



# 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. CALIFORNIA HIGH-SPEED RAIL AUTHORITY**

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

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

This amendment makes necessary and recommended updates to the Code to reflect the expansion of the Authority and makes other technical changes to reflect the current organizational structure of the Authority. Copies of the amended code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than **Tuesday, January 21, 2014**, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than **Monday, January 6, 2014**, by contacting the Contact Person set forth below.

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

The California High-Speed Rail Authority has determined that the proposed amendments:

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

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

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

Angie Reed  
California High-Speed Rail Authority  
770 L Street, Suite 800  
Sacramento, CA 95814

Main Phone: 916.324.1541  
Email: COICode@hsr.ca.gov

**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: DEPARTMENT OF PUBLIC HEALTH

A written comment period has been established commencing on **November 26, 2013** and closing on **January 20, 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 Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **January 20, 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 codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

#### REFERENCE

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

#### CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to 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 respective 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 amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid Interior Quarantine as an emergency action which was effective on July 30, 2013. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than January 27, 2014.

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 [Lindsay.rains@cdfa.ca.gov](mailto:Lindsay.rains@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on January 20, 2014. The Department will consider only comments received at the Department of- fices by that time. Submit comments to:

Lindsay Rains  
 Department of Food and Agriculture  
 Plant Health and Pest Prevention Services  
 1220 N Street  
 Sacramento, CA 95814  
[lindsay.rains@cdfa.ca.gov](mailto:lindsay.rains@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

Existing law, FAC section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, FAC section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, FAC section 5321, 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.

Existing law, FAC section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or

prevent the spread of any pest which is described in FAC section 5321.

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. This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

The amendment of this regulation benefits the citrus industries (nursery, fruit growers, wholesalers, retailers, exporters) and the environment by having a quarantine program to prevent the artificial spread of ACP over long distances. Most all of the commercial citrus fruit and nursery stock production is located outside this proposed quarantine boundary area.

The California, national and international consumers of California citrus benefit by having high quality fruit available at lower cost. It is assumed that any increases in production costs will ultimately be passed on to the consumer.

The amendment of this regulation benefits homeowners who grow citrus for consumption and host material which is planted as ornamentals in various rural and urban landscapes.

FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state.” The amendment of this regulation is preventing the artificial spread of ACP to uninfested areas of the State. Huanglongbing (HLB) is generally distributed in Florida due to ACP being generally distributed there. The University of Florida IFAS Extension calculated and compared the impact of having and not having HLB present in Florida and concluded HLB had a total impact of \$3.64 billion and eliminated seven percent of the total Florida workforce. The overall California economy benefits by the amendment of this regulation which is intended to prevent ACP from becoming generally distributed in California and resulting in a similar effect on our economy as to what happened in Florida. This is now critical as HLB has been introduced into California.

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

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 plant quarantines. 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

This proposed emergency action added a new quarantine area for ACP in the Porterville area of Tulare County of approximately 178 square miles. The effect of the amendment of this regulation is to provide authority for the State to perform quarantine activities against ACP within this additional area. The total area which would be under regulation is now approximately 45,613 square miles.

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: Most businesses will not be affected. There are five citrus production nurseries in the affected area that will be impacted the most. They will need to apply approved treatments every ninety days to ship within the quarantine area or to ship to a non-citrus producing state. Treatment costs will range from \$2.24 per plant to \$9.46 per plant depending on whether the nursery conducts the treatments or hires an outside applicator. In order to ship outside of the quarantine area, the nurseries will need to grow the nursery stock within a USDA-approved ACP Exclusionary facility and apply approved treatments only prior to shipment. The approximate cost of an exclusionary facility is \$148,754–\$180,000 per individual structure which covers one-half to one acre. There are four retail nurseries in the affected area. They will need to purchase pre-treated trees or apply the approved treatments. There are 158 citrus growers in the proposed area. There is no additional cost to growers who take their fruit to a packinghouse inside the current quarantine area. Growers choosing a packinghouse outside the quarantine area have three options: 1. Conduct pre-har-

vest treatments with an approved pesticide while fruit is still on the trees; 2. Field clean the fruit to remove leaves and stems during harvest; 3. Send the fruit to a packinghouse within the quarantine to be cleaned. Pre-harvest treatments cost growers approximately \$60 per acre and are required to be covered with a tarp while in transit. Tarps range in price from \$2,500–\$3,000 a piece. Field cleaning the fruit will cost the grower approximately \$150–\$320 per acre depending on the citrus variety. Field-cleaned fruit does not require a tarp for transport and can be moved within or from the quarantined area. Cleaning at a packinghouse within the quarantine will cost the grower approximately \$300–\$400 per acre and the fruit must remain within the quarantine area, although the loads do not need to be covered with a tarp.

*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 is not aware of any specific benefits the amendment of this regulation will have on worker safety or the health of California residents. The Department believes the amendment of this regulation benefits the welfare of California residents by protecting the economic health of the entire citrus industry. In 2010 the estimated value was \$2.1 billion for citrus fruit and \$28.5 million for citrus nursery stock without all the upstream buyers and downstream retailers included (*Reference: John Gilstrap of California Citrus Nursery Board for citrus nursery stock value and USDA–National Agricultural Statistics Service 2010 data for citrus fruit*). This is a needed source of revenue for the State’s economic health and this amendment will help protect this source of revenue.

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 Section 3435(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 to is: Lindsay Rains, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: [Lindsay.rains@cdfa.ca.gov](mailto:Lindsay.rains@cdfa.ca.gov). In her absence, you may contact Stephen Brown 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](http://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 amended subsection 3700(c) of the regulations in Title 3 of the California Code of Regulations pertaining to Oak Mortality Disease Control (Sudden Oak Death (SOD)) as an emergency action which was effective on November 27, 2013. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than May 27, 2014.

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

**PUBLIC HEARING**

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

**WRITTEN COMMENT PERIOD**

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to [sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov). The written comment period closes at 5:00 p.m. on January 20, 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  
[sbrown@cdfa.ca.gov](mailto:sbrown@cdfa.ca.gov)  
916.654.1017  
916.654.1018 (FAX)

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

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

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

Existing law, FAC section 22, finds that the planned production of trees shall be considered a branch of the agricultural industry of the state for the purposes of any law which provides for the benefit or protection of the agricultural industry of the state.

Existing law, FAC subsection 23(a), finds that the planned production of bushes, ornamental plants, floricultural crops, and other horticultural crops is distinguishable from the production of other products of the soil only in relation to the time elapsing before maturity, plants and floricultural crops that are being produced by nurseries, whether in open fields or in greenhouses, shall be considered to be “growing agricultural crops” for the purpose of any laws that pertain to the agricultural industry of the state, and those laws shall apply equally to greenhouses and open field nursery operations.

Existing law, FAC section 24, states that as a matter of legislative determination, that the provisions of this section are enacted in the exercise of the power of this state for the purpose of protecting and furthering the public health and welfare. It is further declared that the floriculture and nursery industry of this state is affected with a public interest, in that, among other things:

(a) The production, processing, manufacture, and distribution of floriculture and nursery products constitute a paramount industry of this state which not only provides substantial and required revenues for the state and its political subdivisions by tax revenues and other means, and employment and a means of livelihood for many thousands of its population, but also furnishes substantial employment to related industries that are vital to the public health and welfare.

Existing law, FAC section 24.5, states “Inasmuch as plants growing in native stands or planted for ornamental purposes contribute to the environmental and public health and welfare needs of the people of the state, the Legislature hereby finds and declares that such plants shall be considered as a part of the agricultural industry

for the purpose of any law that provides for the protection of the agricultural industry from pests.”

Existing law, FAC section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, FAC section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, FAC section 5321, 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.

Existing law, FAC section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

The non-monetary benefits of this regulation include meeting the Department’s various statutory obligations and goals listed above. While the existing law also obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution, it establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. This amendment provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is also a mandated statutory goal.

The amendment of this regulation benefits the nursery industry (growers, wholesalers, retailers, exporters) and its consumers, Christmas tree growers and their consumers, firefighters (local, State and federal), local governments, home owners, indigenous people, the State’s forests, the general population of this State and the environment by having a control program to prevent the artificial spread of SOD over long distances. Most all of the larger nursery stock producers are located outside the existing regulated area.

Consumers benefit by having higher quality host material free from the symptoms of SOD available at an overall lower cost. It is assumed that any increases in statewide production costs would ultimately be passed on to the consumer.

The amendment of this regulation benefits homeowners who already have host material which is planted as ornamentals in various rural and urban landscapes.

FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state.”

The amendment of this regulation is preventing the artificial spread of SOD to uninfested areas of the State.

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

The Department is the only agency which can implement plant quarantines. 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

This emergency amendment of subsection 3700(c) established *Gaultheria procumbens* (wintergreen, Eastern teaberry, boxberry) as an associated article under the articles and commodities covered by the regulation. The effect of the changes to the regulation is to provide authority for the Department to regulate movement of this new “associated host” from the regulated area to prevent artificial spread of the pest to non-infested areas to protect California’s agricultural industry and the environment.

#### 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 Department is not aware of any costs a representative person or business would 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 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.

This amendment is for an existing on-going program. The Department believes this amendment of the regulation benefits public safety by preventing additional hazardous trees in uninfested areas, worker safety by preventing firefighters (local, State and federal) and arborists from being exposed to hazardous trees which are more prone to unpredictable branch and trunk failures due to the SOD pathogen. The Department is not aware of any specific benefits to the health of California residents. The Department believes the amendment of this regulation benefits the welfare and economic well-being of California residents by reducing fire hazards and hazardous breaking trees; and, protecting property values, heritage trees, cultural traditions, forests, and local, State and national parks, wildlife and the environment from artificial spread of the SOD pathogen through this new associated host.

