactions with Child Protective Services, neighbors, or school personnel; 3% said the person with ASD had been entered into a behavioral unit or confined under Section 5150; 3% received a warning from Law Enforcement; 1% were arrested; and 1% spent time in jail or a juvenile detention center.⁷

This crisis is imposing staggering costs on many of California's governmental entities and on its taxpayers. Through a pattern of failing to provide mandated services, insurers have shifted the costs of ASD therapies and services to California's public education system and school districts. Insurer failures to provide services have had devastating fiscal impacts on limited governmental and taxpayer resources, requiring the promulgation of this emergency regulation to rectify.

CONSISTENCY OR COMPATIBILITY WITH STATE REGULATIONS

After conducting a review, the Department has concluded that the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

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

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

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

To the contrary, the regulation confers a substantial financial benefit on both local agencies and school dis-

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 4.

⁶ *Id.* at 5.

⁷ *Id.* at 4.

tricts through shifting costs, which they are now bearing for special education and services to children with ASD, to private insurers. Substantial cost savings will also be realized by state agencies as their costs are also shifted to private insurers. The Department estimates that the proposed regulations will result in savings to State government of approximately \$18 million in the current State Fiscal Year, savings to local government of approximately \$9.6 million annually, and savings in federal funding to State programs of approximately \$4.4 million in the current State Fiscal Year.

The proposed regulations requiring early intervention with behavioral health treatment and speech and language therapy will generate substantial cost savings to the State in a way that is fully consistent with applicable California law and public policy. Its promulgation will result in young children being better able to be mainstreamed into school and society, thereby lessening the burden on the taxpayer-provided healthcare network and other state-funded special education and support systems as the child matures.

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

The types of businesses that may be affected by the proposed regulations are health insurers. The proposed regulations contain no recording or record-keeping requirements. The compliance requirements are that insurers must cover medically necessary treatment or services for autism or PDD, including BHT, subject only to financial terms and conditions that apply equally to all benefits under the policy.

The Commissioner has made an initial determination that the adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

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

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/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.

Since 2011, insurers have been incrementally picking up growing portions of the cost of behavioral therapy while the government sector and taxpayers pay less of the \$147.8 million annual tab associated with therapy costs for children insured under policies or plans regulated by the Department (“CDI-covered children”) with autism.

The rapidly changing legal environment, including SB 946, the *Harlick* decision, and Department enforcement actions, caused insurers to begin changing premiums to pay for new coverage obligations over two years. According to a review conducted by the Department’s actuarial and health policy staff, insurance companies raised monthly premiums by an average of \$1.08 per member in 2012, to offset the costs of the behavioral treatments required by law. By the end of 2013, the Department estimates that 78% of the costs for therapy have been incorporated into rates, copayments and medical offsets for California’s health care insurance consumers. As insurers raised premiums to cover mental health treatments, households (policyholders) using the therapy benefits incurred corresponding copayments and deductibles. The Department thus estimates that \$7.6 million will have to be picked up in 2014 by parents and other policyholders.

By 2014, the remaining \$32 million of the \$147.8 million associated with annual therapy costs for CDI-covered children with autism will be transferred in annualized payment responsibilities to insurers (\$20.5 million), to policyholders or households (\$7.6 million) and to physicians, dentists, hospitals and other providers (\$3.9 million), who may lower costs due to medical mainstreaming.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; the expansion of businesses currently doing business within the State of California; and the benefits of the regulation to the health and welfare of California residents, worker safety and the state’s environment.

The Commissioner has made an initial determination that the adoption of the proposed regulations may result in the addition of one job within the State of California.

The Commissioner has made an initial determination that the adoption of the proposed regulations will not impact the creation of new businesses or the elimination of existing businesses within the State of California, the expansion of businesses currently doing business within the State of California, worker safety, or the state's environment.

The benefits of the proposed regulations to the health and welfare of California residents are as set forth under "Effect of Proposed Action" and "Policy Statement Overview" in the Informative Digest of this notice. These benefits include and result from the timely provision and coverage of medically necessary treatment and services for autism or PDD.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the health, safety, or welfare of the people of the State that the proposed regulations apply to businesses.

IMPACT ON SMALL BUSINESS

The Commissioner has determined the proposed action will not directly affect small businesses since the regulations only apply to the conduct of insurers doing business in California, and pursuant to Government Code section 11342.610(b)(2), an insurer by definition is not a small business. Providers of treatment or services for autism or PDD that are small businesses will be affected, however, because they may derive a benefit from the enforcement of the regulations.

IMPACT ON HOUSING COSTS

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

ALTERNATIVES

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

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 300 Capitol Mall, 16th Floor, Sacramento, CA 95814, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning these proposed regulations are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right-hand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the dropdown menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Pro-

posed Regulations.’ Then, when the ‘PROPOSED REGULATIONS’ screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To browse, click on the ‘Currently Proposed Regulations’ link. A list of the names of regulations for which documents are posted will appear. Find in the list the link to ‘Mental Health Parity (Permanent)’ and click it. Links to the documents associated with these regulations will then be displayed. To search, enter “REG-2013-00006” (the Department’s regulation file number for these regulations) in the search field. Alternatively, search by keyword (“mental health parity,” for example). Then, click on the ‘Submit’ button to display links to the various filing documents.

TITLE 13. CALIFORNIA HIGHWAY PATROL

TITLE 13. CALIFORNIA CODE OF REGULATIONS,
DIVISION 2, CHAPTER 6.5
AMEND ARTICLE 7.5, SECTION 1239

COMMERCIAL VEHICLE SAFETY ALLIANCE, NORTH AMERICAN STANDARD OUT-OF-SERVICE CRITERIA (CHP-R-13-01)

The California Highway Patrol (CHP) proposes to adopt by reference the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria, April 1, 2013, Edition, in Title 13, California Code of Regulations. The current regulation incorporates by reference the Commercial Vehicle Safety Alliance, North American Standard Out-of-Service Criteria, April 1, 2011, Edition.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 34501(a)(1) of the California Vehicle Code (CVC) authorizes the CHP to adopt reasonable rules and regulations which, in the judgment of the Department, are designed to promote the safe operation of vehicles described in Section 34500 CVC. The CHP’s authority to adopt regulations includes, but is not limited to, controlled substances and alcohol testing of drivers by motor carriers, drivers hours-of-service qualifications, equipment, fuel containers, fuel operations, inspections, maintenance, record keeping, accident reports, drawbridges and cargo securement, (Section 34500.3 CVC). Section 2402 CVC provides the Commissioner with the authority to “make and enforce such

rules and regulations as may be necessary to carry out the duties of the Department,” and Section 2410 CVC provides the authority for the CHP to place vehicles out-of-service (Attorney General’s Opinion NS 2520) in order to “ensure safety.” Current regulations, adopt by reference the Commercial Vehicle Safety Alliance North America Standard Out-of-Service Criteria, April 1, 2011, Edition, which apply to those vehicles listed in Sections 34500 CVC.

The intent of these regulations is to adopt specific uniform criteria for determining whether or not a vehicle and/or driver, inspected by an authorized representative of the CHP, is in an unsafe condition which likely constitutes a hazard on a highway. These regulations will incorporate by reference specified portions of the standards contained within the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria, April 1, 2013, Edition.

Adoption of these criteria will continue to provide a nonmonetary benefit to the protection and safety of public health, employees and safety to the environment by providing a regulatory basis for enforcement efforts as they relate to commercial vehicle out-of-service criteria. During the process of developing this regulation, the CHP has conducted a search of any similar regulation on this topic and has concluded that this proposed regulation is not inconsistent or incompatible with existing state regulations. This proposed regulation merely updates the current regulation.

DOCUMENT INCORPORATED BY REFERENCE

Commercial Vehicle Safety Alliance North American Standard Criteria, Revised Edition 04/01/2013.

PUBLIC COMMENTS

Any interested person may submit written comments on this proposed action via facsimile at (916) 322-3154, by electronic mail to cvsregs@chp.ca.gov or by writing to:

CHP, Enforcement and Planning Division
Commercial Vehicle Section
ATTN: Sergeant Milton Toppings
P. O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 5:00 p.m., on January 11, 2014.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section, no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 322-3154 or by calling the CHP, Commercial Vehicle Section, at (916) 843-3400. All requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state, and zip code), and a daytime telephone number in case the requestors information is incomplete or illegible.

The rulemaking file is available for inspection at the CHP, Commercial Vehicle Section, 601 North 7th Street, Sacramento, CA 95811. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are available through the CHP's Web site at www.chp.ca.gov/regulations.

Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above-noted address. Copies will also be posted on the CHP's Web site.

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations, or questions regarding the substance of the proposed regulations should be directed to Sergeant Milton Toppings or Officer Kristi McNabb, CHP, Commercial Vehicle Section, at (916) 843-3400.

ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or non-substantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

FISCAL IMPACT AND RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The CHP has made an initial determination that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate

upon local agencies or school districts; (3) involves no nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Government Code Sections 17500-17630 require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; (5) Benefit of the regulations: will continue to provide a nonmonetary benefit to the protection and safety of public health, employees and safety to the environment by providing a regulatory basis for enforcement efforts as they relate to commercial vehicle out-of-service criteria; and (6) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

EFFECT ON SMALL BUSINESSES

The CHP has determined that the proposed regulatory action has no effect on small businesses. Changes to the application of the regulation are not substantive and bring the regulation in conformance with existing statute. Minor additions and changes to the out-of-service criteria are clarifying in nature and are within all existing requirements for industry.

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the CHP must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

AUTHORITY

This regulatory action is being taken pursuant to Sections 2402, 2410, 31401, and 34501(a), CVC.

REFERENCE

This action implements, interprets, or makes specific Sections 2402, 2410, 12500, 12502, 12515(b), 14603, 15250, 15275, 15278, 23152, 24002, 24400, 24252, 24600, 24603, 24604, 24952, 27154, 27155, 27465, 27501, 27903, 29001, 29002, 29003, 29004, 31401, 34500, 34501, 34506, and 34510 CVC.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203, 355, 710, 710.5, 710.7, 713, 1002, 1050, 1053, 1526, 1528, 1530, 1580, 1581, 1583, 1745, 1761, 1764, 1765, 1907, 2118, 2120, 2122, 2150, 2150.2, 2157, 2190, and 10504 of the Fish and Game Code and to implement, interpret or make specific sections 355, 711, 713, 1050, 1053, 1055.3, 1526, 1528, 1530, 1570, 1571, 1572, 1580, 1581, 1582, 1583, 1584, 1585, 1590, 1591, 1764, 1765, 2006, 2116, 2116.5, 2117, 2118, 2120, 2125, 2150, 2150.2, 2151, 2157, 2190, 2193, 2271, 10504, 12000, and 12002 of the Fish and Game Code, Section 14998, Government Code, sections 5003 and 5010, Public Resources Code, and sections 25455, 26150, and 26155, Penal Code, proposes to amend sections 550, 551, 552, 630 and 703, add Section 550.5 and repeal Section 553, Title 14, California Code of Regulations, relating to Public Use of Department of Fish and Game Lands.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Wildlife Areas and Ecological Reserves

The majority of acreage administered by the Department of Fish and Wildlife (Department) is included in either wildlife areas or ecological reserves. Wildlife areas are acquired primarily for wildlife conservation and providing opportunities for compatible recreational uses. There are currently 110 wildlife areas, encompassing approximately 711,726 acres. The authority for regulating wildlife areas is established in Fish and Game Code sections 1525 through 1530.

Ecological reserves are acquired primarily for the purpose of protecting rare and/or endangered native plant and animal species and specialized habitat types (Fish and Game Code Section 1580). Other purposes for the establishment of ecological reserves are the observation of native plants and animals by the general public and scientific research (Fish and Game Code Section 1584). There are currently 130 ecological re-

serve properties, encompassing approximately 212,640 acres. The authority for regulating ecological reserves is established in Fish and Game Code sections 1580 and 1584.

The Department also administers public access lands and properties which are not yet designated. The latter are typically properties that have been recently acquired but have not yet been designated as either wildlife areas or ecological reserves by the Fish and Game Commission (Commission).

Fish and Game Code Section 1745 describes the priority public uses for Department-managed lands as "hunting, fishing, wildlife viewing, wildlife photography, conservation education, and fish and wildlife research, except for ecological reserves where uses shall be considered on an individual basis."

Purpose of Amendments to Wildlife Area and Ecological Reserve Regulations

- (1) Currently public uses of Department lands are governed by sections 550, 551, 552, 553, and 630, Title 14, Code of Regulations (CCR). Cumulatively these sections contain hundreds of subsections with both general regulations (applicable to all or most lands) and specific regulations (applying only to one or a limited number of areas), mixed together in an often confusing and hard-to-find manner. Furthermore there are inconsistencies, duplication, and unnecessary regulations which need resolution.
- (2) This rulemaking action is being proposed to accomplish the following objectives:
 - Consolidate and improve the consistency and clarity of the regulations that govern public use of lands owned and/or managed by the Department of Fish and Wildlife, and remove existing regulations that are duplicative or unnecessary.
 - Clarify that restrictions on firearms on Department land do not prohibit the lawful possession of a concealed firearm by an active peace officer, a retired peace officer in lawful possession of an identification certificate issued pursuant to Penal Code Section 25455, or the lawful possession of a concealed firearm pursuant to a concealed carry permit issued pursuant to Penal Code sections 26150 or 26155.
 - Improve public safety and recreational opportunities without causing a significant effect on wildlife or habitat resources.
 - Standardize the process used to issue special use permits for activities on Department land. Fees associated with Special Use Permits are proposed in Section 703(a), Title 14, CCR.

(3) To accomplish these objectives, the Commission proposes to amend and re-order these sections, and to add a new section, so that the public can more easily determine what uses are allowed upon which lands:

- General regulations that apply to all, or most, Department lands will be found in amended Section 550, Title 14, CCR.
- The addition of Section 550.5, Title 14, CCR, within this rulemaking action contains detailed information regarding entry permits, reservations and special use permits for Department lands.
- Specific regulations that pertain to Department lands designated as wildlife areas will be found in amended Section 551, Title 14, CCR. (Note that the current provisions of Section 553, Heenan Lake Wildlife Area, will be incorporated within Section 551. Section 553, Title 14, CCR, will therefore be repealed.)
- Specific regulations for the nine National Wildlife Refuges that have also been designated as wildlife areas by the Commission will be found in amended Section 552, Title 14, CCR.
- Property-specific regulations for lands designated as ecological reserves will be found in amended Section 630, Title 14, CCR.
- Subsection 703(a)(2) is a new regulation within this rulemaking action which includes fees for special use permits and incorporates by reference "Permit Application for Special Use of Department Lands" (DFW 730, New 08/13).

(4) AMEND SECTION 550, Title 14, CCR. This rulemaking proposes the consolidation of generally applicable land regulations within an amended Section 550, Title 14, CCR. The most significant step in the proposed regulations is the combining of general regulations contained in the current sections 550, 551, and 630 into one set of regulations generally applicable to all Department lands as proposed in the new Section 550. These general regulations are for the protection of lands and natural resources.