#### 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 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 3700(c) pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

#### REFERENCE

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

#### CONTACT

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

S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, 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 14. FISH AND GAME COMMISSION

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 713, 1050, 7078, 7701, 7708, 7923, 8026, 8425, 8428 and 8429.5 of the Fish and Game Code and to implement, interpret or make specific sections 1050, 7050, 7071, 7701, 7708, 7852.2, 7923, 8026, 8101, 8425, 8428, 8429.5, 8429.7, 12159 and 12160 of said Code, proposes to amend Section 149 and subsection (a) of Section 149.1, Title 14, California Code of Regulations (CCR), relating to the commercial take of market squid.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Market Squid Fishery Management Plan (MSFMP) was developed under the provisions set forth by the Marine Life Management Act (MLMA) and sets goals and objectives to govern the conservation, sustainable use, and restoration of the market squid resource. Section 149, Title 14, CCR, governs commercial market squid fishing activities off California, pursuant to the MSFMP.

Under current regulations, market squid is allowed to be landed commercially after the catch limit of 118,000 short tons has been reached so long as the amount does not exceed two tons within a calendar day or if the squid will be used for live bait. The regulation also provides for an incidental allowance of up to two tons per calendar day or per trip; however, "incidental" is not defined. The intent of this regulation was to allow for incidental take of market squid in other fisheries. It was never the intent, nor is it compatible with the management goals of the MSFMP to have a two-ton directed fishery occurring after the Seasonal Catch Limit has been reached. The Department proposes to clarify regulations defining incidental take to ensure that after the season ends, market squid is only landed or possessed on a vessel incidental to the take of other species or for live bait purposes.

The following changes are proposed:

- Subsection 149(h): Modify language and broaden the scope of the regulation to specify that squid taken in violation of any commercial squid fishing law or regulation shall be forfeited to the Department. Also, the requirement that squid fishermen or buyers sign a release of property form is proposed to be repealed.
- Subsection 149(l): Modify the incidental take provisions specifying that incidentally taken squid shall meet the following criteria:
  - 1) The volume landed or possessed on a vessel cannot exceed two tons per trip;
  - 2) The amount of squid incidentally taken cannot exceed a specified percentage of the total volume of the fish landed or possessed on a vessel. The Department is proposing that the Commission consider an incidental take allowance ranging from 0-30 percent.

The Department recommends establishing an incidental take allowance of 10 percent; however, the Commission may select an incidental take allowance within the range between 0 and 30 percent.

The following changes are also proposed to improve the organization, clarity and consistency of the regulations:

- Subsection 149(a): Add text referencing the existing permit requirements in Section 149.1 for vessels fishing for market squid, and to clarify that vessels taking or possessing squid incidentally or for live bait are not subject to these permit requirements.
- Subsections 149(a–i): Renumber each subsection due to the proposed addition of the new subsection 149(a).
- Subsection 149(i): Removal of “or to vessels pursuing squid for live bait purposes only” is proposed because the exemption of live bait is clarified in the proposed opening paragraph of the regulatory language.
- Subsection 149(k): Changes are proposed to clarify that operators and crewmembers on a permitted market squid vessel are exempt from the requirement to possess a Tidal Invertebrate Permit.
- Subsection 149(m): Clarify that squid taken for live bait must be used for that purpose and that take of live squid for bait is exempt from other requirements in Section 149, unless expressly specified.
- Subsection 149.1(a): Update cross reference to current subsection 149(g) to reflect renumbering of Section 149 subsections.

### Benefits of the Regulation

The proposed regulatory action will benefit fishermen, processors, the State’s economy, and the environment by maintaining a healthy sustainable market squid fishery.

### Consistency with State Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulations are consistent and compatible with regulations concerning the commercial take of market squid in marine protected areas [subsection 632(b), Title 14, CCR] and with regulations concerning squid weighing provisions (sections 4470, 4471, 4472, Title 4, CCR). Commission staff has searched the California Code of Regulations and statutes and has found no other state regulations related to the take of market squid and no other state agency with authority to promulgate commercial squid fishing 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 in the Hilton San Diego Mission Valley, 901 Camino del Rio South, San Diego, California, on Wednesday, December 11, 2013 at 8:30 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, rele-

vant 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.

Written comments may be submitted at the address given below, or by fax at (916) 653–5040, or by e-mail to [FGC@fgc.ca.gov](mailto:FGC@fgc.ca.gov). **Written comments delivered to the Commission office must be received before 5:00 p.m. on January 31, 2014.** All comments must be received no later than February 5, 2014, at the hearing in Sacramento, CA. 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 Sherrie Fonbuena at the preceding address or phone number. **Dr. Craig Shuman, Marine Region Manager, Department of Fish and Wildlife, phone (805) 568–1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, 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. 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 Businesses, 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 continue to allow all actively permitted market squid vessels (vessel, light, and brail) to participate in a directed fishery for market squid during the commercial market squid season until the season closes. The proposed regulations close the loophole, which unintentionally allows directed fishing after the Seasonal Catch Limit has been reached. Allowing directed squid fishing after the season is closed can pose risk to the squid resource and the ecosystems that rely on it, while also creating an unfair market advantage for those who have availed themselves of the loophole in past seasons when the fishery closed early. In addition, the proposed regulations would set limits on the allowable take of squid caught incidentally in landings with other species.

Brail fishermen, like all squid permittees, will be authorized to fish for squid only up until the Seasonal Catch Limit has been reached. The proposed regulations clarify that when the fishery is closed, it is closed for all directed commercial squid fishing activity regardless of gear type. Impacts to individual fishing operations will vary, as some operations may maximize their squid fishing efforts early in the season, while others may not begin squid fishing activity until later in the season. Neither the MSFMP nor existing regulations establish allocations of squid between fishermen or fishery sectors to allow them to select desired fishing dates. Rather, the fishery operates on a single seasonal limit, which has been attained in only four seasons since the limit's inception in 2001.

Under the proposed regulatory amendments, fishermen currently taking advantage of this loophole will no longer be able to take up to two tons of squid per day after the Seasonal Catch Limit has been reached unless it occurs incidentally to another fishery. Therefore the proposed regulation changes are not expected to result in significant statewide adverse economic impacts to businesses. Additionally, if the full seasonal catch limit is attained, there has likely

been a great deal of economic success for at least some squid fishing operations and businesses. Market squid fishery permits of all gear types provide authorization to commercially fish for squid during the open season and time periods, but regulations do not provide more refined opportunities for some sectors, gears or individual vessels at the exclusion of others.

Depending on which option is chosen, limits on the percent composition of squid caught incidentally could result in impacts to aggregate ex-vessel revenue potential for the 36 fishermen affected. The estimated, per-season aggregate revenue impacts resulting from a zero-to-30 percent incidental take limit are \$(804,000) to \$(19,000), respectively. Disaggregating these estimates results in a projected average potential revenue impact of \$(7,000) to \$(200), respectively, per fisherman per season.

Under the proposed regulations, limits on the percent composition of squid caught incidentally ranging from zero to 30 percent could result in statewide economic impacts of \$(521,000) to \$(13,000), respectively, in total economic output. These estimates are on a per-season basis, and represent the aggregate impact to all 36 fishermen potentially affected by incidental take limits on squid. In light of the entire landings taken by these fishermen, the zero-to-30 percent limits would affect statewide economic output by about -2.1 percent to -0.1 percent, respectively.

Overall, the ex-vessel fishing revenue of squid landings after the early season closure averaged only 1.10 percent of total seasonal squid landings ex-vessel fishing revenue from 2010-2013. When viewed as a percentage of landings using brail gear only, landings after the closure constituted a larger proportion of total landings for this gear type, averaging 31.82 percent over the last three years. Compared to average after-season-closure landings over the past three years (2010-2013), the proposed regulatory change to eliminate the two-ton directed take of squid could result in the direct loss of ex-vessel fishing revenue of about \$(726,000), indirect losses in the amount of \$(76,000), and the potential loss of up to eight (8.0) jobs. It is important to note that there are seasons when the squid fishery does not close early; therefore, the unintended directed fishery during the post-closure period would not occur during these seasons nor would associated income be earned.

The Commission recognizes that some individuals, vessels, and processing plants engaged in the market squid fishery have no other viable alternative fisheries available to them and that a decline or a loss of the market squid resource would cause economic losses to the individuals or corporations engaged in the market squid fishery. However the continued management of this marine resource through the implementation of these regulations will serve to preserve the ongoing viability of market squid fisheries and associated businesses.

- (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:

The Commission does not anticipate significant adverse impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California. Depending on which option the Commission chooses, potential job losses range from 0.5 to 0.1 for an incidental take allowance from 5 percent to 30 percent, respectively; if the Commission decides not to allow incidental take of squid (zero allowance), then three jobs could be lost. These estimates are on a per-season basis, and represent the aggregate impact arising from all 36 fishermen potentially affected by incidental take limits on squid.

Up to eight jobs could be lost if the 2-ton directed fishery is eliminated in years when the fishery closes early. Estimated job losses are for the squid fishery; spending to businesses linked to fishery operations; and for businesses impacted by direct and intermediary employees' spending. Thus, job losses would be shared across an array of associated businesses which would lessen adverse impacts to the viability of individual squid fishery businesses. Additionally, the overall economic effects of eliminating the 2-ton directed fishery are likely to be ameliorated by other revenue sources such as lighting or targeting other species.

The Commission anticipates benefits to the environment in the sustainable management of the

squid resource and benefits to species dependent upon a healthy squid resource.

The Commission anticipates generalized benefits to the health and welfare of California residents through the protection of the market squid population and the fish and wildlife resources that depend upon them. The Commission does not anticipate any benefits to worker safety because the proposed regulations will not impact worker conditions.

- (c) 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.

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

The state may incur landings tax revenues losses. Depending on which option the Commission selects, the decreases in landings tax revenues could range from \$20,000 to \$195,000 per year. There will be no costs/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

tive in implementing the statutory policy or other provision of law.