Additionally, some regulations lack the information necessary to be as clear and understandable as possible. Language was changed or added in many subsections to improve the clarity of the regulations. Also 15 terms are defined in subsection 550(b) for the purpose of improving clarity. Subjects which were a particular focus in the effort to clarify the regulations included, but were not limited to:

hunting, fishing, education, research, photography, and wildlife viewing.

(5) ADD SECTION 550.5, Title 14, CCR. Requirements for reservations, entry permits, fees, passes, and special use permits will be moved to, or provided in, new Section 550.5, Title 14, CCR.

As the amended Section 550 will address the basic, general regulations for public use, a new added Section 550.5 will address detailed topics. These include the "how to" details and specific requirements for entry permits and passes; hunting area reservations, including moving those currently found in Section 551; and, special use permits. The proposed Section 550 will direct readers to appropriate subsections of Section 550.5 to obtain more details where necessary. The necessity for new regulations regarding entry permits, fees, passes, and special use permits is summarized below:

550.5(b), Title 14, CCR: Reservations for Wildlife Viewing and Tours. The observation of native wildlife and habitats by the public is an appropriate use of many Department lands (Fish and Game Code Sections 1528, 1584, 1745). Certain properties have become very popular for wildlife or wildflower viewing opportunities. The new regulation establishes advance reservation opportunities if it is necessary to limit entry to these areas to protect sensitive natural resources.

550.5(c), Title 14, CCR: Entry Permits, Fees and Passes. This section is necessary for clarification about how to obtain passes that are exchanged for entry permits at Department lands. The Commission is authorized to prescribe the terms for issuing permits and other entitlements to use Department lands in Fish and Game Code Section 1050.

550.5(d), Title 14, CCR: Special Use Permits. Proposed subsection 550(d) explains that Special Use Permits are required for organized events or gatherings on Department lands. There currently are no statewide procedures for making or processing requests for Special Use Permits. There is also no mechanism for the Department to recover costs incurred by processing requests for Special Use Permits. Section 550.5 is proposed to fulfill the need to have statewide methods for requesting and processing Special Use Permits for Department lands and also to explain new associated fees associated with Special Use Permits.

- (6) AMEND SECTION 551, Title 14, CCR. Specific regulations for individual wildlife areas are proposed in amended Section 551, Title 14, CCR.

In the existing regulations specific regulations for wildlife areas are listed by property and not by type of use. If a person is interested in a particular type of use it is necessary to read the regulations for every wildlife area to learn where that use is allowed or where use restrictions exist. To make it easier for readers to find regulations regarding a use, the property-specific regulations for wildlife areas have been reorganized within the amended Section 551, primarily by type of use and secondarily by property. For most uses, the property-specific regulations are organized into tables, with each table dedicated to one or two types of uses. New regulations regarding visitor hours, hunter safety, firearms, dogs, and other restrictions are also proposed in this section to improve public safety.

Designation of a New Wildlife Area

The Department designates recently acquired lands described as wildlife areas in accordance with Fish and Game Code Sections 1525 and 1526. The list of all Department lands designated wildlife areas are included in the proposed amendment to subsection 551(b) and all future acquired wildlife areas will be added there. The property proposed at this time for designation in subsection 551(b)(8) is Burcham and Wheeler Flats Wildlife Area, Mono County.

- (7) AMEND SECTION 552, Title 14, CCR. Specific regulations for National Wildlife Refuges that are also designated as wildlife areas by the Commission are proposed in amended Section 552, Title 14, CCR.

All of the regulations in proposed subsection 552(a)(1) through 552(a)(5) correspond to the same numbered regulations in existing subsection 552(a). Following proposed subsection 552(a)(5), we inserted the regulations for the Sacramento River National Wildlife Refuge as subsection 552(a)(6). The regulations that are currently subsections 552(a)(6) through 552(a)(8) are proposed to be renumbered as 552(a)(7) through 552(a)(9). The regulations for the Sacramento River National Wildlife Refuge (SRNWR) were moved from subsection 551(q)(34) to subsection 552(a)(6) in order to consolidate into one location, all of the site-specific regulations for National Wildlife Refuges that are also wildlife areas that have been designated by the Commission. Existing subsection 552(a)(9) is proposed for deletion because the Department no longer

manages the hunting program for the subject refuge (Stone Lakes National Wildlife Refuge), nor does the Department have any other management authority or responsibility for that refuge.

As previously discussed in more detail under Proposed Section 552, the language regarding camping in proposed subsections 552(a)(1)(D), (2)(E), (5)(E), and (9)(D) has been changed from the corresponding existing regulations ((552)(a)(1)(D), (2)(D), (5)(E), and (8)(E)). The existing subsections do not allow for any camping or tents on the subject refuges. This conflicts with the federal regulations (50 CFR 32.24, October 1, 2012) which allows “overnight” camping (meaning one night) on the nights before waterfowl shoot days, but only in campers, motorhomes or trailers and only in the hunter check-station parking area. The proposed changes eliminate the conflicts with both the federal regulations, and also with the decades-long practice of allowing camping under these restricted circumstances for the subject refuges.

- (8) REPEAL SECTION 553, Title 14, CCR, Heenan Lake Wildlife Area. As part of consolidating the regulations, all of Section 553 is proposed for deletion. Existing Section 553 includes site-specific fishing and boating regulations for a single property, Heenan Lake Wildlife Area. These regulations are proposed to be incorporated into proposed subsection 551(l) which, when adopted, will also include property-specific regulations regarding boating.
- (9) AMEND SECTION 630, Title 14, CCR. Specific regulations pertaining to individual ecological reserves are proposed in amended Section 630, Title 14, CCR.

In the existing regulations specific regulations for ecological reserves are listed by property and not by type of use. If a person is interested in a particular type of use it is necessary to read the regulations for every ecological reserve to learn where that use is allowed or where use restrictions exist. To make it easier for readers to find regulations regarding a use, the property-specific regulations for ecological reserves have been reorganized within the amended Section 630, primarily by type of use and secondarily by property. For most uses, the property-specific regulations are organized into tables, with each table dedicated to one or two types of uses. New regulations are also proposed to improve public safety.

Existing regulations in Section 630 give authority to the Department, partner agencies or organizations, to conduct management actions on ecological reserves. Because the Department already has statutory authority for these activities, these existing regulations are duplicative and unnecessary and have therefore been proposed for deletion.

Designation of Six New Ecological Reserves

The Department proposes designations of recently acquired lands described as ecological reserves in accordance with Fish and Game Code Section 1580. Ecological reserves will continue to be designated through addition to existing subsection 630(b), Title 14, CCR, under the proposed regulations. The properties proposed for designation as ecological reserves include:

- Subsection 630(b)(8), Bakersfield Cactus Ecological Reserve, Kern County
- Subsection 630(b)(30), Cambria Pines Ecological Reserve, San Luis Obispo County
- Subsection 630(b)(69), Liberty Island Ecological Reserve, Solano County
- Subsection 630(b)(106), San Antonio Valley Ecological Reserve, Santa Clara County
- Subsection 630(b)(114), Sands Meadow Ecological Reserve, Tuolumne County
- Subsection 630(b)(130), Vernalis Ecological Reserve, San Joaquin County

(10) AMEND SECTION 703(a), Title 14, CCR to add subsection 703(a)(2) Permits for Special Use of Department Lands. An application form for requesting a Special Use Permit is proposed to be incorporated by reference into Section 703(a). The title of the application is “Permit Application for Special Use of Department Lands” (Form DFW 730 (New 08/13)). This application is referred to in proposed subsection 550.5(d), which when adopted, will provide regulations regarding the process for obtaining a Special Use Permit. The application included attachments that provide information about Special Use Permits, standard terms and conditions, and a supplementary form for commercial or fund-raising events.

Section 703(a) also includes the fees that would be associated with Special Use Permits. The fees are proposed to recover Department costs of evaluation and processing special use permit applications.

Benefits of the Regulation

The proposed regulations will make it easier for the public to understand and follow the rules that apply to Department lands. The Department also anticipates non-monetary benefits to public safety as a result of the

changes to regulations proposed in this rulemaking. Proposed amendments to Section 552 will resolve existing conflicts with federal regulations on National Wildlife Refuges that are also designated as wildlife areas by the Commission.

Consistency and Compatibility with Existing State Regulations

After conducting a review for any related regulations, the agency has determined that these are the only regulations dealing with public use of California Department of Fish and Wildlife Lands. Therefore, the proposed regulations in this rulemaking action are neither inconsistent nor incompatible with existing state regulations. The primary purpose of the proposed regulations is a re-ordering and clarification of existing regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Hilton San Diego Mission Valley, 901 Camino del Rio South, San Diego, California, on Wednesday, December 11, 2013, at 8:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Wednesday, February 5, 2014, at 8:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before January 24, 2014 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on February 1, 2014. All comments must be received no later than February 5, 2014 at the hearing in Sacramento. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above-mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sheri Tiemann at the preceding address or phone number. **Dr. Eric Loft, Chief, Wildlife Branch, phone (916) 445-3555, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory lan-

guage, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are intended to clarify existing regulations and will not substantially change existing activities on Department lands.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

Because the proposed regulations will not substantially change existing activities on Department lands, the Commission does not anticipate any impact on the creation or elimination of jobs within the state, the creation or elimination of new or existing businesses, or the expansion of businesses in California. The Commission anticipates benefits to the welfare of California residents. The proposed regulations are intended to provide clarity for public use on Department of Fish and Wildlife Lands.

(c) Cost Impacts on a Representative Private Person or Business:

Per proposed regulation subsection 550.5(d), Title 14, CCR, persons or organizations that apply for a special use permit would pay an appropriate permit fee based upon their proposed use. The proposed permit fee is \$122.50 for a Type 1 Special Use Permit, \$462.50 for a Type 2 Special Use Permit or \$536.00, for a Type 3 Special Use Permit. The permit fee recovers the Department's cost to review the permit application, coordinate with the applicant, develop terms and conditions, and issue the permit. An additional amount may be charged or a deposit may be required to recover other Department costs associated with a special use (e.g. site preparation, monitoring during the special use, clean up). Definitions of the types of special uses are in proposed subsection 550.5(d)(1), Title 14, CCR.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The reduction of duplication within the lands regulations is expected to reduce the number of pages in the regulation booklets which are published each year ("Hunting and Other Public Uses on State and Federal Areas"). This may save the state money in publishing costs. The state would recover the cost of regulating special uses or events on Department land through the special use permit fee.

The Commission does not anticipate any cost or savings in federal funding to the state.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

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

TITLE MPP. DEPARTMENT OF SOCIAL SERVICES

ITEM # 1 CalWORKs Non-Minor Dependent — AB1712/AB212

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held January 8, 2014, as follows:

Office Building # 8
744 P Street, Room 103
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on January 8, 2014.

Following the public hearing, CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for

15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons, are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT: Office of Regulations
Development
California Department of Social Services
744 P Street, M.S. 8-4-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures 40-100 General; 42-400 Residence; 82-500 Child Support Enforcement Program.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current law requires California Work Opportunity and Responsibility to Kids (CalWORKs) non-minor dependents (NMDs) to comply with the requirements for Statewide Fingerprint Imaging System (SFIS), child support referral, and residency. NMDs must be fingerprinted and photo imaged, referred to the local child support agency for the collection or enforcement of child support, and be placed with approved relatives in-state.

Effective January 1, 2013, Assembly Bill (AB) 1712 (Chapter 846, Statutes of 2012):

- 1) exempts NMDs from the SFIS requirements,
- 2) exempts parenting NMDs from referral to the local child support agency for the payment of child support while in foster care, and

- 3) allows NMDs to receive extended CalWORKs benefits even if they are placed with an approved relative in another state.

Effective October 4, 2011, AB 212 (Chapter 459, Statutes of 2011) exempts parents of NMDs from referral to the county for child support payments.

These proposed regulations amend the California Department of Social Services Manual of Policies and Procedures to extend CalWORKs benefits to NMDs placed with approved relatives out-of-state and exempt NMDs from the SFIS and child support referral requirements.

The Department anticipates that these proposed regulations will benefit CalWORKs NMDs by expanding their placement options and reducing barriers to eligibility. Also, by not referring parenting NMDs to the local child support agency, AB 1712 will allow NMDs to retain more of their benefits. These, in turn, will ease the transition to adulthood while improving well-being and outcomes for NMDs.

The Department finds that these proposed regulations are compatible and consistent with the intent of the Legislature in adopting AB 1712 and AB 212, as well as with existing state regulations.

COST ESTIMATE

1. Costs or Savings to State Agencies: No Impact.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500–17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: No Impact.
4. Federal Funding to State Agencies: No Impact.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are no “state-mandated local costs” in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to com-

pete with businesses in other states. This determination was made because this action only pertains to exempting NMDs from the SFIS and child support referral requirements, and allows them to receive extended CalWORKs benefits while placed with an approved relative out-of-state.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

The CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create or eliminate jobs in the State of California, nor result in the elimination of existing businesses or create or expand businesses in the State of California. These amendments will improve the health and welfare of California residents by improving the well-being and outcomes for eligible foster youth and by easing their transition to adulthood. Without this added safety net, youth who are forced to leave the foster care system at age 18 will face high rates of homelessness, incarceration, and reliance on public assistance.

The documents relied upon in proposing this regulatory action are Assembly Bill 1712, Chapter 846, Statutes of 2012 and Assembly Bill 212, Chapter 459, Statutes of 2011.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

The CDSS must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the pro-

posed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

In developing the regulatory action no reasonable alternatives to the statutes (i.e., AB 1712 and AB 212) have been presented to consider.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. Subject regulations implement and make specific Sections 11253(b)(2) and 11253(c), Welfare and Institutions Code; and, Sections 17552(e) and 17552(f), Family Code.

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Kenneth Jennings
(916) 651-8267

Backup: Zaid Dominguez
(916) 651-8267

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at public hearing in accordance with Government Code Section 11346.4.

TITLE MPP. DEPARTMENT OF SOCIAL SERVICES

ITEM # 2 In-Home Supportive Services (IHSS) Program Provider Enrollment Requirements

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held January 8, 2014, as follows:

Office Building # 8
744 P St. Room 103
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive

public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on January 8, 2014.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahw.net.gov/ord>. Additionally all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT: Office of Regulations
Development
California Department of Social Services
744 P Street, MS 8-4-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

The CDSS Manual of Policies and Procedures (MPP), Social Service Standards Manual, Division 30, Chapter 30-700 (Service Program No. 7: In-Home Supportive Services), Sections 30-776 (Provider Enrollment Requirements) and 30-777 (Provider Employment Eligibility Verification).

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Prior to 2004, there were essentially no requirements that an individual seeking to become a provider of services for a recipient of the IHSS program was required to complete before the individual could be enrolled as a provider and receive payment for providing services.

Between 2004 and 2011, several bills were enacted by the Legislature which established specific enrollment requirements for IHSS providers.

Senate Bill (SB) 1104 (Chapter 229, of Statutes 2004) included a provision that prohibited an individual who, within the last 10 years, has been convicted of, or incarcerated following a conviction for, 1) fraud against a government health care or supportive services program; 2) specified abuse of a child (Penal Code [PC] section 273a(a)), or abuse of an elder or dependent adult (PC section 368), from receiving payment from the IHSS program for providing services. Additionally, SB 1104 mandated that an individual seeking to become a provider for an IHSS recipient complete and sign, under penalty of perjury, a provider enrollment form which includes a statement declaring that he/she has not, in the last 10 years, been convicted of, or incarcerated following a conviction for, any of the exclusionary crimes.

Assembly Bill of the Fourth Extraordinary Session of 2009 (ABX4) 4 (Chapter 4, Statutes of 2009) mandated that the prospective provider submit the provider enrollment form to the county in person, and present identification and allow it to be photocopied.

ABX4 19 (Chapter 17, Statutes of 2009) included additional requirements for individuals seeking to become IHSS providers, mandating that a prospective provider: undergo a criminal background check conducted by the Department of Justice; attend a provider orientation; and, sign a statement specifying that he/she agrees to comply with the program rules and requirements.

AB 1612 (Chapter 725, Statutes of 2010) expanded the list of crimes for which a conviction, or incarceration following a conviction, within the last 10 years, disqualifies an individual from being an IHSS provider, to include: 1) a violent or serious felony crime, as specified in PC section 667.5(c), and PC section 1192.7(c); 2) felony offenses for which a person is required to register as a sex offender, pursuant to PC section 290(c); and, 3) felony offenses for fraud against a public social services program, as defined in Welfare and Institutions Code sections 10980(c)(2) and (g)(2). AB 1612 also included a provision which permits an individual who has been found ineligible to be a provider on the basis of a conviction(s) for one of the crimes added by the legislation, but who otherwise meets all of the provider enrollment

requirements, to provide services to a specific IHSS recipient(s) if the recipient(s) who chooses to hire the individual as his/her provider in spite of the criminal conviction(s) submits a request to the county for an individual waiver of the exclusion.

AB 876 (Chapter 73, Statutes of 2011) prohibited, an individual, except for a parent, guardian, or person having legal custody of a minor recipient, a conservator of an adult recipient, or spouse or registered domestic partner of a recipient, from signing his or her own individual waiver form as the recipient's authorized representative.

As authorized by the legislation, the provider enrollment requirements have been implemented through various All County Letters (ACLs) until regulations are adopted. These proposed regulations adopt sections in the Manual of Policies and Procedures to affirm the policy directives that implemented the provider enrollment requirements.

The Department anticipates that these proposed regulations will benefit program stakeholders by consolidating the rules relating to IHSS provider enrollment requirements, which have to date been released via multiple ACLs, into a single place, the Manual of Policies and Procedures. The provider enrollment requirements themselves promote safety and security of IHSS recipients while still allowing them to hire the provider of their choice by ensuring that the individuals seeking to become providers do not have a criminal background of disqualifying convictions, or if they do, recipients are made aware of the fact, and they may still elect to have these individuals as their providers in spite of it. Additionally, the provider enrollment requirements promote program integrity by ensuring that providers understand and agree to comply with program rules and regulations.

The Department reviewed existing program regulations and determined that no other regulations address the requirements for becoming an IHSS provider. Thus, these proposed regulations are not only consistent and compatible with existing state regulations but also with the intent of the Legislature in enacting SB 1104, ABX4 4, ABX4 19, AB 1612, and AB 876.

COST ESTIMATE

1. Costs or Savings to State Agencies: The funding was budgeted in 2013 May Revision, under the Provider Enrollment Statement Form/Process premise and Program Integrity — Administrative Activities Premise.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500–17630: None.

3. Nondiscretionary Costs or Savings to Local Agencies: The funding was budgeted in 2013 May Revision, under the Provider Enrollment Statement Form/Process premise and Program Integrity — Administrative Activities Premise.
4. Federal Funding to State Agencies: The funding was budgeted in 2013 May Revision, under the Provider Enrollment Statement Form/Process premise and Program Integrity — Administrative Activities Premise.

LOCAL MANDATE STATEMENT

These regulations do constitute a mandate on local agencies, but not on local school districts. There are state mandated local costs that require reimbursement, which is provided in the Budget Act to cover any costs that local agencies may incur.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made because the regulations only apply to individuals seeking to become IHSS providers and to the recipients for whom they seek to provide services.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California

nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The requirement, contained in these regulations, that individuals seeking to become IHSS providers undergo a criminal background check, could possibly impact businesses in the state that provide Live Scan fingerprinting services by increasing the number of individuals who seek such services. Although this will be an ongoing requirement for all individuals seeking to become IHSS providers, the bulk of the impact has already occurred because the requirement was implemented by an ACL in November 2009, and the large number of individuals who were already IHSS providers at that time had until December 2010 (initially, June 2010) to comply with this requirement. Therefore, the ongoing impact, though difficult to predict, is likely to be insignificant.

The benefits of the regulatory action to the health and welfare of California residents, worker safety, and the state's environment are as follows:

- The provider enrollment requirements promote safety and security of IHSS recipients while still allowing them to hire the provider of their choice by ensuring that the individuals seeking to become providers do not have a criminal background of disqualifying convictions. Additionally, the provider enrollment requirements promote program integrity by ensuring that providers understand and agree to comply with program rules and regulations.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

CDSS did not consider any other alternatives to the proposed regulatory action because the authorizing legislation specified that CDSS implement the provisions for which the regulations are proposed through All County Letters or similar instruction until regulations are adopted.

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

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. Subject regulations implement and make specific Sections 12301.24, 12305.81, 12305.86, and 12305.87, Welfare and Institutions Code; Immigration Reform and Control Act of 1986, Public Law 99-603 (8 United States Code 1324a); 26 United States Code, Section 3402; and 26 Code of Federal Regulation, Section 31-3402(f)(2)-1(a).

CDSS REPRESENTATIVE REGARDING THE RULEMAKING PROCESS OF THE PROPOSED REGULATION

Contact Person: Zaid Dominguez
(916) 657-2586

Backup: Everardo Vaca
(916) 657-2586

GENERAL PUBLIC INTEREST

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF PUBLIC COMMENT PERIOD FOR PROPOSED CONSENT DECREE Renu Plating Company, Inc. Site, Los Angeles, California

PUBLIC COMMENT PERIOD: November 22, 2013 to December 23, 2013

WHAT IS BEING PROPOSED — The Department of Toxic Substances Control (DTSC) invites the public to review and comment on a proposed Consent Decree entered into with Mario H. Pinzon (“Mr. Pinzon”), regarding the Renu Plating Company, Inc. Site, located at 1527 and 1531 East 32nd Street, Los Angeles, California (“Site”). On October 30, 2013, DTSC lodged the proposed Consent Decree in *Department of Toxic Substances Control v. Renu Plating Inc.*, Case No. CV13-01508-R (CWx), with the United States District Court for the Central District of California. The proposed Consent Decree resolves DTSC’s claims against Mr. Pinzon under the Comprehensive Environmental Response, Compensation, and Liability Act

(“CERCLA”), 42 U.S.C. section 9601 et seq., in connection with the Site. Mr. Pinzon is the current property owner of the Site, and was named as one of the defendants in DTSC’s CERCLA lawsuit filed to recover DTSC’s costs of investigating and cleaning up releases of hazardous substances at the Site. Under the proposed Consent Decree, Mr. Pinzon will pay \$500,000 to reimburse DTSC for a portion of DTSC’s past response costs incurred at the Site, subject to certain conditions and reservations. The proposed Consent Decree provides that Mr. Pinzon is entitled to contribution protection as provided by CERCLA and state law. After the 30-day public comment period ends, DTSC intends to file a motion for judicial approval of the proposed Consent Decree.

HOW CAN I GET INVOLVED? — DTSC will consider public comments on the proposed Consent Decree that are postmarked or received by December 23, 2013. **Comments should include the phrase “Renu Plating Company CD Comments” in the subject line of your letter or e-mail.** DTSC may withdraw its consent to the proposed Consent Decree if it receives comments that disclose facts or considerations that indicate the proposed Consent Decree is inappropriate, improper, or inadequate. Comments should be addressed to:

Rania A. Zabaneh
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630
Rania.Zabaneh@dtsc.ca.gov

WHERE DO I GET INFORMATION? A hard copy of the proposed Consent Decree is also available from the DTSC Cypress Office by written request to Rania A. Zabaneh sent to the address or to the email above or to fax at (714) 816-1983. The proposed Consent Decree and other documents related to the Site are available at the following location:

DTSC Regional Records Office File Room/ Contact: Jone Barrio
5796 Corporate Avenue
Cypress, California 90630
Phone: (714) 484-5337
(By appointment only; Monday–Friday, 8 a.m. to 5 p.m.)

Copies of these documents, key technical reports, fact sheets and other site-related information are also available online at DTSC’s website: http://www.envirostor.dtsc.ca.gov/public/profile_report.asp?global_id=19340643

FOR ADDITIONAL INFORMATION: If you have any questions or wish to discuss the Consent Decree please contact:

For the Project:

Rania A. Zabaneh
DTSC Project Manager
(714) 484-5479

For Public Participation:

Mary Sue Maurer
Public Participation Specialist
(818) 717-6566

FISH AND GAME COMMISSION

NOTICE OF FINDINGS Black-backed Woodpecker (*Picoides arcticus*)

NOTICE IS HEREBY GIVEN that the California Fish and Game Commission (“Commission”), at its November meeting in La Quinta, California, made a finding pursuant to Fish and Game Code section 2075.5, that the petitioned action to add the black-backed woodpecker (*Picoides arcticus*) to the list of threatened or endangered species under the California Endangered Species Act (“CESA”) (Fish & G. Code, § 2050 et seq.) is not warranted. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i).)

I. Background and Procedural History

On October 1, 2010, the Office of the Commission received the “Petition to the State of California Fish and Game Commission to list the Black-backed Woodpecker (*Picoides arcticus*) as threatened or endangered under the California Endangered Species Act” (September 29, 2010) (“Petition”) from the John Muir Project of Earth Island Institute and Center for Biological Diversity (“Petitioners”). (Cal. Reg. Notice Register 2010, No 44-Z, p. 1851.) The Commission, pursuant to Fish and Game Code section 2073, referred the Petition to the Department of Fish and Wildlife (“CDFW”) for its evaluation and recommendation. (Fish & G. Code, § 2073.) On February 15, 2011, CDFW submitted its “Evaluation of Petition from John Muir Project of Earth Island Institute and Center for Biological Diversity to list Black-backed Woodpecker (*Picoides arcticus*) as Threatened or Endangered” (“Petition Evaluation Report”) to the Commission. CDFW recommended in its Petition Evaluation Report that the Petition be rejected pursuant to Fish and Game Code section 2073.5, subdivision (a)(1). (See also Cal. Code Regs., tit. 14, § 670.1, subd. (d).)

On April 6, 2011, at its meeting in Folsom, California, the Commission took up consideration of the Petition and received public testimony on the matter. However, in light of information dated March 24, 2011 sub-

mitted by Petitioners to the Commission, the Commission voted to table consideration as to whether the petitioned action may be warranted until receipt of an evaluation by CDFW of the March 24, 2011 information.

On June 29, 2011, at its meeting in Stockton, California, the Commission received an update from CDFW that its evaluation of the March 24, 2011 information from Petitioners would be completed around August. CDFW also informed the Commission of additional information received from Petitioners dated April 15, 2011 and June 17, 2011, and the United States Forest Service (“USFS”) dated May 17, 2011.

On August 3, 2011, at its meeting in Sacramento, California, the Commission received from CDFW its evaluation of supplemental material from Petitioners dated March 24, 2011 and April 15, 2011, and CDFW’s recommendation remained the same, that the Petition did not contain sufficient information to indicate that the Petitioned action may be warranted. The Commission received public testimony on the Petition and voted to table consideration as to whether the petitioned action may be warranted until receipt of an additional evaluation by CDFW of supplemental material from Petitioners dated June 17, 2011, July 1, 2011, and July 29, 2011.

On November 16, 2011, at its meeting in Santa Barbara, California, the Commission received from CDFW its second evaluation of supplemental material. This second evaluation reviewed information from Petitioners dated June 17, 2011, July 1, 2011, and July 29, 2011, and information from USFS dated May 17, 2011. The Commission received public testimony and again voted to table consideration as to whether the petitioned action may be warranted until the following Commission meeting to evaluate additional new information from Petitioners dated November 10 and November 11, 2011.

On December 15, 2011, at its meeting in San Diego, California, the Commission received public testimony and voted to accept the Petition and advance the black-backed woodpecker to the candidacy stage. In reaching its decision, the Commission considered the Petition, CDFW’s Petition Evaluation Report, Petitioners’ information submittals mentioned above, CDFW’s evaluations of such information, public comment, and other relevant information, and determined based on evidence in the record of proceedings that the Petition contained sufficient information to indicate that the petitioned action may be warranted. (Cal. Code Regs., tit. 14, § 670.1, subd. (e); see also Cal. Reg. Notice Register 2012, No. 1-Z, p. 18.) The Commission also took emergency action pursuant to the Fish and Game Code and the Administrative Procedure Act (Gov. Code, § 11340 et seq.), authorizing take of black-backed woodpecker as a candidate species under CESA, sub-

ject to various terms and conditions. (See Fish & G. Code, §§ 240, 2084, adding Cal. Code Regs., tit. 14, § 749.7; Cal. Reg. Notice Register 2012, No. 3–Z, p. 62.) Although the emergency authorization would have been repealed by operation of law on July 6, 2012, it was set aside approximately five weeks earlier on May 29, 2012, as part of a settlement in response to a lawsuit filed against the Commission.

Following published notice of black-backed woodpecker’s designation as a candidate species under CESA, CDFW began preparing a status review of black-backed woodpecker. As part of that effort, CDFW solicited data, comments, and other information from interested members of the public, state and federal agencies, and the scientific and academic community. CDFW also submitted a preliminary draft of its status review to an independent peer review by scientists with expertise relevant to the status of the black-backed woodpecker in order to critique the scientific validity of the report. (Fish & G. Code, §§ 2074.4, 2074.8; Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).)

Meanwhile, on March 6, 2013, the Commission at its meeting in Mount Shasta, California, received from Petitioners their own status review of the black-backed woodpecker titled “Black-backed Woodpecker (*Picoides arcticus*) Status Review under the California Endangered Species Act” dated February 11, 2013 (“Petitioners’ Status Review”). (Cal. Code Regs., tit. 14, § 670.1, subd. (h)(2).)

Then on May 22, 2013, CDFW submitted to the Commission at its meeting in Los Angeles, California, CDFW’s status review: “A Status Review of the Black-backed Woodpecker (*Picoides arcticus*) in California” (“CDFW Status Review”) wherein CDFW recommended to the Commission that based on the best science available to CDFW designating black-backed woodpecker as a threatened or endangered species under CESA is not warranted. (Fish & G. Code, § 2074.6; Cal. Code Regs., tit. 14, § 670.1, subd. (f).) Following receipt, the Commission made CDFW’s Status Review available to the public, inviting further review and input. (*Id.*, § 670.1, subd. (g).)