## TITLE 14. STATE MINING AND GEOLOGY BOARD

### PROPOSED AMENDED REGULATIONS FOR DESIGNATION OF MINERAL LANDS IN THE PALM SPRINGS PRODUCTION–CONSUMPTION REGION, RIVERSIDE COUNTY

NOTICE IS HEREBY GIVEN that the State Mining and Geology Board (SMGB) proposes to amend regulations described below after considering all comments and recommendations regarding the proposed action.

#### REGULATORY ACTION

The SMGB has adopted, by regulation set forth in CCR Section 3550, the designation of certain mineral resource sectors within geographical areas to be of regional significance. Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future. The SMGB proposes to present new proposed regulations which would amend Section 3550.15 to Title 14, Article 2, of the California Code of Regulations (CCR), and provide a description of the locations of mineral resources areas designated to be of statewide significance, and areas where designation will be terminated, within the Palm Springs Production–Consumption (P–C) Region, Riverside County.

#### PREVIOUS PUBLIC HEARINGS

The State Geologist recommended to the SMGB 1) several candidates, or areas, which meet or exceed the SMGB’s threshold economic value, thus, each area may be considered for designation as an area of regional or statewide significance by the SMGB, and 2) several candidates, or areas, where the SMGB’s involvement is no longer required. The reclassified areas are identified as Sector K. Candidate Sector K has eight sub–sectors (K–1 through K–8) that border the existing Sector G on the northwestern, northern, and eastern sides, and two areas in the eastern Palm Springs P–C Region being reclassified as MRZ–2b for PCC–grade aggregate. These areas are identified as Candidate Sector I and Candidate Sector J (sub–sectors J–1 through J–6).

In regards to termination of lands previously designated, five areas, in Sectors A–3, B–2, B–3, and B–5 in the San Geronio Pass, are sites where large, high–

value wind–driven electrical generators have been constructed. One area, Sector C in Little Morongo Canyon near Desert Hot Springs, is the site of recently constructed urban development and flood control infrastructure. These designated sites are located in the western part of the Palm Springs P–C Region and will be terminated. The recommendations were accepted by the SMGB on October 14, 2010.

The 60–day public comment period, pursuant to PRC Section 2762(d)(2), commenced on February 6, 2009, and ended on April 7, 2009. In addition, pursuant to PRC Section 2793, a public hearing was held on March 11, 2009, in Palm Springs. The hearing facility was barrier free in accordance with the Americans with Disabilities Act. At the hearing, an opportunity for any person to present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest, was provided. The SMGB requested, but did not require, that persons who made oral comments at the hearing also submit a written copy of their testimony. Written comments were received from the Coachella Valley Mountains Conservancy (CVMC), and the Friends of the Desert Mountains in regards to designation of new areas. No comments were received pertaining to termination of designated areas.

The CVMC in correspondence dated March 10, 2009, offered several comments as follows:

**Comment No. 1: Sector I is described as including “that part of Thermal canyon wash within the Palm Springs P–C Region. It is south of Interstate Highway 10. . . .” Thermal Canyon wash is an important wildlife movement corridor linking the Mecca Hills Wilderness and Joshua Tree National Park. The Friends has been acquiring land adjacent to Thermal Canyon with a Proposition 84 grant from the Conservancy to protect this crucial biological corridor. Thermal Canyon is also targeted for conservation within the NCCP Reserve System.** Intent to purchase land does not prevent or conflict with designation. A surface mine is temporary and with reclamation the mine site is returned to open space, or some other land use determined by the local lead agency. Designation does not prevent subsequent conservation of these areas, or consideration of some other land use incompatible with mining.

**Comment No. 2: Sector J–1 (2,633 acres). This is a portion of the 8,881 acres acquired in 2004 by a partnership of conservation entities to conserve the lands in perpetuity as part of the NCCP Reserve System. The lands are currently managed by the California Department of Parks and Recreation (“State Parks”), the California Department of Fish and Game (“CDFG”) and the Friends of the Desert Mountains (“Friends”). These lands were acquired primarily or entirely with Proposition 40 bond**

**funds approved by the voters specifically for the purpose of protecting wildlife habitat and other conservation values.** The SMGB has previously not considered designation of mineral lands when such land has been purchased for the sole purpose of protecting wildlife habitat and other conservation values. When the SMGB in 1989 considered designation within the Palm–Springs P–C Region, the SMGB excluded land designated after public input for the following reasons:

- Within a Habitat Conservation Plan (i.e., endangered species such as fringed–toed lizard habitat);
- Sectors identified as a sensitive resource area;
- High winds and scenic corridors;
- Existing wind turbines and gas lines, high winds, visual concerns, and the potential for high water; and
- Floodplain Reserve because of the existence of endangered species.

Being consistent with previous considerations, it is recommended that approximately 2,633 acres within Sector J–1 not be designated.

**Comment No. 3: Sector J –2 (103 acres). This is a portion of the 8,881 acres acquired in 2004 by a partnership of conservation entities to conserve the lands in perpetuity as part of the NCCP Reserve System. The lands are currently managed by State Parks. These lands were acquired primarily or entirely with Proposition 40 bond funds approved by the voters specifically for the purpose of protecting wildlife habitat and other conservation values.** Similar to the response to Comment No. 2, and being consistent with previous considerations, it is recommended that approximately 103 acres within Sector J–2 not be designated.

**Comment No. 4: Sector J –3 (1,135 acres). A portion of this sector is part of the 8,881 acres referenced above and is managed in part by the Bureau of Land Management (BLM) and in part by State Parks. BLM used federal funds specifically to protect the habitat values of the property as part of the Coachella Valley Fringe–toed Lizard Area of Critical Environmental Concern. State Parks used Proposition 40 bond funds approved by the voters specifically for the purpose of protecting wildlife habitat and other conservation values. Additional portions of this sector were acquired in the 1980s by ELM with federal funds as part of the establishment of the Coachella Valley Fringe–toed Lizard Area of Critical Environmental Concern, which is part of the Coachella Valley Fringe–toed Lizard Preserve established pursuant to a Habitat conservation Plan to satisfy the federal Endangered Species Act.** Similar to the response to Comment No. 2, and being consistent

with previous considerations, it is recommended that approximately 1,135 acres within Sector J–3 not be designated.

**Comment No. 5: Sector K–1 (112 acres). The portion of this that is in Section 28 is owned by State Parks and is within the Indio Hills unit of the State Park system. State Parks is a Permittee under the NCCP and is obligated to manage the land for its habitat conservation values in perpetuity.** Similar to the response to Comment No. 2, and being consistent with previous considerations, it is recommended that approximately 52 acres within Sector K–1 not be designated.

**Comment No. 6: Sector K–4 (136 acres). The portion of this that is in Section 27 is owned by either State Parks and is within the Indio Hills unit of the State Park system and the NCCP Reserve System, or by the Friends of the Desert Mountains. State Parks is a Permittee under the NCCP and is obligated to manage the land for its habitat conservation values in perpetuity. The Friends is a nonprofit conservation organization that holds land for the purpose of conserving the resource values on the land. The Friends' land is also with the NCCP Reserve System.** Similar to the response to Comment No. 2, and being consistent with previous considerations, it is recommended that approximately 4 acres within Sector K–4 not be designated.

FDM in correspondence dated March 11, 2009, expressed support of the comment letter provided by the CVMC dated March 10, 2009, noting that FDM owns considerable acreage within potential designated areas, and expressed no interest in any of their lands being designated for possible mineral extraction.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the SMGB. Comments may also be submitted by facsimile (FAX) at (916) 445–0738 or by e–mail to [stephen.testa@conservation.ca.gov](mailto:stephen.testa@conservation.ca.gov). The 45–day comment period will commence on December 6, 2013, and closes at 5:00 p.m. on January 20, 2014. The SMGB will consider only comments received at the SMGB office by that time. No public hearing is scheduled, but any person can request a public hearing no later than 15 days before the close of the written comment period.

#### AUTHORITY AND REFERENCE

The SMGB proposes to adopt a regulation that amends Section 3350.15 to Article 2 of the California Code of Regulations, Title 14, Division 2, Chapter 8,

Subchapter 1, pursuant to its authority granted in PRC Sections 2790 and 2207 (Reference PRC Section 2726, 2761–2763, 2790–2791, and 2793).

INFORMATIVE DIGEST

The SMGB has adopted, by regulation set forth in CCR Section 3550 the designation of certain mineral resource sectors within geographical areas to be of regional significance. Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future.

In 1985, the California Division of Mines and Geology (CDMG; now CGS) published Special Report 159 (SR 159) — *Mineral Land Classification: Aggregate Materials in the Palm Springs Production–Consumption Region*. In response to this classification report, the SMGB, in 1989, designated construction aggregate resource areas of regional significance in the Palm Springs P–C Region as presented in the report titled “*SMARA Designation Report No. 10 — Designation of Regionally Significant Construction Aggregate Resources in the Palm Springs Production–Consumption Region*”. At its December 13, 2007, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 198 which updated information on Portland cement concrete–grade (PCC) aggregate in the Palm Springs Production–Consumption (P–C) Region previously presented in SR 159.

The updated mineral classification report prepared by CGS, SR 198, presented the following conclusions:

- As of January 2006, eleven mines, operated by seven different mining companies, were producing PCC–grade aggregate in the Palm Springs P–C Region. In 1985, there were eight mines operated by five mining companies. In addition to PCC aggregates, these mines also produced a full range of lower aggregate grades for such products as asphaltic concrete and base.
- The anticipated consumption of aggregate in the Palm Springs P–C Region for the next 50 years (through the year 2056) is estimated to be 307 million tons, of which 45 percent, or 138 million tons, must be PCC quality. This is nearly double the 50–year consumption estimate made in SR 159.
- Since 1985, permitted PCC–grade aggregate reserves have increased from 67 million tons to 167 million tons, extending the projected depletion date from 2012 to 2038.

- Approximately 10 percent, or 923<sup>(a)</sup> acres of the 9,094 acres of lands designated by the SMGB in 1989, has been lost to land uses incompatible with mining.
- An additional 6,638 acres of land containing an estimated 472 million tons of PCC–grade aggregate resources have been identified in the Palm Springs P–C Region.

The publication of Special Report 159, and its update, Special Report 198, accomplish part one of the two–part *Classification–Designation process*. Part two of the two–step process, designation, is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance needed to meet the demands of the future. In the years since the original publication of Special Report 159, termination of designation for certain areas where the direct involvement of the SMGB is no longer required has also been identified.

The State Geologist has recommended several candidates, or areas, which meet or exceed the SMGB’s threshold economic value; thus, each area may be considered for designation as an area of regional or statewide significance by the SMGB. These areas include eight areas which have been reclassified as MRZ–2a, and eight areas that have been reclassified as MRZ–2b.

The State Geologist also recommended five areas for termination of designation. Six areas (in five Sectors) are identified as potential candidates for termination of designation status due to high–value incompatible land use developments. Five areas, in Sectors A–3, B–2, B–3, and B–5 in the San Geronio Pass, are sites where large, high–value wind–driven electrical generators have been constructed. One area, Sector C in Little Morongo Canyon near Desert Hot Springs, is the site of recently constructed urban development and flood control infrastructure. These sites, located in the western part of the Palm Springs P–C Region, are shown on Plate 1 (Western Area). In addition to the areas described below, areas in Sectors E–1, E–2, and F are now underlain by a utility corridor carrying fiber optic cables. These areas amount to 100 acres containing 27 million tons of aggregate. Because these cables may be relocatable, allowing for the mining of the underlying aggregate, the State Geologist did not recommend termination of designation status for these utility corridors at this time.

POLICY STATEMENT OVERVIEW

The proposed regulations would allow consideration of new information obtained since the publication of the 1985 Mineral Land Classification study. The proposed amended regulations reflect information provided in

CGS Special Report 159 which identified 28.2 square miles of sectorized lands available to meet future aggregate needs, and approximately 67 million tons of PCC-grade aggregate resources. A reevaluation and update as presented in CGS Special Report 198 identified an additional 6,638 acres of land containing an estimated 472 tons of PCC-grade aggregate resources. The reclassified areas are identified as Sector K. Candidate Sector K has eight sub-sectors (K-1 through K-8) that border the existing Sector G on the northwestern, northern, and eastern sides, and two areas in the eastern Palm Springs P-C Region being reclassified as MRZ-2b for PCC-grade aggregate. These areas are identified as Candidate Sector I and Candidate Sector J (sub-sectors J-1 through J-6).

Each Sector that may be considered for designation as an area of regional or statewide significance by the SMGB pursuant to Article 6, Section 2790 *et seq.* (SMARA), meets or exceeds the threshold value as established by the SMGB. This proposed regulation is necessary in order for the State to meet its aggregate availability and sustainability needs.

The proposed regulatory language is consistent and compatible with existing state regulations. The specific benefits anticipated by the proposed amendment include nonmonetary benefits to the environment by avoiding species conservation areas and habitat-sensitive areas, while contributing to efforts to reduce greenhouse gas emissions, and do not conflict with the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things.

#### CEQA COMPLIANCE

The SMGB has determined that this rulemaking action is not a project as defined in the California Environmental Quality Act (CEQA) and is exempt from the requirements of CEQA, Title 14, CCR, Section 15061(b)(3).

#### DISCLOSURES REGARDING THE PROPOSED ACTION

The SMGB's Executive Officer has made the following preliminary determinations:

**Mandate on local agencies and school districts:** The adoption of this amended regulation does not impose any new mandates on local agencies or on local school districts.

**Costs or savings to any State agency:** The proposed amended regulation imposes no savings or additional expenses to state agencies.

**Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630:** The proposed amended regulation does not impose any additional cost obligations on local agencies or on local school districts.

**Other non-discretionary costs or savings imposed upon local agencies:** No other non-discretionary costs or savings to local agencies are imposed by the proposed amended regulation.

**Cost or savings in Federal funding to the State:** There are no costs or savings in Federal funding to the State.

**Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states:** No statewide adverse impacts to California businesses result from the adoption of this proposed amended regulatory language.

**Potential cost impact on private persons or directly affected businesses:** The imposition of the proposed amended language on a directly affected local mining operation will have a positive cost impact to that operation by the recognition of designated mineral land of regional significance which in some circumstances may reduce the amount of time, thus cost, in acquiring a permit to mine from its lead agency. Also, termination of formally designated areas would not have any cost impact. Therefore, 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.

**Results of Economic Impact Analysis:** The adoption of this amended regulation will not:

- Create nor eliminate jobs within California;
- Create new nor eliminate existing businesses within California;
- Expand businesses currently doing business in California.

The adoption of this amended regulation will, however, benefit the health and welfare of California residents and the state's environment by avoiding species conservation and habitat-sensitive areas, as well as reducing greenhouse gas emissions related to transportation.

**Significant effect on housing costs:** The adoption of this amended regulation will have no significant effect on housing costs, but may reduce such costs by providing a source of PCC-grade aggregate closer to users and market areas.

**Effects on small businesses:** The imposition of the proposed amendment will have no cost impact on small businesses. The SMGB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no costs related or associated with the proposed designation of mineral lands. Such considerations require a lead agency to consider the regional significance of mineral lands designated by the SMGB when making land-use decisions, but does not impose any fees or costs to small businesses as part of that consideration.

CONSIDERATION OF ALTERNATIVES

The SMGB must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the SMGB 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 the statutory policy or other provision of law. The SMGB’s Executive Officer has not identified any adverse impacts resulting from the proposed regulation.

No alternatives have been considered by the SMGB at this time that would be more effective in carrying out the purpose for which the regulatory action is proposed, nor have any other alternatives been proposed that would be as effective and less burdensome to affected private persons, lead agencies, or small businesses.

CONFLICT WITH FEDERAL REGULATIONS

This regulation change does not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the SMGB, SMARA and federal law are coordinated to eliminate duplication.

GENERAL PURPOSE AND  
CONDITION ADDRESSED

Article 6 of the Surface Mining and Reclamation Act of 1975 (SMARA), commencing with PRC Section 2790, provides for the SMGB, based upon mineral information from the State Geologist pursuant to subdivision (c) of PRC Section 2761, to adopt in regulation specific geographic areas of the state as areas of state-

wide or regional mineral resource significance and specify the boundaries of those areas.

At its December 13, 2007, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 198 which updated information previously presented in a classification report on Portland cement concrete-grade (PCC) aggregate in the Palm Springs Production-Consumption (P-C) Region completed in 1985. The previous report was published by the California Division of Mines and Geology (CDMG; now CGS) as Special Report 159 (SR 159) — *Mineral Land Classification: Aggregate Materials in the Palm Springs Production-Consumption Region*. The State Geologist’s recommendations for designation, and termination of designation, of select mineral resource lands in the Palm Springs P-C Region, Riverside County, were accepted by the SMGB’s Mineral and Geologic Resources Committee at its regular business meeting held on April 10, 2008. The 60-day public comment period commenced on February 6, 2009, and ended on April 7, 2009. In addition, pursuant to PRC Section 2793, a public hearing was held on March 11, 2009, in Palm Springs. During such hearing, comments were received and responses prepared. Written comments were received from the Coachella Valley Mountains Conservancy (CVMC), and the Friends of the Desert Mountains, and addressed. At its October 14, 2010, regular business meeting, the SMGB accepted the proposed regulation with modification in consideration of public comments received.

SPECIFIC PURPOSE

The proposed amendments to Section 3550.15, Article 2 CCR, are intended to clarify and make specific those mineral lands that are to be designated by the SMGB as having regional significance within the Palm Springs P-C Region. These regulations are contained under Article 2, titled Areas Designated to be of Regional Significance.

The proposed amended regulations reflect information provided in CGS Special Report 159, which identified 28.2 square miles of sectorized lands available to meet future aggregate needs, and approximately 67 million tons of PCC-grade aggregate resources. A reevaluation and update as presented in CGS Special Report 198 identified an additional 6,638 acres of land containing an estimated 472 tons of PCC-grade aggregate resources. The reclassified areas are identified as Sector K. Candidate Sector K has eight sub-sectors (K-1 through K-8) that border the existing Sector G on the northwestern, northern, and eastern sides, and two areas in the eastern Palm Springs P-C Region being reclassified as MRZ-2b for PCC-grade aggregate. These areas

are identified as Candidate Sector I and Candidate Sector J (sub-sectors J-1 through J-6).

The State Geologist also recommended five areas for termination of designation in the western Palm Springs P-C Region. Six areas (in five Sectors) are identified as potential candidates for termination of designation status due to high-value incompatible land use developments. Five areas, in Sectors A-3, B-2, B-3, and B-5 in the San Gorgonio Pass, are sites where large, high-value wind-driven electrical generators have been constructed.

Proposed amended regulations CCR Section 3550.15, indicates reference to two plates (maps). These two plates form an integral part of the regulation.

#### STATEMENT OF NECESSITY

PRC Section 2790 provides the SMGB the authority to adopt regulations that establish state policy for the designation of mineral lands of statewide or regional significance, in accordance with Article 6 (commencing with Section 2790) of this chapter, and pursuant to PRC Section 2761. PRC Section 2790 states that after receipt of mineral information from the State Geologist, the SMGB may by regulation adopted after a public hearing designate specific geographic areas of the state as areas of statewide or regional significance and specify the boundaries thereof. Such designation shall be included as a part of the state policy and shall indicate the reason for which the particular area designated is of significance to the state or region, the adverse effects that might result from premature development of incompatible land uses, the advantages that might be achieved from extraction of the minerals of the area, and the specific goals and policies to protect against the premature incompatible development of the area. PRC Section 2791 also requires the SMGB to seek the recommendations of concerned federal, state, and local agencies, educational institutions, civic and public-interest organizations, and private organizations and individuals in the identification of areas of statewide and regional significance. PRC Section 2793 allows the SMGB by regulation adopted after a public hearing, to terminate, partially or wholly, the designation of any area of statewide or regional significance on a finding that the direct involvement of the board is no longer required.