At the following Commission meeting on June 26, 2013, in Sacramento, California, the Commission received a presentation by CDFW of its status review and a presentation by Petitioners of their status review. The Commission also received public comment. The Commission then scheduled its consideration and deliberation of the Petition for the following meeting in August to allow time to consider information submitted by Petitioners dated June 11, 2013.

Then on August 7, 2013, at its meeting in San Luis Obispo, California, the Commission considered final action regarding the Petition. In taking final action on the Petition, the Commission considered the Petition,

public comment, CDFW’s Petition Evaluation Report, Petitioners’ Status Review, CDFW’s Status Review, and other information received by the Commission over the almost three years since commencement of these proceedings. Following public comment and deliberation, the Commission determined that designating black-backed woodpecker as an endangered or threatened species under CESA is not warranted. (Fish & G. Code, § 2075.5(1); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).)

II. Statutory and Legal Framework

The Commission’s determination that listing black-backed woodpecker is not warranted marks the end of proceedings under CESA prescribed by the Fish and Game Code and controlling regulation. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.) The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.)¹

The CESA listing process for black-backed woodpecker began in the present case with the Petitioners’ submittal of the Petition to the Commission in October 2010. (Cal. Reg. Notice Register 2010, No. 44–Z, p. 1851.) The regulatory process that ensued is described in some detail in the preceding section above, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including:

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114–116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App.4th 1535, 1541–1542;
- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111–1116.

The “is not warranted” determination at issue here for black-backed woodpecker stems from Commission obligations established by Fish and Game Code section

¹ The Commission, pursuant to this authority, may add, remove, uplist, downlist, or choose not to list any plant or animal species to the list of endangered or threatened species, or designate any such species as a candidate for related action under CESA. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A)–(C) and (2).) In practical terms, any of these actions is commonly referred to as subject to CESA’s “listing” process.

2075.5. Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether the petitioned action is warranted or is not warranted. Here with respect to black-backed woodpecker, the Commission made the finding under section 2075.5(1) that the petitioned action is not warranted.

The Commission was guided in making this determination by statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease.” (Fish & G. Code, § 2062.)

Similarly, the Fish and Game Code defines a threatened species under CESA as “a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter.” (*Id.*, § 2067.)

The Commission also considered Title 14, section 670.1, subdivision (i)(1)(A), of the California Code of Regulations in making its determination regarding black-backed woodpecker. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the species’ continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Fish and Game Code section 2070 provides similar guidance. This section provides that the Commission shall add or remove species from the list of endangered and threatened species under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (Fish & G. Code, § 2055.) This policy direction does not compel a particular determination by the Com-

mission in the CESA listing context. Nevertheless, “[l]aws providing for the conservation of natural resources’ such as the CESA ‘are of great remedial and public importance and thus should be construed liberally.’” (*California Forestry Association v. California Fish and Game Commission, supra*, 156 Cal. App.4th at pp. 1545–1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.)

Finally in considering these factors, CESA and controlling regulation require the Commission to actively seek and consider related input from the public and any interested party. (See, e.g., *Id.*, §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h).) The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) All of these obligations are in addition to the requirements prescribed for CDFW in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a review of the candidate species’ status culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science. (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f), (h).)

III. Final Determination by the Commission

The Commission has weighed and evaluated information for and against designating black-backed woodpecker as an endangered or threatened species under CESA. This information includes scientific and other general evidence in the Petition; CDFW’s Petition Evaluation Report; CDFW’s Status Review; CDFW’s related recommendations; Petitioners’ Status Review; written and oral comments received from members of the public, the regulated community, various public agencies, and the scientific community; and other evidence included in the Commission’s record of proceedings. (See sections I and IV of this Notice of Findings.) Based upon the evidence in the record the Commission has determined that the best scientific information available indicates that the continued existence of the black-backed woodpecker is not in serious danger or threatened by present or threatened modifications or destruction of the species’ habitat, overexploitation, predation, competition, disease, or other natural occurrences or human-related activities, where such factors are considered individually or in combination. (See generally Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A); Fish & G. Code, §§ 2062, 2067) The Commission determines for the same reason that there is not sufficient scientific information to indicate that desig-

nating the black-backed woodpecker as an endangered or threatened species under CESA is warranted at this time and that with adoption and publication of these findings the black-backed woodpecker for purposes of its legal status under CESA shall revert to its status prior to the Commission's acceptance of the Petition. (Fish & G. Code, §§ 2070, 2075.5(2); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(2).)

IV. Factual and Scientific Bases for the Commission's Final Determination

The factual and scientific bases for the Commission's determination that designating black-backed woodpecker as an endangered or threatened species under CESA is not warranted are set forth in detail in the Commission's record of proceedings, summarized here.

Included in the Commission's record are: the Petition, CDFW's Petition Evaluation Report, CDFW's Status Review, Petitioners' Status Review, and other information submittals from various entities including: CDFW (dated June 30, 2011 and September 30, 2011), Petitioners (including but not limited to information dated March 24, 2011, April 15, 2011, June 17, 2011, July 1, 2011, July 29, 2011, November 11, 2011, June 1, 2012, August 21, 2012, March 27, 2013, June 11, 2013, and July 26, 2013), the USFS (dated May 17, 2011 and May 31, 2012), and the California Department of Forestry and Fire Protection (dated June 4, 2012).

The Commission determines that the continued existence of black-backed woodpecker in the State of California is not in serious danger or threatened by one or a combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

The Commission also determines that the information in the Commission's record constitutes the best scientific information available and establishes that designating black-backed woodpecker as an endangered or threatened species under CESA is not warranted. Similarly, the Commission determines that the black-backed woodpecker is not in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes. And that the black-backed woodpecker is also unlikely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by CESA.

The Commission's record of proceedings contains relatively little evidence concerning overexploitation, predation, competition, or disease affecting the black-backed woodpecker. As a result, there is insufficient information available to determine if the black-backed woodpecker's continued existence is in serious danger or threatened by overexploitation, predation, competition, or disease, either individually or in combination. The scant evidence in the Commission's record on these factors merely provides examples of factors that could affect an individual black-backed woodpecker. (*See e.g.* CDFW Status Review.) However, that evidence does not explain if those factors have any actual effect on the black-backed woodpecker's population or continued existence.

The bulk of evidence in the record before the Commission falls under the remaining two regulatory factors: present or threatened modification or destruction of the black-backed woodpecker's habitat, and other natural occurrences or human-related activities. Specifically, the bulk of evidence submitted pertains to: burned forest habitat creation, burned forest habitat modification, and population size. These findings address those topics in detail. (Nevertheless, the issues highlighted here and detailed in the following section represent only a portion of the complex issues aired and considered by the Commission during the CESA listing process for the black-backed woodpecker. Similarly, the issues addressed in these findings represent some, but not all of the evidence, issues, and considerations affecting the Commission's final determination. Other issues aired before and considered by the Commission are addressed in detail in the record before the Commission.)

A. Burned Forest Habitat Creation

Black-backed woodpeckers occur at their highest densities in recently burned forests for the first five to eight years following a fire and there is considerable evidence in the Commission's record pertaining to the creation of such habitat. The following three factors feature prominently in the record as affecting the creation of burned forest habitat: fire suppression, pre-fire fuel treatment, and climate change. However, as discussed more fully below, based on the information before it, the Commission cannot conclude that these three factors affecting the creation of burned forest habitat (i.e. fire suppression, pre-fire fuel treatment, and climate change), either by themselves or in combination with each other or other threats, has caused the black-backed woodpecker's continued existence to be in serious danger or threatened such that listing is warranted. Furthermore, although black-backed woodpeckers inhabit unburned, green forests, there is little scientific information in the record concerning the role of such green for-

est as it pertains to the black-backed woodpecker's continued existence, in part because they are more abundant on a per acre basis, and are easier to study because of increased visibility, in burned habitats. More particularly, there is little information concerning the extent to which the presence of burnt forest is a requisite for the bird's continued existence.

1. Fire Suppression

Since the early 1900s fire suppression has occurred in California's forests thereby reducing the frequency and extent of forest fires as compared to levels that existed prior to large scale European American settlement in the early 1850s. Nevertheless, there has been no detected decrease in the black-backed woodpecker's range nor any detected decrease in the bird's population (subjective descriptions of abundant versus rare are discussed below) (CDFW Status Review). Moreover, there is an unsustainable fire deficit in California (i.e. for several decades forest fuels have been accumulating more rapidly than they are being removed by wildland fire or forest management practices). And since the 1980s there has been an increase in forest fire frequency, burned area, and extent of high severity fire (high severity burn areas appear to be preferred by black-backed woodpeckers) (*See e.g.* CDFW Status Review).

Petitioners take issue with the published literature that indicates an increasing trend in fire frequency and cite to an unpublished study concerning only fire severity. (*See* Hanson and Odion (2013).²) Assuming the study is accurate and there is no increasing trend in fire severity, one can infer that there have been more high severity fires in the early part of the studied time period than previously estimated i.e. montane conifer forest that was not identified in more recent vegetation maps used to identify the trend burned at a high severity. (Hanson and Odion (2013).³) This study then raises two questions, could an increasing trend in fire severity have started earlier than previously estimated, or have there been more high severity fires throughout the century than previously estimated? Regardless of there being an increasing trend in forest fires or more forest fires than previously estimated, there is recognition of a severe fire deficit in California's forests (i.e. for several decades forest fuels have been accumulating more rapidly than they are being removed by wildland fire or forest management practices). Moreover, there remains nearly universal recognition of an increasing trend in western North American forest fire frequency and size

in the published literature. (CDFW Status Review; Westerling et. al (2006)⁴.)

Related to the topic of fire severity, the Commission places little weight on the fact that CDFW changed its position regarding future fire frequency and intensity between the petition evaluation stage and preparation of the status review. At the petition evaluation stage, CDFW is statutorily charged with assessing the petition on its face, and in relation to other information in CDFW's files or that it receives. (Fish & G. Code, § 2073.5.) However, after the Commission accepted the Petition and the black-backed woodpecker became a candidate, CDFW was required to solicit data and comments on the Petition and to prepare a status review based on the best scientific information available. (Fish & G. Code, §§ 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1 subd. (f).) It appears CDFW had limited information at the petition evaluation stage, namely the information it received or possessed. That limited information lacked the evidence concerning the increased frequency and severity in fires considered by CDFW during the status review. Accordingly, the Commission is reassured that the process was followed in the sense that CDFW would change its scientific opinion on a particular issue after receiving new, contrary information.

2. Pre-fire Fuel Treatment

Fire treatment, or fuel treatment, commonly in the form of thinning forests is also a factor that could affect the creation and quality of burned forest habitat. Information in the record indicates that thinning trees pre-fire can reduce the potential creation of burned forest habitat for the black-backed woodpecker by preventing high-severity fires, and can reduce the quality of burned forest habitat by reducing snag density. However, the record lacks evidence indicating such thinning is occurring in a quantity to significantly affect the future creation of the type of burned forest habitat in which black-backed woodpeckers appear in high densities. In fact, if the current rate of thinning since 2004 continues, less than 5% of the forest would be thinned over a 20-year period. (CDFW Status Review.) Petitioners highlight one USFS Publication in which the author recommends fuels should be reduced by 437,000 acres/year; a 14-fold increase over the current rate. (North 2012 [Chpt. 15].⁵) The recommendation to reduce fuels by 437,000 acres/year is intended, in part, to mimic the historic fires regimes of pre-European American settlement i.e. pre 1850s before fire suppres-

² Hanson, C.T., and D.C. Odion. 2013. Is fire severity increasing in the Sierra Nevada mountains, California, USA? (Authors' inpress copy)

³ Hanson, C.T., and D.C. Odion. 2013. Is fire severity increasing in the Sierra Nevada mountains, California, USA? *In press* in International Journal of Wildland Fire.

⁴Westerling, AL., H.G. Hidalgo, D.R. Cayan, and T. W. Swetnam. 2006. Warming and earlier spring increase western U.S. forest wildfire activity. *Science* 313. DOI:10.1126/science.1128834

⁵North, M. ed. 2012. Managing Sierra Nevada forests. Gen. Tech. Rep. PSW-GTR-237. U.S. Forest Serv., Pac. Southwest Res. Station, Albany, CA. 184pp.

sion. However, this is only a recommendation from a USFS scientist who recognizes that future implementation will depend on scientific, social, and budgetary factors.

3. Climate Change

Climate change is the third major factor that could affect the creation of burned forest habitat. The Commission recognizes there is a certain amount of uncertainty, and what some may consider scientific disagreement, involved in forecasting events based on climate change. Nevertheless, evidence in the Commission's record indicates that over the next several decades, future climate scenarios are likely to increase the frequency, size, and severity of fires in northern California. (*See e.g.* CDFW Status Review.) The Commission came to this determination based on the considerable amount of evidence on this matter while recognizing the uncertainty in forecasting climate predictions and that contrary evidence exists. Some examples of evidence contrary to the Commission's determination appear to be based on global studies, thereby lacking the finer resolution of studies focusing on northern California or areas that include the Sierra Nevada, or are presented in global figures whereby it is difficult to discern local geography to any specificity. (*See e.g.* Krawchuk et al. 2009 [Fig. 3];⁶ Gonzalez et al. 2010 [fig. 2c];⁷ Liu et al. 2010 [Fig. 1].⁸)

An example of competing climate evidence concerns the effect of increased summer precipitation on forest fires. Some evidence indicates that the increased summer precipitation could suppress fires or perhaps reduce the severity of fires. (*See e.g.* Petitioners' Status Review.) Contrary evidence questions the extent to which the Sierra Nevada would experience an increase in precipitation to have such an effect. (*See* California Department of Forestry and Fire Protection letter dated, June 4, 2012; USFS letter dated May 31, 2012.) That same contrary evidence also questions the extent to which such increase could affect fire behavior beyond a few hours or days after rainfall; in other words, whether increased precipitation in the coming decades could appreciably affect California's Mediterranean climate of hot dry summers to change fires regimes in the Sierra Nevada. Other evidence indicates that predicted increases in summer precipitation will result in significantly increased fire activity in Sierra Nevada forests

due to increased vegetation growth. (Lenihan et al. 2008,⁹ citing to Lenihan et al. 2003; Westerling and Bryant 2008;¹⁰ Miller et al. 2009.¹¹)

The Commission is also presented with climate evidence that is subject to uncertainty. One example of climate evidence that involves uncertainty pertains to the potential change in vegetation due to climate change. A study predicted a change from conifer forest (commonly used by black-backed woodpeckers under current conditions) to mixed evergreen forest (used infrequently by black-backed woodpeckers under current conditions) in the Sierra Nevada by the end of the century. (Lenihan et al. (2008).) The study's authors, however, recognize the limitations in their modeling. Specifically, that there is considerable uncertainty concerning the impacts of climate change and that "the uncertainty due to differences among future climate scenarios and to unrepresented or poorly understood processes preclude the use of these simulations as unflinching predictions of the future. Nevertheless, the results of this and previous studies underscore the potentially large impacts of climate change on California ecosystems, and the need for further analyses of both future climate change and terrestrial ecosystem responses." (Lenihan et al. (2008).) The Commission carefully considered the fact that such vegetation change could potentially reduce the type of forest that currently hosts high densities of black-backed woodpecker, the uncertainties in the modeling, the time frame in which such vegetation change could occur, and the effect on the continued existence of the black-backed woodpecker in coming to its overall listing determination.

4. Unburned, Green Forest

In addition to considering the effects of fire suppression, fire treatment, and climate change on the creation of burned forest habitat as it pertains to the continued existence of the black-backed woodpecker, the Commission recognizes that evidence also indicates that black-backed woodpeckers do inhabit unburned, green forests. However, few recent studies have focused on the role of green forests as they pertain to the black-backed woodpecker's life history and continued existence. And although information in the record indicates that black-backed woodpeckers are at their highest density in burned forests, there is no information con-

⁶ Krawchuk, M.A., M.A. Moritz, M. Parisien, J. Van Dorn, and K. Hayhoe. 2009. Global pyrogeography: the current and future distribution of wildfire. *PLoS ONE* 4: e5102.

⁷ Gonzalez, P., R.P. Neilson, J.M. Lenihan, and R.J. Drapek. 2010. Global patterns in the vulnerability of ecosystems to vegetation shifts due to climate change. *Global Change and Biogeography* 19:755–768.

⁸ Liu, Y., J. Stanturf, and S. Goodrick. 2010. Trends in global wildfire potential in a changing climate. *Forest Ecology and Management* 259:685–697.

⁹ Lenihan, J.M., D. Bachelet, R.P. Neilson and R. Drapek. 2008. Response of vegetation distribution, ecosystem productivity, and fire to climate change scenarios for California. *Clim. Change* 87: S215–S230.

¹⁰ Westerling, A. L. and B.P. Bryant. 2008. Climate change and wildfire in California. *Clim. Change* 87: S231–S249.

¹¹ Miller, J.D., H.D. Safford, M. Crimmins, and A.E. Thode. 2009. Quantitative Evidence for Increasing Forest Fire Severity in the Sierra Nevada and Southern Cascade Mountains, California and Nevada, USA. *Ecosystems* 12:16–32.

cerning the population within the Sierra Nevada indicating that the lower densities of black-backed woodpeckers in green forests negatively affect the bird's continued existence (low density distinguished from small overall population is discussed below). A recent dissertation provided by the Petitioners seems to indicate that a population of black-backed woodpecker in beetle-killed forests and forests burned by low-severity management fires declined over its four year study period. (Rota (2013).¹²) However, what is unanswered is if the declining population would reach a minimum but stable floor as the food source declines or if the population is expected to reduce to zero over time. It is also important to note that the study was located in the Black Hills, South Dakota. The forests in the Black Hills are different from those in the Sierra Nevada for several reasons including: tree species, tree size, tree spacing, disturbance regimes and other ecosystem processes, and in the associated insect and wildlife communities. These factors differentiate black-backed woodpeckers in California from those in the Black Hills and as a result it is unclear to what extent, if any, the study's determinations would apply to black-backed woodpeckers in California. Additionally, population trends commonly are subject to a high degree of variance over a short term, versus a robust population trend that is studied over decades.

B. Burned Forest Habitat Modification

Modification of burned forest habitat, primarily from post-fire salvage logging, can negatively affect nesting and foraging of black-backed woodpeckers, but there is no information directly linking the effects of such modifications to the black-backed woodpecker's continued existence in California. As mentioned above, black-backed woodpeckers occur in their highest densities in burned forests. Evidence clearly indicates that salvage/removal of burned trees i.e. snags, can result in reduced density of nesting and foraging as compared to similar burned forest stands that are not logged. However, there is no evidence in the record pertaining to the effect on the black-backed woodpecker's continued viability caused by such reductions in bird density. Also, it is worth noting that the mere fact that logging has occurred does not appear to reduce densities, rather it is the degree and intensity to which snags are logged that appears to affect post-fire densities of the bird. (*See e.g.*

¹² Rota, C.T. 2013. Not all forests are disturbed equally: population dynamics and resource selection of Black-backed Woodpeckers in the Black Hills, South Dakota. Ph.D. Dissertation, University of Missouri-Columbia, MO.

Forristal 2009.¹³) So, in light of the unclear role of green forest; the fact that some, if not most of the burned forest habitat on federal land remains after salvage logging; and the lack of evidence concerning a threat to the continued viability of the black-backed woodpecker caused by salvage logging; it is unclear what effect logging and its modification of habitat have on the continued existence of the black-backed woodpecker.

Even if the Commission assumed the existence of a correlation between modification of burned forest habitat and a negative effect on the black-backed woodpecker's statewide population (there is no evidence in the record concerning such correlation), there is also a lack of evidence concerning the extent to which such burned forest modification must occur to affect the black-backed woodpecker's continued existence. Further complicating the analysis are the various ways in which one could assess the quantity of post-fire logging in federal forests (note: the Commission focused on federal forests because they comprise the vast majority of forestland that, if burned, could provide habitat for black-backed woodpeckers where they exist in high densities (*See* CDFW Status Review).). For example, the Department cites in its status review that since 2003, 20% of severely burned conifer forest in the Sierra Nevada managed by USFS has been logged, and that 80% of severely burned forest has not been logged and therefore remained for black-backed woodpecker habitat. (CDFW Status Review.) Petitioners take issue with CDFW's use of the information by emphasizing it does not account for the variation in black-backed woodpecker habitat quality and that logging typically targets the highest quality black-backed woodpecker habitat. Evidence provided by Petitioners points out that logging of high quality black-backed woodpecker habitat occurs at rates higher than 20%. For example:

- Chip-munk Recovery and Restoration Project — within the project area USFS intends to log 42% of “the best Black-backed Woodpecker habitat (areas with 75–100% mortality in CWHR 5M and 5D [old-growth [i.e. medium/large tree] forest with moderate to high pre-fire canopy cover]) (1444 out of 3398 acres to be logged) and 38% of the next best (areas with 75–100% mortality in CWHR 4M and 4D [late successional [i.e. small tree forest with moderate to high pre-fire canopy cover]) (791 out of 2067 acres to be logged) — i.e., the areas most likely to be good nesting habitat (see Chip-Munk Environmental Assessment

¹³ Forristal, C.D. 2009. Influence of post-fire salvage logging on Black-Backed Woodpecker nest site selection and nest survival. MSc Thesis, Montana State Univ., Bozeman, MT. 78pp +apps.

[EA], pp. 270–271) (see also Siegel et al. 2013)” (Petitioners’ letter dated, June 11, 2013)

- Poker Chip Project — within the project area USFS “intends to log 42% of the moderate severity dense/mature–old [i.e. large tree forest (331 out of 737 acres to be logged) and 51% of the high–severity dense/mature–old [i.e. large tree] forest (166 out of 328 acres to be logged) (Poker Chip EA, pp. 64, 66).” (Ibid.)
- Reading Project — within the project area USFS “intends to log 56% of the good Black–backed Woodpecker habitat on USFS lands (2,536 out of 4,543 acres to be logged on NF lands) (Reading EA, p. 77).” (Ibid.)
- Angora Fire Restoration Project— within the project area USFS proposed to “salvage log 62% of all Black–backed woodpecker suitable habitat in the entire Angora fire area, and 70% of all high–quality habitat in the fire area.” (Petitioners’ Status Review)
- Moonlight and Wheeler Fires Recovery and Restoration Project — within the analysis area, “of the 32,569 acres characterized by the Plumas National Forest as suitable Black–backed woodpecker habitat on public lands within the Moonlight/Wheeler fire area, approximately 20,000 acres (about 61%) have been salvage logged, or are in the process of being salvage logged, on public lands.” (Petitioners’ Status Review.)

The Commission recognizes that the relative percentage of logged forest varies depending on different factors such as: whether one considers all projects in response to a fire or just individual projects, whether one considers the total burned area or just the project’s area, whether one should consider previously burned forest in quantifying habitat, and when logging would occur relative to the fire. For example, the logging percentages in the USFS environmental assessments for the Chip–munk Recovery and Restoration Project (42% of the best black–backed woodpecker habitat) and the Poker Chip Project (60% of the high severity burn in CWHR 5M and 5D; 25 of 42 acres) represent the percentage of logging in that particular project in a particular burned area subject to environmental analysis. However, both projects are in response to the 2012 Chips fire. The Chips fire created a total of 4,133 acres of what Petitioners have labeled as the best black–backed woodpecker habitat. (Chip–munk Recovery and Restoration Project Environmental Assessment, (April 2013).) The combined logging of both projects in that habitat is 1,468 acres (1,443 acres from Chip–Munk Project and 25 acres from Poker Chip project), so post–

fire logging may affect approximately 36% (as opposed to 42% or 60%) of the best black–backed woodpecker habitat created by the Chips fire on federal land.¹⁴ (Chip–munk Recovery and Restoration Project Environmental Assessment, (April 2013); Poker Chip Project Environmental Assessment, (March 2013).)

Similarly, the Reading Project is in response to the Reading fire which burned both the Lassen Volcanic National Park (16,993 acres) and the Lassen National Forest (11,071 acres), two forested areas that share an administrative border. (Reading Project, Environmental Assessment (April 2013).) The environmental assessment contemplates logging only in the Lassen National Forest; none in Lassen Volcanic National Park. Such logging would remove 56% of the burned forest habitat in the Lassen National Forest (2,535.28 out of 4,543.05 acres). However, if one considers logging’s effect on total burned forest habitat created by the Reading fire i.e. burned forest habitat in both the Lassen National Forest *and* Lassen Volcanic National park (total of 14,203.91 acres), 18% (as opposed to 56%) of the burned forest habitat created by the Reading fire on federal land would be logged. (Reading Project, Environmental Assessment (April 2013).)

Another example of different factors affecting the percentage of habitat logged involves quantifying total burned forest habitat for the Angora Fire Restoration Project. The 2010 Angora Fire Restoration Project would log 62% of the suitable black–backed woodpecker habitat created by the Angora fire. (Angora Fire Restoration Project, Environmental Assessment (July 2010).) However, one could also consider that since 2001, within the cumulative area of the project’s environmental analysis, two other fires created an additional 301 acres of suitable black–backed woodpecker habitat that wasn’t logged. Combining all habitat created by the three fires, logging under the Angora Fire Restoration Project would affect 53% (as opposed to 62%) of such habitat (i.e. 1,858 acres (available from Angora fire) + 301 acres (available from two other fires) =2,159; the Angora Fire Restoration Project would log 1,149 of the total 2,159). (See also USFS letter dated, May 31, 2012.)

Yet another example of different factors affecting the relative percentage of habitat logged involves identifying the logging that should be used to calculate loss of

¹⁴ The Poker Chip Project environmental assessment uses the terms: unburned/very low, low, moderate, and high for categorizing burn severity. In contrast, the Chip–munk Project environmental assessment uses basal area mortality percentages: 0–25%, 25–50%, 50–75%, and 75–100%. For purposes of illustrating logging’s effect on the highest quality burned habitat created by the Chips Fire, the Commission equated high severity burning with 75–100% basal area mortality.

habitat for the Moonlight and Wheeler Fires Recovery and Restoration Project (“Moonlight Wheeler Project”). In Petitioners’ status review they assert that approximately 20,000 of the 32,569 acres of suitable black-backed woodpecker habitat would be logged i.e. 61%. The 20,000 acres appears to be the sum of 12,397 acres (the project), 7,525 acres (two other roadside hazard tree logging projects), and 500 acres (two other salvage logging projects). However, the Commission interprets the 12,397 acres as already including the two other roadside hazard tree logging projects and two other salvage logging projects such that the cumulative total of logging in suitable black-backed woodpecker habitat is 12,397 acres (Moonlight Wheeler Project, Environmental Assessment, p. 128.) Under this understanding of the Moonlight Wheeler Project environmental assessment’s language, approximately 38% (as compared to 61%) of the suitable black-backed woodpecker habitat within the Moonlight Wheeler project area would be salvage logged. (*See also* USFS letter dated, May 31, 2012.)

Another example involving the Moonlight Wheeler Project is the timing of logging post fire and its effect on burned forest habitat. Evidence in the record states that peak densities of black-backed woodpecker in burned forest habitat appear two to three years post fire, and that densities decline dramatically five years post fire. The Moonlight and Antelope Complex fires occurred in 2007. (Moonlight Wheeler Project, Environmental Assessment.) Petitioners’ Status Review indicates that logging of black-backed woodpecker suitable habitat began in 2009, two years post fires. As of May 2012, approximately 7,988 acres of burned forest were logged. (USFS letter dated, May 31, 2012.) And as of February of this year logging was continuing, six years post fires. (Petitioners’ Status Review.) So some percentage of the 12,397 acres of burned forest habitat that is to be logged persisted since 2009 and could be used by black-backed woodpeckers. Moreover, now that it is three to four years past the time period for peak densities of black-backed woodpeckers, the bird’s density may be naturally declining in the Moonlight Wheeler Project area. Because the Commission received no data concerning the annual quantity of logging for the Moonlight Wheeler Project since 2009, one cannot assess the actual impact of the project’s logging on burned forest habitat that would be occupied by black-backed woodpeckers; nor can one extrapolate such logging’s effect on the black-backed woodpecker.

Other factors that can influence the role of salvage logging on burned forest habitat include: consideration

of different quality of pre-fire habitat, consideration of different fire severities, consideration of the substantial area of federal forest land in which logging is administratively precluded (e.g. wilderness areas, roadless areas, and National Park land), and the public’s participation and input to any federal environmental review of logging projects on federal land. Accordingly, based on the information before it, the Commission cannot conclude that post-fire salvage logging of burned forest habitat on federal land, by itself or in combination with other threats, has caused the black-backed woodpecker’s continued existence to be in serious danger or threatened such that listing is warranted.

C. Population size

The Commission also received considerable information on the black-backed woodpecker’s population size and related issues. The black-backed woodpecker’s population is likely to be small. Population estimates range from 722–6,300 individuals. Furthermore, there is no objective, quantifiable evidence as to whether the black-backed woodpecker’s population is increasing, decreasing, or is stable. Subjective statements in the record concerning the historical or more modern presence of black-backed woodpeckers (e.g. rather common, rare, etc.) lack any objective, contextual information to infer any reliable estimates of population size. It is important to understand that although black-backed woodpeckers appear at their highest densities in certain types of burned forest habitat due to habitat preferences, high densities of birds is different from the total population size i.e. quantity within a particular area versus total quantity in California. Nevertheless, the lack of objective, quantifiable data concerning population size and population trend is unsurprising given the fluctuating presence and apparent response of black-backed woodpeckers depending on environmental conditions. The black-backed woodpecker’s range has remained the same despite the small population and ephemeral nature of burned forest habitat.