In 2006, the California Geological Survey (CGS) in its statewide report titled "*Map Sheet 52 (Updated 2006), Aggregate Availability in California*" noted that the Palm Springs P-C Region 50-year demand for aggregate was on the order of 295 million tons. Permitted aggregate resources were on the order of 176 million tons. The percentage of permitted aggregate resources,

as compared to the 50-year demand, was 60 percent, significantly lower than the projected demand.

Special Report 159 "*Mineral Land Classification: Aggregate Materials in the Palm Springs Production-Consumption Region*," published by the California Division of Mines and Geology (CDMG; now CGS) in 1989, identified 28.2 square miles of sectorized lands containing approximately 67 million tons of PCC-grade aggregate resources available to meet future aggregate needs. In review of the reevaluation and update in Special Report 198 updated information on Portland cement concrete-grade (PCC) aggregate in the Palm Springs Production-Consumption (PC) Region previously presented in SR 159, the State Geologist has recommended several candidates, or areas, which meet or exceed the SMGB's threshold economic value, and each area may be considered for designation as an area of regional or statewide significance by the SMGB, and has identified an additional 6,638 acres of land containing an estimated 472 million tons of PCC-grade aggregate resources in the Palm Springs P-C Region. These areas include eight areas which have been reclassified as MRZ-2a, and eight areas that have been reclassified as MRZ-2b.

The State Geologist also recommended several candidates for termination of designation. Six areas (in five Sectors) are identified as potential candidates for termination of designation status due to high-value incompatible land use developments. Five areas, in Sectors A-3, B-2, B-3, and B-5 in the San Gorgonio Pass, are sites where large, high-value wind-driven electrical generators have been constructed. One area, Sector C in Little Morongo Canyon near Desert Hot Springs, is the site of recently constructed urban development and flood control infrastructure.

#### IDENTIFICATION OF TECHNICAL/THEORETICAL/EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS UPON WHICH THE SMGB HAS RELIED

Designation is the formal recognition by the SMGB of lands containing mineral resources of regional or statewide economic significance that are needed to meet the demands of the future. In 1985, the California Division of Mines and Geology (CDMG; now CGS) published Special Report 159 (SR 159) — *Mineral Land Classification: Aggregate Materials in the Palm Springs Production-Consumption Region*. In response to this classification report, the SMGB, in 1989, designated construction aggregate resource areas of regional significance in the Palm Springs P-C Region as presented in the report titled "*SMARA Designation Report No. 10 — Designation of Regionally Significant Construction Aggregate Resources in the Palm Springs*

*Production–Consumption Region*”. At its December 13, 2007, regular business meeting, the SMGB accepted California Geological Survey (CGS) Special Report 198 which updated information on Portland cement concrete–grade (PCC) aggregate in the Palm Springs Production–Consumption (P–C) Region previously presented in SR 159.

The updated mineral classification report prepared by CGS, SR 198, presented the following conclusions:

- As of January 2006, eleven mines, operated by seven different mining companies, were producing PCC–grade aggregate in the Palm Springs P–C Region. In 1985, there were eight mines operated by five mining companies. In addition to PCC aggregates, these mines also produced a full range of lower aggregate grades for such products as asphaltic concrete and base.
- The anticipated consumption of aggregate in the Palm Springs PC Region for the next 50 years (through the year 2056) is estimated to be 307 million tons, of which 45 percent, or 138 million tons, must be PCC quality. This is nearly double the 50–year consumption estimate made in SR 159.
- Since 1985, permitted PCC–grade aggregate reserves have increased from 67 million tons to 167 million tons, extending the projected depletion date from 2012 to 2038.
- Approximately 10 percent, or 923 acres of the 9,094 acres of lands designated by the SMGB in 1989, has been lost to land uses incompatible with mining.
- An additional 6,638 acres of land containing an estimated 472 million tons of PCC–grade aggregate resources have been identified in the Palm Springs P–C Region.

The State Geologist has recommended several candidates, or areas, which meet or exceed the SMGB’s threshold economic value; thus, each area may be considered for designation as an area of regional or state-wide significance by the SMGB. These areas include eight areas which have been reclassified as MRZ–2a, and eight areas that have been reclassified as MRZ–2b. The State Geologist also recommended five areas for termination of designation.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the SMGB may adopt the proposed regulations substantially as described in this notice. If the SMGB makes modifications which are sufficiently related to the originally proposed text, it

will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the SMGB adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mr. Stephen Testa at the address provided below. The SMGB 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, copies of the Final Statement of Reasons may be obtained by contacting Mr. Stephen Testa at the address provided below.

#### CONTACT PERSON

An interested person may request a copy of the proposed amended regulation and the Initial Statement of Reasons. Questions about the proposed regulation and Initial Statement of Reasons can be directed to the SMGB’s office. All supplemental information, upon which the regulation is based, is contained in the rule-making file.

The rulemaking file is available for inspection at the SMGB Office at 801 K Street, Suite 2015, Sacramento, California, between 9:00 a.m. and 4:00 p.m., Monday through Friday except during state holidays. Copies of the proposed regulation and the Initial Statement of Reasons may be requested by writing to the above address, or viewed on the SMGB’s Internet Web Site at: <http://www.conservation.ca.gov/smgbl>.

Inquiries concerning the substance of the proposed amended regulation should be directed to:

Mr. Stephen M. Testa, Executive Officer  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, California 95814  
Phone: (916) 322–1082  
Fax: (916) 445–0738  
[Stephen.Testa@conservation.ca.gov](mailto:Stephen.Testa@conservation.ca.gov)

OR

Amy Scott, Executive Assistant  
State Mining and Geology Board  
801 K Street, Suite 2015  
Sacramento, CA 95814  
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**TITLE 17. DEPARTMENT OF PUBLIC HEALTH**

**ACTION:** Notice of Proposed Rulemaking  
Title 17, California Code of Regulations  
**SUBJECT:** HIV Screening Testing by Laboratories,  
DPH-13-007E

The California Department of Public Health (Department) has adopted emergency regulatory amendments to the California Code of Regulations (CCR), Title 17, Section 1230 and 2641.57, and they are now in effect. The Department is now proposing to make those emergency regulatory amendments to Title 17, CCR, Sections 1230 and 2641.57 permanent.

**PUBLIC PROCEEDINGS**

Notice is hereby given that the Department will conduct a written comment period during which time any interested person or such person's duly authorized representative may submit statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice. No hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. For individuals with disabilities, should a public hearing be scheduled, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of written public hearing materials into Braille, large print, or onto audiocassette or computer disk. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing. To request such services or copies of materials in an alternate format, please write to Elizabeth Reyes, Office of Regulations, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, or call (916) 445-2529, or use the California Relay Service by dialing 711.

**WRITTEN COMMENT PERIOD**

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by **5 p.m. on January 20, 2014**, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to [regulations@cdph.ca.gov](mailto:regulations@cdph.ca.gov). It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "**DPH-13-007E**" in the subject line to facilitate timely identification and review of the comment; or
2. By fax transmission: (916) 440-5747; or
3. By mail to: Office of Regulations, California Department of Public Health, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377; or hand-delivered to: 1415 L Street, Sacramento, CA 95814. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

**INQUIRIES**

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Kama Brockmann, Office of AIDS, at (916) 449-5964.

All other inquiries concerning the action described in this notice may be directed to Elizabeth Reyes, Office of Regulations, at (916) 445-2529.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Background: The first cases of AIDS were first identified in 1981, and testing for HIV became available in 1985. In 1986, California enacted Title 17, section 1230 that mirrored the recommendation from the Centers for Disease Control and Prevention (CDC) and the Association of Public Health Laboratories (APHL) to use a sequential two-test algorithm to diagnose HIV-1. This laboratory protocol identifies positive HIV test results within approximately 45 days of infection.

Since then, HIV research, treatment, and testing protocols have improved dramatically. Prior to the adoption of the emergency regulations, California was one of the only states with high HIV prevalence that was not able to use a newly recommended HIV testing protocol or algorithm that can detect acute HIV infection within 14 days of infection, as many as 31 days earlier than the existing HIV algorithm. In addition, the existing HIV algorithm can take 7 to 10 days to process and return test results. Since the existing HIV algorithm confirmation test takes a long time to process, these tests are often run in batches two or three times a week rather than every day. In comparison, the new HIV test algorithm can be

processed with results back within 1 to 3 days. Combined with the time saving of earlier detection, the new HIV test algorithm reduces the time for diagnosing acute HIV infection from between 52 and 55 days down to 15 to 17 days.

The use of this new HIV testing algorithm is supported by the California Association of Public Health Laboratory Directors and the California Conference of Local Health Officers. Clinical and Laboratory Standards Institute (CLSI) has recommended the use of this new HIV testing algorithm for supplemental testing after a reactive HIV screening test. The CDC and the APHL have also proposed the use of this new algorithm. Importantly for California, the new HIV testing algorithm identifies acute HIV infection, a critical feature that the existing algorithm is unable to do. In a side-by-side comparison of the existing and new algorithm over an 18-month period, the San Diego Public Health Laboratory found 14 acute HIV infections that would not have been detected using the existing laboratory algorithm. The San Francisco Public Health Laboratory also ran a side-by-side comparison of the existing and new algorithm and found 19 acute HIV infections in 2012. These early acute HIV infection cases were not detected using the existing HIV algorithm.