Although the population of black-backed woodpeckers is small and subject to risks attributed to small populations of species, there is no specific evidence in the record indicating the mere fact of the black-backed woodpecker’s small population size, by itself or in combination with other factors, causes the bird’s continued existence to be in serious danger or threatened. The record contains evidence both in support and against relying solely on population size as a predictor of a species’ viability i.e. minimum viable population. (*See e.g.* CDFW’s Status Review; Petitioners’ Status Review;

Traill et al. 2007;¹⁵ Traill et al. 2010;¹⁶ Flather et al. 2011.¹⁷) There is no way to simply assess the black-backed woodpecker's population viability against published information such as Traill et al. 2007 who identified a single minimum viable population for all species of birds in the world based on only 48 species of birds. With the lack of scientific information about a population trend, the scientific information that documents a lack or range contraction and the known fluctuations in density caused by environmental conditions, the Commission determines that the black-backed woodpecker's small population size by itself does not indicate listing is warranted.

The potential risk posed by a small population might arise if the California population of black-backed woodpeckers were genetically isolated from the Oregon population. However, the limited genetic information in the record concerning the 20 sampled black-backed woodpeckers from the northern Sierra Nevada is inconclusive as to the question of genetic isolation. (See Petitioners' March 27, 2013 letter, citing Siegel et al. 2013.) The value of the genetic testing is limited by the fact that it involves only 20 birds and that all samples were from three areas in the northern Sierra Nevada mountain range. Differences between the samples presented in Siegel et al. 2013, Appendix 2 could be attributed to the geographic distances between samples. The most northerly samples were most similar to the Oregon population. Consequently, it is possible these reported differences reflect the fact that as one moves further south from Oregon, the genetic material becomes more different. A sample from the southern Sierra Nevada could be quite different from the California birds sampled in the northern Sierra Nevada and reflective of the transition in genetic material as one moves north to south. Nevertheless, Siegel et al. 2013 does not explain the reason for the differences. Thus, this first glimpse at the species' genetic information is informative, but not conclusive. Even if the genetic information indicated the California population was genetically isolated, the extent of such fact on the black-backed woodpecker's continued viability would be unclear. However, given what appears to be contiguous conifer habitat from Oregon to California as indicated by maps in the record, one could infer the transfer of genetic material between the

Oregon and California black-backed woodpecker populations. Accordingly, based on the information before it, the Commission cannot conclude that the California population of black-backed woodpecker's small size, either by itself or in combination with other threats, has caused the black-backed woodpecker's continued existence to be in serious danger or threatened such that listing is warranted.

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

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

**NOTICE TO CHANGE THE BASIS FOR
LISTING AS KNOWN TO THE STATE OF
CALIFORNIA TO CAUSE REPRODUCTIVE
TOXICITY:
1,2-DIBROMO-3-CHLOROPROPANE,
ETHYLENE OXIDE AND LEAD**

NOVEMBER 22, 2013

Effective November 22, 2013, the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) changed the basis for the listing of 1,2-dibromo-3-chloropropane (DBCP), ethylene oxide and lead as known to the state to cause reproductive toxicity under the Safe Drinking Water and Toxic Enforcement Act of 1986¹. The original listing date of February 27, 1987 for DBCP, ethylene oxide² and lead remains the same.

DBCP, ethylene oxide and lead were originally added to the Proposition 65 list as causing reproductive toxicity pursuant to Labor Code Section 6382(d) which is incorporated by reference in Health and Safety Code Section 25249.8(a). Male and female reproductive toxicity and developmental toxicity are the general endpoints noted for lead and ethylene oxide, and male reproduc-

¹⁵ Traill, L. W., C. J. A. Bradshaw, and B.W. Brook. 2007. Minimum viable population size: A meta-analysis of thirty years of published estimates. *Biol. Conserv.* 139:159-166.

¹⁶ Traill, L. W., B. N. Brook, R. R. Frankham, and C.J. A. Bradshaw. 2010. Pragmatic population viability targets in a rapidly changing world. *Biol. Conserv.* 143:28-34.

¹⁷ Flather, C. H., G. D. Hayward, S.R. Beissinger, and P.A. Stephens. 2011. Minimum viable populations: is there a 'magic number' for conservation practitioners? *Trends in Ecol. Evol.* June 2011, vol. 26 (6).

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

² Ethylene oxide was listed February 27, 1987 as causing reproductive toxicity (female reproductive endpoint); two additional reproductive toxicity endpoints (developmental and male reproductive toxicity) were added August 7, 2009.

tive toxicity is noted for DBCP. Based on changes to certain federal regulations that affect the bases for the original listings, OEHHA has accordingly changed the bases for listings for these chemicals to the “formally required to be labeled or identified” listing mechanism³.

DBCP, ethylene oxide and lead are required to be identified or labeled to communicate a risk of reproductive toxicity by federal Occupational Safety and Health Administration (OSHA) regulations. In addition, the U.S. Environmental Protection Agency (U.S. EPA) also requires labels to communicate a risk of reproductive toxicity for ethylene oxide.

The bases for listing DBCP, ethylene oxide and lead were described in a public notice published in the September 20, 2013, issue of the California Regulatory Notice Register (Register 2013, No. 38–Z.) The title of the notice was “Notice of Intent to Change the Basis for Listing as Known to the State of California to Cause Reproductive Toxicity: 1,2–Dibromo–3–Chloropropane, Ethylene Oxide and Lead.” The publication of the notice initiated a public comment period that closed on October 21, 2013. One public comment was received.

Chemical	CASNo.	Toxicological Endpoints	Listing Mechanism ⁴
1,2–Dibromo–3–chloro–propane (DBCP)	96–12–8	Male reproductive	FR (OSHA)
Ethylene oxide	75–21–8	Male reproductive Female reproductive Developmental	FR (OSHA & U.S. EPA)
Lead	—	Male reproductive Female reproductive Developmental	FR (OSHA)

³ See Health and Safety Code section 25249.8(b) and Title 27, Cal. Code of Regs., section 25902. All further references are to sections of Title 27 of the California Code of Regulations, unless indicated otherwise.

⁴Listing Mechanism: FR — ‘formally required to be labeled or identified’ mechanism (Title 27, Cal. Code Regs., section 25902).

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

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

**NOTICE TO INTERESTED PARTIES
November 22, 2013**

**TENTATIVE AGENDA FOR THE
DECEMBER 5, 2013 MEETING OF
THE CARCINOGEN IDENTIFICATION COMMITTEE**

The California Environmental Protection Agency’s Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65; Health and Safety Code Section 25249.8 et seq.).

The Carcinogen Identification Committee of OEHHA’s Science Advisory Board identifies chemicals for addition to the Proposition 65 list: The Committee serves as the “State’s qualified experts” for determining whether a chemical has been clearly shown, through scientifically valid testing according to generally accepted principles, to cause cancer.

A public meeting of this committee will be held on **Thursday, December 5, 2013** at the California Environmental Protection Agency Headquarters Building, **Coastal Hearing Room**, at 1001 I Street, Sacramento, California. The meeting will begin at 10:00 a.m. and will last until 5:00 p.m. or until all business is conducted.

This meeting will be webcast: The URL for the webcast (not active until the day and time of the meeting) is: <http://calepa.ca.gov/Broadcast/>.

If you have special accommodation or language needs, please contact Cynthia Oshita at (916) 445–6900 or cynthia.oshita@oehha.ca.gov by November 25, 2013. TTY/TDD/Speech-to-Speech users may dial 7–1–1 for the California Relay Service.

The tentative agenda for this meeting is given below. The order of items on the agenda is provided for general reference only. The order in which items are taken up by the Committee is subject to change at the discretion of the Chair.

- I. WELCOME AND OPENING REMARKS**
- II. CONSIDERATION OF CHEMICALS AS KNOWN TO THE STATE TO CAUSE CANCER**
 - A. Butyl benzyl phthalate**
 - Staff presentation

- Committee discussion
- Public comments*
- Committee discussion and decision

B. Diisononyl phthalate

- Staff presentation
- Committee discussion
- Public comments*
- Committee discussion and decision

III. UPDATE OF THE SECTION 27000 LIST OF CHEMICALS WHICH HAVE NOT BEEN ADEQUATELY TESTED AS REQUIRED

IV. STAFF UPDATES

V. SUMMARY OF COMMITTEE ACTIONS

*Generally public comments should be limited to 5 minutes, which may be changed if time allows and at the discretion of the chair. Commenters may ask the chair for additional time in advance by sending a request to Cynthia Oshita at Cynthia.Oshita@oehha.ca.gov at least three business days in advance of the meeting. The request should specify the name(s) of the commenter(s), the amount of time requested, and (briefly) the reasons for additional time.

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# 2013-0925-01
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS
 Fingerprinting

This regulatory action by the Board for Professional Engineers, Land Surveyors, and Geologists updates title 16 of the California Code of Regulations to include fingerprint and disclosure requirements for the processing and approval of applications for licensure. These changes are made pursuant to Business and Professions Code section 144, as amended by Senate Bill 543 (Stats 2011, Ch. 448).

Title 16
 California Code of Regulations
 ADOPT: 420.1, 3021.1
 Filed 11/06/2013
 Effective 01/01/2014
 Agency Contact: Jeff Alameida (916) 263-2269

File# 2013-1004-02
BOARD OF ACCOUNTANCY
 Military Inactive Status

This regulatory action by the California Board of Accountancy amends Title 16 by adopting new sections to implement newly enacted Business and Professions Code section 5070.2, which creates a military inactive status of licensure for accountants who are on active duty in the California National Guard or the United States Armed Forces.

Title 16
 California Code of Regulations
 ADOPT: 15, 16, 16.1, 16.2
 Filed 11/13/2013
 Effective 01/01/2014
 Agency Contact: Matthew Stanley (916) 561-1792

File# 2013-1104-02
DEPARTMENT OF FOOD AND AGRICULTURE
 Oak Mortality Disease Control

This emergency regulatory action established “Gaultheria procumbens” (wintergreen, Eastern teaberry and boxberry) as an associated article under the articles and commodities covered by Section 3700. The effect of this amendment provides authority to the State to regulate the movement of this new “associated article (nursery stock)” to prevent artificial spread of oak mortality disease to non-infested areas. These plants are being added to the list of plants whose movements are regulated as hosts or potential carriers that may transfer the disease from an infested area.

Title 3
 California Code of Regulations
 AMEND: 3700(c)
 Filed 11/13/2013
 Effective 11/27/2013
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2013-0926-03
DEPARTMENT OF FOOD AND AGRICULTURE
 Rendering Industry Advisory Board

Senate Bill (SB) 513 [Stats. 2011, ch. 337] enacted sections 19218 through 19218.7 of Article 1.5, Chapter 5, Part 3, Division 9 of the Food and Agricultural Code which established the Rendering Industry Advisory Board (RIAB). The RIAB was created to advise and make recommendations to the Secretary of the Depart-

ment of Food and Agriculture regarding, among other things, licensing matters, regulations, procedures for employment, training, supervision, and compensation of inspectors and other personnel, and the rate and collection of license fees and penalties. The Department of Food and Agriculture adopted sections 1180.3.3, 1180.3.4, 1180.3.5, 1180.3.6, 1180.3.7, 1180.3.8, and 1180.3.9 of title 3 of the California Code of Regulations to be used by the RIAB to implement the provisions of SB 513.

Title 3
 California Code of Regulations
 ADOPT: 1180.3.3, 1180.3.4, 1180.3.5, 1180.3.6, 1180.3.7, 1180.3.8, 1180.3.9
 Filed 11/06/2013
 Effective 01/01/2014
 Agency Contact: Nancy Grillo (916) 900-5033

File# 2013-1106-02
DEPARTMENT OF FOOD AND AGRICULTURE
 Light Brown Apple Moth Eradication Area

This emergency regulatory action established Mendocino County as an additional eradication area with respect to the light brown apple moth (“*Epiphyas postvittana*”), LBAM, due to recent findings of the pest. The effect of the amendment to section 3591.20(a) is to provide authority to the State to perform eradication activities against the LBAM in Mendocino County.

Title 3
 California Code of Regulations
 AMEND: 3591.20(a)
 Filed 11/07/2013
 Effective 11/07/2013
 Agency Contact: Stephen S. Brown (916) 654-1017

File# 2013-0926-02
DEPARTMENT OF PESTICIDE REGULATION
 Continuing Education Records and Course Approval

This rulemaking action amends sections of Title 3 of the California Code of Regulations to, among other things, add criteria for the approval of online and correspondence continuing education courses for pesticide applicators, pest-control businesses, and pest-control advisors and regarding continuing education course record keeping requirements for providers and students.

Title 3
 California Code of Regulations
 AMEND: 6512, 6513
 Filed 11/07/2013
 Effective 01/01/2014
 Agency Contact:
 Linda Irokawa-Otani (916) 445-3991

File# 2013-1030-01
DEPARTMENT OF WATER RESOURCES
 Conflict of Interest Code

This is an amendment to a Conflict of Interest Code that has been approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing in the California Code of Regulations only.

Title 23
 California Code of Regulations
 AMEND: 595
 Filed 11/06/2013
 Effective 12/06/2013
 Agency Contact: Amanda Jack (916) 651-6851

File# 2013-0927-01
DIVISION OF WORKERS’ COMPENSATION
 Workers’ Compensation — Supplemental Job Displacement Benefit

This regulatory action makes changes to the Supplemental Job Displacement Benefit (SJDB) regulations to reflect statutory changes made pursuant to SB 863 (Chapter 363, Statutes of 2012), which took effect on January 1, 2013. These regulations establish requirements for employers, employees and physicians regarding offers of work, notifications and vouchers for retraining.

Title 8
 California Code of Regulations
 ADOPT: 10133.31, 10133.32, 10133.33, 10133.34, 10133.35, 10133.36
 AMEND: 9813.1, 10116.9, 10117, 10118, 10133.53, 10133.55, 10133.57, 10133.58, 10133.60
 REPEAL: 10133.51, 10133.52
 Filed 11/08/2013
 Effective 11/08/2013
 Agency Contact: Carol N. Finuliar (415) 286-0660

File# 2013-1016-01
DIVISION OF WORKERS’ COMPENSATION
 Workers’ Compensation — QME Form 105

In this “changes without regulatory effect” filing, the Division of Workers’ Compensation of the Department of Industrial Relations amends its “Request for QME Panel Under Labor Code Section 4062.1 Unrepresented” form (QME Form 105).

Title 8
 California Code of Regulations
 AMEND: 105
 Filed 11/06/2013
 Agency Contact: James D. Fisher (510) 286-0679

File# 2013-1104-05
MANAGED RISK MEDICAL INSURANCE BOARD

Continue MRMIP 2013 Subscriber Subsidy

Section 25 of Assembly Bill (AB) 82 (Stats. 2013, ch. 23) amended subdivision (c) of Insurance Code section 12737 to give the Managed Risk Medical Insurance Board (Board) ongoing authority beyond 2013 to subsidize subscriber premiums to as low as 100% of the standard average individual rates for comparable coverage. This emergency filing amended section 2698.401 of title 10 of the California Code of Regulations to implement this change and to provide that beginning January 1, 2014 the Board shall calculate an estimate of the standard average individual rate for program benefits for each risk category and for covering a subscriber in each risk category. Pursuant to section 77 of AB 82, this filing is deemed an emergency by the Legislature and exempt from review by the Office of Administrative Law.

Title 10

California Code of Regulations

AMEND: 2698.401

Filed 11/13/2013

Effective 11/13/2013

Agency Contact: JoAnne French (916) 327-7978

File# 2013-1104-04
MANAGED RISK MEDICAL INSURANCE BOARD

AIM Implement MAGI & End of Month Disenrollment

This emergency regulatory action by the Managed Risk Medical Insurance Board amends sections of Title 10, modifying the eligibility requirements for the Access for Infants and Mothers (AIM) program and the end of month disenrollment from the AIM program. These changes are effective January 1, 2014.

Title 10

California Code of Regulations

AMEND: 2699.200, 2699.207

Filed 11/13/2013

Effective 11/13/2013

Agency Contact: JoAnne French (916) 327-7978

File# 2013-1018-02
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Globally Harmonized System Update to Hazard Communication — Health

The Occupational Safety and Health Standards Board submitted this file and print action pursuant to Labor Code section 142.3(a)(4) to readopt amendments to 29 sections from title 8 of the California Code of Reg-

ulations, and to amend the appendices to many of these sections, that were approved and filed on May 6, 2013. The purpose of the amendments was to conform them to recent amendments in federal standards that address updates to the Hazard Communication Standard (HCS) and related sections. The amendments update requirements for hazard communication that are at least as effective as the federal standards for HCS programs, which include warning labels, signs, and safety data sheets, and employee training to inform workers and other downstream users of manufactured and imported chemical products, and are intended to be consistent with the United Nations Globally Harmonized System Classification and Labeling of Chemicals (GHS), Revision 3.

Title 8

California Code of Regulations

AMEND: 1529, 1532, 1532.1, Appendix B of 1532.1, 1532.2, 1535, 5150, 5189, 5190, 5191, 5192, Appendix A of 5192, 5194, Appendix of A of 5194, Appendix B of 5194, Appendix C of 5194, Appendix D of 5194, Appendix E of 5194, Appendix F of 5194, Appendix G of 5194, 5198, Appendix B of 5198, 5200, 5201, 5202, Appendix A of 5202, 5206, 5207, 5208, Appendix J of 5208, 5209, 5210, 5211, 5212, Appendix B of 5212, 5213, 5214, 5217, Appendix A of 5217, 5218, 5220, 8358, Appendix K of 8358, 8359

Filed 11/06/2013

Effective 11/06/2013

Agency Contact:

Marley Hart (916) 274-5721

File# 2013-0927-04
STATE WATER RESOURCES CONTROL BOARD
Revised TMDL for Bacteria in Ballona Creek, Estuary, & Sepulveda Chan

This regulatory action by the State Water Resources Control Board (State Board) amends the Water Quality Control Plan for the Los Angeles Region as adopted by the Los Angeles Regional Water Quality Control Board (Regional Board) on June 7, 2012, pursuant to Resolution R12-008 and approved by the State Board on March 19, 2013, pursuant to Resolution 2013-0008. This basin plan amendment revises the total maximum daily load (TMDL) for bacteria in Ballona Creek, Ballona Estuary and the Sepulveda Channel and includes a new reconsideration deadline of July 15, 2018.

Title 23

California Code of Regulations

AMEND: 3939.24

Filed 11/08/2013

Effective 11/08/2013

Agency Contact: Jenny Newman (213) 576-6691

File# 2013-0927-05

STATE WATER RESOURCES CONTROL BOARD
Revised TMDL for Bacteria in Malibu Creek and Lagoon

This regulatory action by the State Water Resources Control Board (State Board) amends the Water Quality Control Plan for the Los Angeles Region as adopted by the Los Angeles Regional Water Quality Control Board (Regional Board) on June 7, 2012, pursuant to Resolution R12-009 and approved by the State Board on March 19, 2013, pursuant to Resolution 2013-0008. This basin plan amendment revises the total maximum daily load (TMDL) for bacteria in Malibu Creek and Lagoon.

Title 23
California Code of Regulations
AMEND: 3939.15
Filed 11/08/2013
Effective 11/08/2013
Agency Contact: Jenny Newman (213) 576-6691

File# 2013-0927-03

STATE WATER RESOURCES CONTROL BOARD
Regional Water Quality Control Board R4 Beaches Bacteria TMDL Revision

This regulatory action by the State Water Resources Control Board (State Board) amends the Water Quality Control Plan for the Los Angeles Region as adopted by the Los Angeles Regional Water Quality Control Board (Regional Board) on June 7, 2012, pursuant to Resolution R12-007 and approved by the State Board on March 19, 2013, pursuant to Resolution 2013-0008. This basin plan amendment revises the total maximum daily load (TMDL) for bacteria for the Santa Monica Bay beaches, Marina Del Rey Harbor Mother's Beach and Back Basins, Los Angeles Harbor Inner Cabrillo Beach and Main Ship Channel, and modifies the implementation provisions for water contact recreation bacteria objectives TMDL for bacteria in the Los Angeles River Watershed.

Title 23
California Code of Regulations
AMEND: 3938, 3939, 3939.4, 3939.12
Filed 11/07/2013
Effective 11/07/2013
Agency Contact: Man Voong (213) 576-6690

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN June 12, 2013 TO
November 13, 2013**

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 1

10/29/13 ADOPT: 2000, 2001, 2002, 2003, 2004

Title 2

11/04/13 AMEND: 1859.2, 1859.71, 1859.71.6, 1859.74.5, 1859.77.4, 1859.82, 1859.83

10/30/13 AMEND: 1859.76

10/25/13 ADOPT: 579.3, 579.21, 579.22, 579.25
AMEND: 579.2

10/03/13 AMEND: 18521.5

10/03/13 ADOPT: 18421.5

10/03/13 AMEND: 18239

10/03/13 AMEND: Amend and renumber sections: 7285.0 (11000), 7285.1 (11001), 7285.2 (11002), 7285.4 (11003), 7285.7 (11004), 7286.0 (11005), 7286.1 (11005.1), 7286.3 (11006), 7286.4 (11007), 7286.5 (11008), 7286.6 (11009), 7286.7 (11010), 7286.8 (11011), 7287.0 (11013), 7287.1 (11014), 7287.2 (11015), 7287.3 (11016), 7287.4 (11017), 7287.6 (11019), 7287.7 (11020), 7287.8 (11021), 7287.9 (11022), 7288.0 (11023), 7289.4 (11027), 7289.5 (11028), 7290.6 (11029), 7290.7 (11030), 7290.8 (11031), 7290.9 (11032), 7291.0 (11033), 7291.1 (11031), 7291.2 (11035), 7291.3 (11036), 7291.4 (11037), 7291.6 (11039), 7291.7 (11040), 7291.8 (11041), 7291.9 (11042), 7291.10 (11043), 7291.11 (11044), 7291.12 (11045), 7291.13 (11046), 7291.14 (11047), 7291.16 (11049), 7291.17 (11050), 7291.18 (11051), 7292.0 (11052), 7292.1

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08/16/13	ADOPT: 10170.1, 10170.2, 10170.3, 10170.4, 10170.5, 10170.6, 10170.7, 10170.8, 10170.9, 10170.10, 10170.11, 10170.12, 10170.13, 10170.14, 10170.15	5194, 5198, Appendix B of 5198, 5200, 5201, 5202, Appendix A of 5202, 5206, 5207, 5208, Appendix J of 5208, 5209, 5210, 5211, 5212, Appendix B of 5212, 5213, 5214, 5217, Appendix A of 5217, 5218, 5220, 8358, Appendix K of 8358, 8359
08/06/13	ADOPT: 2086, 2086.1, 2086.5, 2086.6, 2086.7, 2086.8, 2086.9, 2087, 2087.5, 2087.6, 2088, 2088.6, 2089, 2089.5, 2089.6, 2090, 2090.5, 2090.6, 2091, 2091.5, 2091.6, 2092, 2092.5, 2092.6, 2093	
07/31/13	AMEND: 12357, 12463, 12464	11/06/13 AMEND: 105
07/25/13	AMEND: 5170, 5190, 5205, 5212, 5230, 5250	10/29/13 ADOPT: 344.76, 344.77
07/22/13	AMEND: 8072	10/03/13 ADOPT: 11770, 11771.1, 11771.3, 11772, 11773
07/22/13	AMEND: 10322, 10325, 10326	09/30/13 ADOPT: 9792.5.4, 9792.5.5, 9792.5.6, 9792.5.7, 9792.5.8, 9792.5.9, 9792.5.10, 9792.5.11, 9792.5.12, 9792.5.13, 9792.5.14, 9792.5.15 AMEND: 9792.5.1, 9792.5.3, 9793, 9794, 9795
07/08/13	ADOPT: 5342, 5343, 5344, 5345, 5346, 5347, 5348	09/30/13 ADOPT: 9785.5, 9792.6.1, 9792.9.1, 9792.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.7, 9792.10.8, 9792.10.9 AMEND: 9785, 9792.6, 9792.9, 9792.10, 9792.12
Title 5		
10/23/13	ADOPT: 80691, 80692	09/30/13 ADOPT: 10205, 10205.12, 10206, 10206.1, 10206.2, 10206.3, 10206.4, 10206.5, 10206.14, 10206.15, 10207, 10208
10/17/13	ADOPT: 19847 AMEND: 19816, 19816.1, 19818, 19824, 19829, 19837.3	09/24/13 ADOPT: 9789.12.1, 9789.12.2, 9789.12.3, 9789.12.4, 9789.12.5, 9789.12.6, 9789.12.7, 9789.12.8, 9789.12.9, 9789.12.10, 9789.12.11, 9789.12.12, 9789.12.13, 9789.12.14, 9789.12.15, 9789.13.1, 9789.13.2, 9789.13.3, 9789.14, 9789.15.1, 9789.15.2, 9789.15.3, 9789.15.4, 9789.15.5, 9789.15.6, 9789.16.1, 9789.16.2, 9789.16.3, 9789.16.4, 9789.16.5, 9789.16.6, 9789.16.7, 9789.16.8, 9789.17.1, 9789.17.2, 9789.18.1, 9789.18.2, 9789.18.3, 9789.18.4, 9789.18.5, 9789.18.6, 9789.18.7, 9789.18.8, 9789.18.9, 9789.18.10, 9789.18.11, 9789.18.12, 9789.18.19
10/16/13	REPEAL: 3052	
09/25/13	AMEND: 11530, 11531, 11532	09/23/13 ADOPT: 10451.1, 10451.2, 10451.3, 10451.4, 10498, 10538, 10606.5, 10608.5, 10774.5, 10957, 10957.1, 10959 AMEND: 10250, 10260, 10300, 10301, 10408, 10450, 10582.5, 10606, 10608, 10622, 10770, 10770.1, 10770.5, 10770.6, 10845, 10886
09/25/13	AMEND: 20101, 20107, 20190 REPEAL: 20150, 20151, 20152, 20153, 20154, 20155, 20156, 20157	09/17/13 AMEND: 3650(b)(3)
09/25/13	AMEND: 11530, 11531, 11532	09/17/13 AMEND: 5194(g)(2)(Q)
09/17/13	AMEND: 4600, 4610, 4630, 4631, 4633, 4650, 4611, 4620, 4621, 4622, 4632, 4640	09/16/13 ADOPT: 37, 10159 AMEND: 1, 11, 11.5, 13, 14, 17, 26, 30, 31.3, 31.5, 31.7, 32, 33,
09/16/13	AMEND: 80499	
09/05/13	AMEND: 19816, 19828.4	
08/12/13	AMEND: 58312	
08/12/13	AMEND: 80003, 80004, 80048.6	
07/10/13	AMEND: 80021.1, 80023, 80023.1, 80023.2, 80025.5 REPEAL: 80024.1, 80024.2, 80024.2.1, 80024.3.2, 80024.4, 80024.5	
06/12/13	ADOPT: 19847 AMEND: 19816, 19816.1, 19818, 19824, 19829, 19837.3	
Title 8		
11/08/13	ADOPT: 10133.31, 10133.32, 10133.33, 10133.34, 10133.35, 10133.36 AMEND: 9813.1, 10116.9, 10117, 10118, 10133.53, 10133.55, 10133.57, 10133.58, 10133.60 REPEAL: 10133.51, 10133.52	
11/06/13	AMEND: 1529, 1532, 1532.1, Appendix B of 1532.1, 1532.2, 1535, 5150, 5189, 5190, 5191, 5192, Appendix A of 5192, 5194, Appendix A of 5194, Appendix B of 5194, Appendix C of 5194, Appendix D of 5194, Appendix E of 5194, Appendix F of 5194, Appendix G of	