Early detection of HIV is essential to decreasing the transmission of HIV to non-infected individuals. Research and public health studies show that people with acute HIV infection are more likely to transmit HIV than those with established infections. CDC also found that people with early infection are more likely to transmit than those with established infections due to high viral load and viral variants more able to cause infection.

Phylogenetic analysis of viral gene sequences has shown that people with early infection may account for between 24 and 50 percent of new transmissions of HIV infection. In addition, a 2005 meta-analysis of eight studies showed that people who knew their HIV positive status were 68 percent less likely to engage in risky sexual behaviors with people of unknown HIV status than people who did not know their HIV status. Allowing and encouraging California laboratories to implement use of this superior algorithm will decrease HIV transmission within California.

CDC estimates that prevention efforts in the United States have averted more than 350,000 HIV infections. In addition to the lives saved from HIV, it is estimated that more than \$125 billion in medical costs have been averted. Yet, HIV continues to be an epidemic in the United States and California. CDC estimates that in 2010, approximately 1,148,200 people in the United States lived with HIV/AIDS. At the end of 2012, 117,695 Californians were reported to be living with

HIV/AIDS. It is estimated that another 27,000 Californians have HIV but are unaware of their status. The Department estimates that each year another 5,000 to 6,000 Californians become infected with HIV. The projected life expectancy of someone from the time of entering HIV care is 24.2 years. Total discounted costs associated with the lifetime care of a person with HIV are estimated at \$385,200. HIV also decreases personal productivity and the quality of life for all affected Californians. If a person's HIV is undetected and untreated, their HIV disease will most likely progress to an AIDS diagnosis. While HIV care and treatment has improved, people with HIV still have to manage a long-term and chronic illness. This illness takes its toll on their capacity to work, their contributions to society and affects their families. Since research suggests between a quarter and half of all new infections are caused by people with acute HIV infection, widespread use of the new HIV testing algorithm could significantly decrease this number.

On a technical level, this newly developed HIV testing algorithm is more accurate than the existing HIV algorithm because the initial test is a sensitive screening assay that detects HIV-1 and HIV-2 or antibodies to these two viruses. If this initial test is reactive, a supplemental test is performed to differentiate between HIV-1 and HIV-2. If the supplemental test is also reactive, HIV-1 or HIV-2 is established. If the supplemental test is non-reactive or indeterminate, the specimen is further tested for acute HIV infection that neither of the first two tests could determine.

States with high prevalence of HIV/AIDS comparable to California such as New York and Florida are permitted to use this newly developed HIV testing algorithm to identify early HIV/AIDS infections and better protect public health. Both these states have had success identifying acute HIV infection.

## PURPOSE

The broad purpose of this proposed regulatory action is to reduce the transmission of HIV during the first months of acute HIV infection by reducing the waiting time for positive HIV test results from 45 days to 14 days from infection and allow for rapid notification of HIV test results to the patient. This regulatory action will reduce the number of newly HIV-infected persons in California and save lives.

The more specific purpose of the Department's proposed regulatory action is to permanently allow a newly developed HIV testing algorithm to be used by licensed California laboratories to better protect the public health, safety and welfare.

OBJECTIVE

The broad objectives of this proposed regulatory action are to:

- Permit the use of a newly developed HIV testing algorithm by licensed California laboratories to more quickly identify persons with acute HIV infections.
- Reduce the transmission of HIV during the first months of acute infection.
- Reduce the time for HIV test results from 45 days to 14 days from infection and reduce the HIV test processing time from 7 to 10 days down to 1 to 3 days. All combined the time needed to diagnose HIV infection is reduced from 52 to 55 days down to 15 to 17 days.
- Reduce the number of persons newly infected with HIV in California.
- Reduce health care costs by reducing the transmission of HIV to non-infected members of the public in California.
- Allow superior HIV testing protocols to better protect California’s public health and safety.
- Permit use of best laboratory protocols in California so the Department and California’s laboratories continue to be leaders in HIV testing.

BENEFITS

Anticipated benefits including nonmonetary benefits to the protection of public health and safety, worker safety, the environment, the prevention of discrimination, or the promotion of fairness or social equity, from this proposed regulatory action are:

- Making a laboratory protocol available to laboratory professionals to determine within 14 days of infection if a person has been infected with HIV, rather than waiting 45 days pursuant to the only protocol currently approved in CCR Title 17.
- Improving health outcomes of newly diagnosed HIV-positive individuals due to earlier diagnosis and linkages to appropriate care and treatment.
- Reducing the transmission of HIV from one infected individual to potentially numerous others during the first months of acute HIV infection.
- Establishing consistency between California’s HIV testing protocols and those adopted in other states with high HIV prevalence rates so that California remains a leader in HIV public health.

- Establishing alternative permissive laboratory protocol options rather than prescriptive requirements that meet current and serious concerns of public health officials, laboratory directors and the public.
- Promoting statewide availability of the best laboratory protocol practices that more effectively protect public health and safety.
- Reducing health care costs by reducing the transmission of HIV between members of the public in California.
- Saving lives by reducing the transmission of HIV between members of the public in California.

Evaluation as to whether the proposed regulations are inconsistent or incompatible with existing state regulations

The Department has evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department’s laws and specifically those statutes and regulations related to HIV, laboratory practices and health and safety. Department staff also conducted an internet search of other California and federal regulations.

While several state and federal statutes and regulations relate to HIV and AIDS, no statute or regulation was found that conflicts with this regulatory proposal. The Department also determined that this regulatory proposal is nonduplicative of any other known state or federal statute or regulation.

No other state regulation or statute addressed the same subject matter. Therefore, the Department has determined that this proposal, if adopted, would not be inconsistent or incompatible with existing state regulations or statutes.

AUTHORITY AND REFERENCE

The Department proposes this regulatory action under the authority provided in Sections 1603.1(f), 120895, 121022, 131019, 131050, 131051, 131056, and 131200 of the Health and Safety Code and Section 1224 of the Business and Professions Code. This proposal implements, interprets and makes specific Sections 1603.1, 101160, 120895, 120917, 121022, 131050, 131051, 131052, and 131056 of the Health and Safety Code and Sections 1206, 1220, and 1265 of the Business and Professions Code.

Pursuant to its authorities, the Department is proposing to amend CCR Sections 1230 and 2641.57, as follows:

Amend Section 1230: This regulatory proposal would amend Section 1230 to permit licensed laboratories to confirm HIV test results by using a newly devel-

oped HIV testing algorithm or other future diagnostic protocols recommended by CDC, CLSI, APHL or U.S. Department of Health and Human Services (DHHS). This proposal would also delete the requirement that CDC publish its recommended protocols in the *Morbidity and Mortality Weekly Report* (MMWR) before licensed California laboratories can use CDC recommended protocols.

These amendments are reasonably necessary to permit the permanent use of superior HIV diagnostic protocols recommended by leading HIV researchers and proposed by the federal government. These amendments also provide consistency between California and CDC, eliminate confusion for regulation users and provide clarity for laboratories and the public given CDC no longer publishes its recommended protocols in the MMWR.

Section 1230 also uses the term “confirmation” with respect to the HIV test results. CDC has discontinued use of the terms “confirmation” and “confirmatory” because they imply that the HIV test is in some way a definitive determination of HIV infection. Instead, an HIV diagnosis is obtained by screening and supplemental tests that indicate the presence of HIV antigens or antibodies. The deletion of the word “confirmation” and replacement with the word “diagnostic” in Section 1230 is reasonably necessary to more accurately represent the conclusions that can be drawn from HIV testing protocols. This amendment will also reduce confusion for licensed laboratories using these regulations and provide clarity for the public.

Amend Section 2641.57: This regulatory proposal would amend the definition of “HIV test algorithm” to permit the use of HIV test protocols recommended by CDC, CLSI, APHL or DHHS. This amendment is reasonably necessary so the definition of “HIV test algorithm” does not conflict with the proposed amendments to Section 1230. This amendment will provide clarity for regulation users by avoiding conflicts in wording between these regulatory sections.

Section 2641.57 also uses the term “confirmation” with respect to the HIV test results. CDC has discontinued use of the terms “confirmation” and “confirmatory” because they imply that the HIV test is in some way a definitive determination of HIV infection. Instead, an HIV diagnosis is obtained by screening and supplemental tests that indicate the presence of HIV antigens or antibodies. The deletion of the word “confirmation” and replacement with the word “diagnostic” in Section 2641.57 is reasonably necessary to more accurately represent the conclusions that can be drawn from HIV testing protocols. This amendment will also reduce confusion for licensed laboratories using these regulations and provide clarity for the public.

TECHNICAL, THEORETICAL, AND/OR  
EMPIRICAL STUDY, REPORTS OR  
DOCUMENTS RELIED UPON

Branson, B.M., Mermin, J. *Establishing the Diagnosis of HIV Infection: New Tests and a New Algorithm for the United States*. *Journal of Clinical Virology*, 52S (2011) S3–S4. [http://www.journalofclinicalvirology.com/article/S1386-6532\(11\)00387-8/fulltext](http://www.journalofclinicalvirology.com/article/S1386-6532(11)00387-8/fulltext).

Brenner, B.G. et al. *High Rates of Forward Transmission Events after Acute/Early HIV-1 Infection*. *Journal of Infectious Disease*, 2007:195, 951–959 (April 1) <http://jid.oxfordjournals.org/content/195/7/951.full.pdf+html?sid=1098401a-b005-4098-83a7-f87959b6a47a>.

California Association of Public Health Laboratory Directors, letter of support, dated February 6, 2013.

CDC. *HIV Prevention in the United States at a Critical Crossroads*. August, 2009. [http://www.cdc.gov/hiv/resources/reports/hiv\\_prev\\_us.htm](http://www.cdc.gov/hiv/resources/reports/hiv_prev_us.htm).

CDC. *Revised Recommendations for HIV Testing of Adult, Adolescents, and Pregnant Women in Health-Care Settings*. *Morbidity and Mortality Weekly Report*, September 22, 2006, Vol. 55, No. RR-14. <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>.