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	34, 35, 35.5, 36, 38, 100, 104, 105, 106, 109, 110, 112, 117, 10160 REPEAL: 31.2	11/13/13	AMEND: 2698.401
09/16/13	AMEND: 344, 344.1	09/30/13	ADOPT: 6700, 6702, 6704, 6706, 6708, 6710, 6712, 6714, 6716, 6718
08/29/13	AMEND: 1533	09/30/13	ADOPT: 6408, 6410, 6450, 6452, 6454, 6470, 6472, 6474, 6476, 6478, 6480, 6482, 6484, 6486, 6490, 6492, 6494, 6496, 6498, 6500, 6502, 6504, 6506, 6508, 6510, 6600, 6602, 6604, 6606, 6608, 6610, 6612, 6614, 6616, 6618, 6620 REPEAL: 6410
08/27/13	AMEND: 5155	09/30/13	ADOPT: 6520, 6522, 6524, 6526, 6528, 6530, 6532, 6534, 6536, 6538
08/22/13	AMEND: 32147, 32380, 32802	09/30/13	ADOPT: 6800, 6802, 6804, 6806
08/19/13	ADOPT: 32999, 33000, 33001, 33002, 33003, 33004, 33005, 33006, 33007, 33008, 33009, 33010, 33011, 33012, 33013	09/19/13	ADOPT: 6458
08/13/13	ADOPT: 9795.1.5, 9795.1.6, 9795.5 AMEND: 9795.1, 9795.3	09/09/13	ADOPT: 2562.1, 2562.2, 2562.3, 2562.4
08/13/13	ADOPT: 15209 AMEND: 15201, 15210, 15210.1, 15475, 15477, 15481, 15484, 15496, 15497	08/27/13	AMEND: 2690, 2690.1, 2690.2
08/01/13	AMEND: 5199(g)(3)(B)	08/05/13	AMEND: 2498.5
07/23/13	AMEND: 1933, 5541, 5543, 5559, 5600, 6170	07/31/13	AMEND: 2498.6
07/02/13	AMEND: 3329	07/17/13	AMEND: 2498.5
07/01/13	ADOPT: 9792.5.4, 9792.5.5, 9792.5.6, 9792.5.7, 9792.5.8, 9792.5.9, 9792.5.10, 9792.5.11, 9792.5.12, 9792.5.13, 9792.5.14, 9792.5.15. AMEND: 9792.5.1., 9792.5.3, 9793, 9794, 9795	07/16/13	AMEND: 2498.6
07/01/13	AMEND: 5197	07/15/13	ADOPT: 6650, 6652, 6654, 6658, 6660, 6662, 6664, 6666, 6668, 6670
07/01/13	AMEND: 9795.1, 9795.3	07/10/13	ADOPT: 6410, 6420, 6422, 6424, 6440, 6442, 6444
07/01/13	ADOPT: 9785.5, 9792.6.1, 9792.9.1, 9792.10.1, 9792.10.2, 9792.10.3, 9792.10.4, 9792.10.5, 9792.10.6, 9792.10.7, 9792.10.8, 9792.10.9 AMEND: 9785, 9792.6, 9792.9, 9792.10, 9792.12	07/03/13	AMEND: 2548.3, 2548.19, 2548.21, 2548.24, 2548.25
07/01/13	ADOPT: 37, 10159 AMEND: 1, 11, 11.5, 14, 17, 30, 31.2, 31.7, 33, 35, 35.5, 36, 38, 100, 105, 106, 10160	06/27/13	ADOPT: 6456
06/26/13	ADOPT: 10133.31, 10133.32, 10133.33, 10133.34, 10133.35, 10133.36 AMEND: 9813.1, 10116.9, 10117, 10118, 10133.53, 10133.55, 10133.57, 10133.58, 10133.60 REPEAL: 10133.51, 10133.52	06/25/13	AMEND: 2698.401
06/26/13	ADOPT: 10206, 10206.1, 10206.2, 10206.3, 10206.4, 10206.5, 10206.14, 10206.15, 10207, 10208 AMEND: 10205, 10205.12	06/13/13	ADOPT: 2594, 2594.1, 2594.2, 2594.3, 2594.4, 2594.5, 2594.6, 2594.7
06/24/13	AMEND: 8352		
Title 9, 17		Title 11	
11/05/13	ADOPT: 40000, 40010, 40020, 40030, 40040 (Title 17) REPEAL: 14200, 14210, 14220, 14230, 14240 (Title 9)	08/21/13	ADOPT: 31.25 REPEAL: 101.1
Title 10		08/21/13	ADOPT: 31.26 REPEAL: 101.2
11/13/13	AMEND: 2699.200, 2699.207	08/21/13	AMEND: 31.7
		08/06/13	AMEND: 1955
		07/08/13	AMEND: 1005, 1007, 1008
		Title 12	
		09/23/13	REPEAL: 3000
		Title 13	
		08/15/13	AMEND: 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711
		07/31/13	AMEND: 1968.2, 1968.5, 1971.1, 1971.5
		07/24/13	AMEND: 599
		Title 14	
		10/30/13	AMEND: 163, 164
		10/30/13	ADOPT: 1667.1, 1667.2, 1667.3, 1667.4, 1667.5, 1667.6
		10/23/13	AMEND: 18419
		10/21/13	AMEND: 817.02, 817.03, 818.02, 818.03, 820.01, 827.02, 852.60.2, 852.62.2
		10/11/13	AMEND: 190, 195

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10/10/13	ADOPT: 5200, 5201, 5202, 5203, 5204, 5205, 5206, 5207, 5208, 5209, 5210, 5211, 5300, 5301, 5302, 5303, 5304, 5305, 5306, 5307	09/10/13	ADOPT: 80.1, 80.2, 87.1 AMEND: 12, 12.5, 37, 80, 81, 87, 87.8, 87.9, 88, 88.1, 88.2, 89 REPEAL: 87.1, 87.7
10/02/13	AMEND: 401 REPEAL: 480	09/09/13	AMEND: 103
10/02/13	AMEND: 3550.5	08/08/13	AMEND: 1920, 1937.11
09/19/13	AMEND: 502	08/07/13	AMEND: 811, 832.05, 832.06, 832.35 REPEAL: 832.14, 854
09/16/13	AMEND: 510	08/07/13	ADOPT: 1399.620, 1399.621, 1399.622, 1399.623
09/10/13	AMEND: 313	08/07/13	AMEND: 1399.501, 1399.502, 1399.503, 1399.506, 1399.507, 1399.507.5, 1399.511, 1399.512, 1399.520, 1399.521, 1399.521.5, 1399.523, 1399.523.5, 1399.526, 1399.527, 1399.530, 1399.540, 1399.543, 1399.545, 1399.547, 1399.557, 1399.570, 1399.571, 1399.572, 1399.610, 1399.612, 1399.616, 1399.617, 1399.618, 1399.619 REPEAL: 1399.512
09/10/13	AMEND: 300	08/07/13	AMEND: 811, 832.05, 832.06, 832.35 REPEAL: 832.14, 854
09/10/13	AMEND: 1670	08/07/13	ADOPT: 1399.620, 1399.621, 1399.622, 1399.623
08/27/13	AMEND: 703	08/07/13	AMEND: 1399.501, 1399.502, 1399.503, 1399.506, 1399.507, 1399.507.5, 1399.511, 1399.512, 1399.520, 1399.521, 1399.521.5, 1399.523, 1399.523.5, 1399.526, 1399.527, 1399.530, 1399.540, 1399.543, 1399.545, 1399.547, 1399.557, 1399.570, 1399.571, 1399.572, 1399.610, 1399.612, 1399.616, 1399.617, 1399.618, 1399.619 REPEAL: 1399.512
08/27/13	AMEND: 670 REPEAL: 678	08/07/13	AMEND: 811, 832.05, 832.06, 832.35 REPEAL: 832.14, 854
08/19/13	AMEND: 1299.03(b)(2)(A)	08/07/13	ADOPT: 1399.620, 1399.621, 1399.622, 1399.623
08/06/13	AMEND: 13055	08/07/13	AMEND: 1399.501, 1399.502, 1399.503, 1399.506, 1399.507, 1399.507.5, 1399.511, 1399.512, 1399.520, 1399.521, 1399.521.5, 1399.523, 1399.523.5, 1399.526, 1399.527, 1399.530, 1399.540, 1399.543, 1399.545, 1399.547, 1399.557, 1399.570, 1399.571, 1399.572, 1399.610, 1399.612, 1399.616, 1399.617, 1399.618, 1399.619 REPEAL: 1399.512
07/22/13	ADOPT: 18751.2.2, 18751.2.3 AMEND: 18751.2, 18751.2.1	07/30/13	REPEAL: 367.7
06/28/13	AMEND: 228	07/24/13	ADOPT: 1398.15
06/26/13	AMEND: 1059(a)	07/23/13	AMEND: 2502, 2516, 2525, 2526, 2526.1, 2527, 2529, 2530, 2535, 2562, 2575, 2580, 2581, 2581.1, 2582, 2584, 2585, 2885.1
06/25/13	AMEND: 354, 360, 361, 362, 363, 364, 708.9	07/16/13	AMEND: 4154
06/19/13	AMEND: 816.01(c)(3), 826.01(c)(2), 870.21(d)	07/15/13	ADOPT: 1355.45
06/17/13	AMEND: 7.50	07/15/13	AMEND: 1833
Title 15		06/26/13	AMEND: 1600
10/29/13	AMEND: 3000, 3040, 3040.1, 3041, 3041.3, 3043, 3043.5, 3043.6, 3044, 3046, 3074.3, 3075.1, 3077.1, 3078.4, 3170.1, 3190, 3375.2, 3375.4, 3375.5, 3375.6, 3376, 3379, 3383	06/25/13	AMEND: 4102, 4114, 4122, 4141, 4163, 4181
09/25/13	REPEAL: 7001	06/20/13	AMEND: 1379.50
09/24/13	AMEND: 3044, 3190, 3282, 3335	Title 17	
08/27/13	ADOPT: 8125	10/31/13	ADOPT: 6300.1, 6300.3, 6300.5, 6300.7, 6300.9, 6300.11, 6300.13, 6300.15, 6300.17, 6300.19, 6300.21, 6300.23, 6301.1, 6301.3, 6301.5, 6301.7, 6301.9, 6303.1, 6303.3
08/06/13	AMEND: 2000		
07/30/13	AMEND: 3075		
07/29/13	AMEND: 3000, 3190, 3213, 3334		
Title 16			
11/13/13	ADOPT: 15, 16, 16.1, 16.2		
11/06/13	ADOPT: 420.1, 3021.1		
11/06/13	ADOPT: 420.1, 3021.1		
10/28/13	AMEND: 1398.6		
10/17/13	AMEND: 442, 3035		
10/16/13	REPEAL: 3340.38		
10/16/13	ADOPT: 15, 15.1, 15.2, 15.3, 15.4 AMEND: 70, 71, 80.1, 80.2		
10/09/13	AMEND: 109, 117		
09/30/13	AMEND: 2475		
09/27/13	ADOPT: 2030.05, 2030.3, 2032.05, 2032.15, 2032.25, 2032.35 AMEND: 2030, 2030.1, 2030.2, 2032.1, 2032.2, 2032.3, 2032.4, 2037		
09/23/13	REPEAL: 3526		
09/17/13	AMEND: 2520.5, 2523.2, 2577.6, 2579.4		

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10/28/13 AMEND: 54342, 57332
 10/11/13 ADOPT: 30400, 30409, 30411, 30412, 30413, 30413.5, 30414, 30415, 30416, 30417, 30418, 30419, 30420, 30467, 30468 AMEND: 30403, 30403.5, 30403.8, 30404, 30405, 30406, 30408, 30410, 30421, 30422, 30423, 30424, 30425, 30427.2, 30435, 30436, 30437, 30440, 30442, 30443, 30444, 30446, 30447, 30450, 30451, 30455.1, 30456.6, 30460, 30461, 30462, 30463, 30464, 30465, 30466 REPEAL: 30400.5, 30400.40, 30400.60, 30400.85, 30400.95, 30420, 30427, 30428, 30441, 30445, 30445.1, 30452, 30467, 30468
 10/02/13 AMEND: 54342(a)(29)
 09/18/13 ADOPT: 100900, 100901, 100902, 100903, 100904
 09/10/13 AMEND: 52086
 08/12/13 AMEND: 2641.55
 08/12/13 ADOPT: 30456, 30456.1, 30456.2, 30456.4, 30456.6, 30456.8, 30456.10, 30456.12
 07/16/13 ADOPT: 7000, 7002, 7004, 7006, 7008, 7010, 7012, 7014, 7016
 07/01/13 AMEND: 100000
 06/26/13 AMEND: 91022
 06/26/13 AMEND: 1230, 2641.57
 06/24/13 ADOPT: 95943 AMEND: 95802, 95830, 95833, 95910, 95911, 95912, 95913, 95920, 95921, 95942, 96010, 96022
 06/13/13 ADOPT: 56068, 56069, 56070, 56071, 56072, 56073, 56074, 56620, 56621, 56622, 56623, 56624, 56625 AMEND: 56101

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10/30/13 REPEAL: 474
 10/14/13 ADOPT: 1566.1
 09/23/13 ADOPT: 2000
 08/28/13 AMEND: 1703
 08/28/13 AMEND: 1703
 07/24/13 AMEND: 462.040
 07/16/13 AMEND: 4601, 4603, 4604, 4605
 07/11/13 AMEND: 1532, 1533.1, 1533.2, 1534, 1535, 1598
 06/25/13 ADOPT: 2000

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07/17/13 AMEND: 557.4, 557.5, 557.8, 557.13, 557.23, 561.2, 567, 567.8, 573, 574.4, 575.1, 575.3, 575.6, 575.8, 575.13, 575.16, 577.2, 578.6, 591.6, 592.1, 592.2, 593.1, 594.3, 594.4, 594.5, 595.5 and 596

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10/17/13 AMEND: 1680, 1681, 1683, 1684
 08/28/13 ADOPT: 1240, 3200, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208

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09/23/13 ADOPT: 2653, 2654, 2655, 2656, 2657, 2658
 06/24/13 ADOPT: 2653, 2654, 2655, 2656, 2657, 2658

Title 22

10/28/13 AMEND: 123000
 10/16/13 AMEND: 67100.1, 67100.8, 67100.9
 10/02/13 AMEND: 97212
 10/01/13 AMEND: 69501.3(b), 69509.1(a), 69509.1(c)
 09/23/13 AMEND: 97232
 09/18/13 AMEND: 51516.1
 09/05/13 AMEND: 66261.33
 08/28/13 ADOPT: 69501, 69501.1, 69501.2, 69501.3, 69501.4, 69501.5, 69502, 69502.1, 69502.2, 69502.3, 69503, 69503.1, 69503.2, 69503.3, 69503.4, 69503.5, 69503.6, 69503.7, 69504, 69504.1, 69505, 69505.1, 69505.2, 69505.3, 69505.4, 69505.5, 69505.6, 69505.7, 69505.8, 69505.9, 69506, 69506.1, 69506.2, 69506.3, 69506.4, 69506.5, 69506.6, 69506.7, 69506.8, 69506.9, 69506.10, 69507, 69507.1, 69507.2, 69507.3, 69507.4, 69507.5, 69507.6, 69508, 69509, 69509.1, 69510
 08/28/13 ADOPT: 69501, 69501.1, 69501.2, 69501.3, 69501.4, 69501.5, 69502, 69502.1, 69502.2, 69502.3, 69503, 69503.1, 69503.2, 69503.3, 69503.4, 69503.5, 69503.6, 69503.7, 69504, 69504.1, 69505, 69505.1, 69505.2, 69505.3, 69505.4, 69505.5, 69505.6, 69505.7, 69505.8, 69505.9, 69506, 69506.1, 69506.2, 69506.3, 69506.4, 69506.5, 69506.6, 69506.7, 69506.8, 69506.9, 69506.10, 69507, 69507.1, 69507.2, 69507.3, 69507.4, 69507.5, 69507.6, 69508, 69509, 69509.1, 69510
 08/19/13 ADOPT: 70438.2

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11/08/13 AMEND: 3939.24
 11/08/13 AMEND: 3939.15
 11/07/13 AMEND: 3938, 3939, 3939.4, 3939.12
 11/06/13 AMEND: 595
 10/31/13 AMEND: 1062, 1064, 1066, 1068
 10/23/13 AMEND: 2200, 2200.5, 2200.6

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08/07/13	ADOPT: 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013, 5014, 5015, 5016		
07/26/13	ADOPT: 3979.6		
07/03/13	AMEND: 595		
07/01/13	ADOPT: 3007		
06/24/13	ADOPT: 3919.13		
Title 27			
08/08/13	AMEND: 25805		
07/11/13	AMEND: 25805		
06/25/13	AMEND: 25805		
Title 28			
10/07/13	ADOPT: 1300.67.003		
07/05/13	ADOPT: 1300.67.005		
Title MPP			
09/30/13	AMEND: 40-105, 42-422, 82-504		