CLSI. *Criteria for Laboratory Testing and Diagnosis of HIV: Approved Guideline*. CLSI document M53–A. Wayne, PA: Clinical and Laboratory Standards Institute; 2011. Note that this laboratory guidance is proprietary although all certified laboratories use this document. <http://shopping.netsuite.com/s.nl/c.1253739/it.A/id.250/f>.

Hutchinson, A., et al. *Laboratory Cost of the APHL/CDC Proposed Algorithm for the Diagnosis of HIV*. 2012 HIV Diagnostics Conference Program Book, p. 69. <https://custom.event.com/ADE0EB81B3184D618E2FB8340F1EC28E/files/b7a7473c5a084eeca23e146649e3f33.pdf>.

Manlutac, A.M. *Identification of Early HIV Infections Using the Fourth Generation Abbott Architect HIV Ag/Ab Combo Chemiluminescent Microparticle Immunoassay (CIA) in San Diego County*. 2012 HIV Diagnostics Conference Program Book. December 12–14, 2012, Atlanta, Georgia. <https://custom.event.com/ADE0EB81B3184D618E2FB8340F1EC28E/files/b7a7473c5a084eeca23e146649e3f33.pdf>, <https://custom.event.com/ADE0EB81B3184D618E2FB8340F1EC28E/files/5aed5ead2525484fa1981dedad756cf4.pdf>.

Neuman, D. et al. *Performance of the new HIV-1/2 Diagnostic Algorithm in Florida’s Public Health Testing Population: A Review of the First Five Months of Utilization*. 2012 HIV Diagnostics Conference Program Book, December 12–14, 2012, Atlanta, Georgia.

<https://custom.cvent.com/ADE0EB81B3184D618E2FB8340F1EC28E/files/b7a7473c5a084eeca23e146649e3f33.pdf>,  
<https://custom.cvent.com/ADE0EB81B3184D618E2FB8340F1EC28E/files/6eebbfa7fb1b4553b9676161e980b211.pdf>.

Shackman, B.R. et al. *Lifetime Cost of Current Human Immunodeficiency Virus Care in the United States. Medical Care*, Vol. 44, No. 11, November 2006. <http://webserver.rilin.state.ri.us/HIV/Documents/lifetimecostofHIV.pdf>.

Forms Incorporated By Reference There are no documents to be incorporated by reference.

Mandated by Federal Law or Regulations Currently, there are no existing federal regulations or statutes applicable to the regulations.

Other Statutory Requirements Not applicable.

Mandate on Local Agencies or School Districts

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Fiscal Impact Estimate

- A. Fiscal Impact on Local Government: None. The Department is not aware of any cost impacts that a local health department laboratory would necessarily incur in reasonable compliance with the proposed action because the new HIV testing algorithm is not required to be used by licensed laboratories. Under this proposed action, licensed laboratories are allowed to continue to use the existing HIV test algorithm if they so choose at no increase or decrease in cost.
- B. Fiscal Impact on State Government: None. The Department is not aware of any cost impacts that a State laboratory would necessarily incur in reasonable compliance with the proposed action because the new HIV testing algorithm is not required to be used by licensed laboratories. Under this proposed action, licensed laboratories are allowed to continue to use the existing HIV test algorithm if they so choose at no increase or decrease in cost.
- C. Fiscal Impact on Federal Funding of State Programs: None.
- D. Fiscal Impact on Private Persons or Businesses Directly Affected: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action because the new HIV testing algorithm is not

required to be used by licensed laboratories. The Department estimates that the costs for existing HIV algorithm is approximately \$4.34 to \$5.34 per patient sample, and utilizing the newly developed HIV test algorithm will cost approximately \$3.44 to \$8.44 depending on the volume of the laboratory and the number of highly complex diagnostic steps required for a particular patient sample. These cost estimates include rental of laboratory equipment from the test manufacturer (standard laboratory operation cost). Under this proposed action, licensed laboratories are allowed to continue to use the existing HIV test algorithm if they so choose at no increase or decrease in cost.

- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: There are no known costs or savings imposed on local agencies in connection with this emergency regulatory package.
- F. Fiscal Impact on Local Agencies or School Districts: None. There are no known cost impacts on local agencies or school districts.

Recordkeeping Requirement None.

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

The Department has made the determination that the regulations would not have a significant adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations allow licensed California laboratories to use a newly developed HIV testing algorithm that can identify positive HIV test results within 14 days of infection, as many as 31 days earlier than the existing HIV algorithm. This will allow for earlier notification of HIV test results to the patient, provide more rapid referrals for appropriate HIV treatment, and it will save lives. Importantly, under this proposed action, licensed laboratories are allowed to continue to use the existing HIV test algorithm if they so choose at no increase or decrease in cost.

Result of Economic Impact Analysis

The Department has determined that the regulations would not significantly affect the following:

1. The Creation or Elimination of Jobs Within the State of California. This regulatory proposal will not create or eliminate jobs in California. The proposed regulations allow a new protocol to be used to test for HIV. The testing protocol will be different from the one protocol currently allowed, and the Department does not anticipate it will create or eliminate any jobs. In addition, licensed laboratories are allowed to continue to use the existing HIV test algorithm if they so choose.

2. The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California. The Department does not reasonably expect this regulatory proposal to create new businesses or eliminate existing businesses within the State of California. HIV testing is one of the many laboratory tests that licensed laboratories conduct in California, and laboratory tests and protocols often change over time due to research findings and discoveries. Allowing the use of a new protocol will not result in the creation or elimination of licensed laboratories. Licensed laboratories are allowed to continue to use the existing HIV test algorithm if they so choose at no increase or decrease in cost.
3. The Expansion of Businesses Currently Doing Business Within the State of California. This regulatory proposal is not expected to expand businesses within the State of California. HIV testing is one of the many laboratory tests that licensed laboratories conduct in California, and permitting a new protocol will not reasonably result in the expansion of businesses.
4. Worker Safety. This regulatory proposal does not affect worker safety because it does not impact workers.
5. California's Environment. This regulatory proposal does not affect the State's environment.

#### STATEWIDE EFFECT ON HOUSING COSTS

The Department has determined that this regulatory proposal does not impact housing costs within California.

#### BENEFITS OF THE REGULATION

The proposed regulations are expected to decrease the cost for HIV treatment and care in California. Early identification of acute HIV infection saves lives by lowering the transmission of HIV to non-infected members of the public and by more quickly addressing medical needs of those who test positive for HIV. Total discounted costs associated with the lifetime care of a person with HIV are estimated at \$385,200. This will reduce health care costs and allow funds that would otherwise be spent on HIV treatment and patient care to be spent in other ways that benefit the health and welfare of California residents, worker safety, the environment, or on other state priorities.

#### SMALL BUSINESS DETERMINATION

The Department has determined that the proposed regulations will not affect small businesses that process these HIV tests, and in the event that there are small businesses that do, this regulatory proposal does not require them to use the new HIV test algorithm. Licensed laboratories are allowed to continue to use the existing HIV test algorithm if they so choose at no increase or decrease in cost.

#### ALTERNATIVES CONSIDERED

In accordance with Government Code Section 11346.5(a)(13), the Department has determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this regulatory 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.

#### AVAILABILITY OF PROPOSED REGULATION TEXT, STATEMENT OF REASONS AND RULEMAKING FILE

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at [www.cdph.ca.gov](http://www.cdph.ca.gov) by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Proposed Regulations.

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 445-2529 (or the California Relay Service at 711), send an email to [regulations@cdph.ca.gov](mailto:regulations@cdph.ca.gov), or write to the Office of Regulations at Office of Regulations, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377. Upon specific request, these

documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR  
MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department’s Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

**TITLE 22. DEPARTMENT OF PUBLIC  
HEALTH**

**ACTION:** Notice of Proposed Rulemaking  
Title 22, California Code of Regulations

**SUBJECT:** Conflict of Interest Code for  
Department of Public Health,  
DPH-11-018

NOTICE IS HEREBY GIVEN that the California Department of Public Health, pursuant to the authority set forth in section 87306 of the Government Code, proposes to adopt its Conflict of Interest Code. The purpose of this adoption is to implement the requirements of sections 87300 through 87302, and section 87306, of the Government Code.

The Political Reform Act (Gov. Code, § 81000 et seq.) requires each government agency to adopt a conflict of interest code, and agency personnel covered by the code to periodically file a financial disclosure statement known as a Statement of Economic Interests (Form 700). (See Gov. Code, §§ 87300 and 87302.) Among other things, an agency’s conflict of interest code must enumerate employee positions with the agency that involve the making of or participation in the making of decisions that may foreseeably have a material financial effect on any economic interest of the employee and, for each enumerated position, the specific types of investments, business positions, interests in real property, and sources of income and gifts which are required to be disclosed on the statement of economic interests. (Gov. Code, § 87302.)

Although the California Department of Public Health (CDPH) technically was newly created by statute on July 1, 2007 (S.B. 162, Chapter 241, Statutes of 2006), its entire operation existed prior to that date as part of the Department of Health Services (DHS). The former DHS was split into two separate departments, with the Medi-Cal Program (and related functions) becoming the Department of Health Care Services (DHCS), and the public health programs becoming CDPH.

Since its “creation” on July 1, 2007, CDPH has continued to follow the Conflict of Interest Code (COIC) of the former DHS, and will continue to do so until adoption of this new code under the name of the Department of Public Health. This Notice therefore will provide the content and findings appropriate to this specific situation; a state agency is technically newly created, but as a practical matter is a re-organization of an existing agency.

CDPH proposes to adopt this conflict of interest code to cover its officers and employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The proposed CDPH COIC has been developed with reference to the DHS COIC in effect when DHS was split into DHCS and CDPH: The proposed CDPH COIC will thus be reflected as if it were an amendment to the DHS COIC.

A number of changes have been made from the OHS COIC in terms of how CDPH offices subject to the COIC are described. The DHS COIC described CDPH officers in broad terms such as “Assistant Branch Chief and Above”, “Section Chief”, or persons performing higher-level duties relating to contracts and other procurements. The proposed CDPH COIC instead lists each such office. This change was made in order to allow easier identification of CDPH officers subject to the COIC, without having to refer to other documents, e.g. organization charts, duty statements, etc.

The proposed COIC also expands the number of job classifications subject to disclosure, recognizing the important role played by employees in the wide variety of positions that may be called upon to provide substantive input to decision makers.

The disclosure categories, which define what a designated employee needs to file on their Form 700, all were changed to better describe the types of financial interests to be disclosed, adopting in part language used by other state agencies that have recently amended their codes; the DHS COIC has not been amended since 1996. In order to avoid overly-broad disclosure, some of the disclosure categories were also amended to differentiate between those employees whose job duties involve department-wide subject matter, and those whose scope of duties are more limited to matters within their division.

ADVISORY COMMITTEES

It was determined that there are thirteen (13) departmental advisory committees that meet the standard under which members of such committees are designated to file a Form 700, under the authority of Title 2,

California Code of Regulations Section 18701(a)(1) which applies to:

“. . . salaried or unsalaried members of committees, boards or commissions with decision-making authority. A committee, board or commission possesses decision-making authority whenever:

- (i) It may make a final governmental decision;
- (ii) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or
- (iii) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.”

For these thirteen (13) advisory committees, the proposed COIC would establish a separate and unique disclosure category tailored to potential financial interests that could be impacted by decisions or recommendations made by each such advisory committee.

CDPH has prepared a written explanation of the reasons for the proposed code (Initial Statement of Reasons). Copies of the proposed code, and the Initial Statement of Reasons, may be obtained from the person(s) identified in the Inquiries section.

CDPH has determined that the proposed code:

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

In proposing to adopt this conflict of interest code, CDPH must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the code is proposed or would be as effective as and less burdensome to affected private persons than the proposed code.

Copies of the proposed code are available and may be requested from the person(s) identified in the Inquiries section. Upon specific request, these documents will be made available in Braille, large print, audio cassette, or computer CD.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by **5 p.m. on January 20, 2014**, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929 or 711, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

Written comments may be submitted as follows:

- 1. By email to: [tim.ford@cdph.ca.gov](mailto:tim.ford@cdph.ca.gov). It is requested that email transmission of comments contain the regulation package identifier “DPH-11-018” in the subject line to facilitate timely identification and review of the comment;
- 2. By fax transmission: (916)440-5104;
- 3. By mail to: Timothy Ford, Office of Legal Services, California Department of Public Health, MS 0506, P.O. Box 997377, Sacramento, CA 95899-7377; or
- 4. Hand-delivered to: 1415 L Street, Sacramento, CA 95814.

All comments, including email or fax transmissions, should include the author’s name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at [www.cdph.ca.gov](http://www.cdph.ca.gov) by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Proposed Regulations.

If written comments are submitted, they need not be separately presented at a public hearing. At this time, no public hearing has been scheduled concerning the proposed code. If any interested person or the person’s representative requests a public hearing, he or she must do so no later than 15 calendar days before close of the written comment period, by contacting the person identified in the Inquiries section of this notice. If a public hearing is requested, it will be held on January 20, 2014 from 3:00 p.m. until 5:00 p.m. at 1500 Capitol Avenue, Sacramento, CA 95814.

If a hearing is held, the Department will provide assistive services to persons with disabilities, such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print,

audio cassette, or computer CD. To request such services or copies in an alternate format, please call or write the person identified in the Inquiries section of this notice. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

After completion of the written comment period/hearing, CDPH may adopt the proposed code if it remains substantially the same as described in the text originally made available to the public. CDPH may make changes to the proposed code prior to its adoption, so long as the text of any modified amendment is made available to the public at least 15 days before CDPH adopts the amendments. A request for the modified text should be made to the person(s) identified in the Inquiries section. CDPH will accept written comments on the modified amendments, addressed to the person identified in the Inquiries section of this notice, for 15 days after the date on which the text of any modified amendment is made available.

**INQUIRIES**

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

Timothy Ford  
 Office of Legal Services  
 California Department of Public Health  
 1415 L Street  
 P.O. Box 997377, MS 0506  
 Sacramento, CA 95899-7377  
 Phone: (916) 538-6415  
 Fax: (916) 440-5104

OR

Cynthia A. Jones  
 Political Reform Consultant II  
 Fair Political Practices Commission  
 428 J Street, Suite 620  
 Sacramento, CA 95814  
 Phone: (916) 322-5660  
 Toll-free 1 (866) 275-3772  
 Email: cjones@fppc.ca.gov

**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# 2013-1106-01  
 BOARD OF EQUALIZATION  
 Retailer Reimbursement Retention

This rulemaking action makes permanent an emergency regulation and adopts a new regulation which together provide for an amount of reimbursement retention allowed to retailers of lumber and engineered wood products for their costs of beginning to collect the one percent tax assessment on these products.

Title 18  
 California Code of Regulations  
 ADOPT: 2000, 2001  
 Filed 11/26/2013  
 Effective 01/01/2014  
 Agency Contact:  
 Richard E. Bennion (916) 445-2130

File# 2013-1120-06  
 BOARD OF FORESTRY AND FIRE PROTECTION  
 Commercial Species Definitions Amendments, 2013

The Board of Forestry and Fire Protection (Board) amended the definition of “commercial species” as it applies to the Coast Forest District and the Southern Forest District in title 14, California Code of Regulations, section 895.1. The proposed amendments remove eucalyptus trees from the definition and re-designate Monterey pine trees from “Class A” species to “Class B” species, which results in the elimination of the requirement to obtain an approved timber harvest plan from the Board for removing these trees. This will eliminate duplicative permitting requirements under the Board’s Forest Practice Rules and CEQA in order to facilitate the removal of these tree species for the treatment of hazardous fuel conditions. The amendments also make two corrections to the scientific names of incense cedar and tanoak trees.

Title 14  
California Code of Regulations  
AMEND: 895.1  
Filed 11/26/2013  
Effective 01/01/2014  
Agency Contact: Eric Huff (916) 653-9633

File# 2013-1120-01  
BOARD OF FORESTRY AND FIRE PROTECTION  
Class II-L Identification and Protection, 2013

This regulatory action clarifies the identification and protection of watercourses designated as "Class II-Large" (Class II-L).

Title 14  
California Code of Regulations  
AMEND: 895.1, 916.9, 936.9, 956.9  
Filed 11/27/2013  
Effective 01/01/2014  
Agency Contact: Eric Huff (916) 653-9633

File# 2013-1015-06  
BUREAU OF ELECTRONIC AND APPLIANCE REPAIR  
New Flammability Standard for Upholstered Furniture/  
TB 117-2013

Existing regulations establish the flammability and labeling requirements for Technical Bulletin 117 (TB 117) entitled, "Requirements, Test Procedures and Apparatus for Testing the Flame Retardance of Filling Materials Used in Upholstered Furniture". This mandatory performance standard requires that the concealed filling materials and cover fabric of upholstered furniture undergo individual component testing to ensure that they pass open flame and cigarette smolder tests. The main emphasis of the current upholstered furniture flammability standard is on the open flame testing of interior filling materials. This rulemaking action amends the flammability standards allowing the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation to conduct smolder resistance testing of products for the purpose of protecting consumers from fires ignited by smoking materials. This rulemaking also lessens the burden on manufacturers through the proposed exemption of products deemed to pose no serious fire hazard.

Title 4  
California Code of Regulations  
AMEND: 1101, 1126, 1373.2, 1374, 1374.2, 1374.3, 1383.2 REPEAL: 1370, 1374.1  
Filed 11/21/2013  
Effective 01/01/2014  
Agency Contact: Diana Godines (916) 574-2442

File# 2013-1015-04  
CALIFORNIA ARCHITECTS BOARD  
Broadly Experienced Foreign Architect (BEFA)

This rulemaking action by the California Architects Board amends section 121 of title 16 of the California Code of Regulations to provide a new pathway to California licensure for certain licensed foreign architects.

Title 16  
California Code of Regulations  
AMEND: 121  
Filed 11/21/2013  
Effective 01/01/2014  
Agency Contact: Timothy Rodda (916) 575-7217

File# 2013-1114-02  
CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY  
Investment in Mental Health Wellness Grant Program

This emergency regulatory action by the California Health Facilities Financing Authority amends Title 10 of the California Code of Regulation by adopting sections 7113 through 7129, and implements SB 82 and SB 101. These regulations improve access and capacity for crisis services for Californians affected by mental health disorders. The Authority is mandated by statute to establish specific selection criteria for grant awards, define eligible costs, and determine minimum and maximum grant amounts for the purpose of increasing crisis capacity for mental health crisis assistance.

Title 4  
California Code of Regulations  
ADOPT: 7113, 7114, 7115, 7116, 7117, 7118, 7119, 7120, 7121, 7122, 7123, 7124, 7125, 7126, 7127, 7128, 7129  
Filed 11/21/2013  
Effective 11/21/2013  
Agency Contact: Rosalind Brewer (916) 653-8243

File# 2013-1022-01  
 COMMISSION ON PEACE OFFICER STANDARDS  
 AND TRAINING  
 Training and Testing Specifications

This rulemaking by the Commission on Peace Officer Standards and Training (POST) amends three sections in title 11 of the California Code of Regulations and amends the incorporated document, "Training and Testing Specifications for Peace Officer Basic Courses." These changes are to the curriculum of peace officer courses.

Title 11  
 California Code of Regulations  
 AMEND: 1005, 1007, 1008  
 Filed 11/25/2013  
 Effective 02/01/2014  
 Agency Contact: Cheryl Smith (916) 227-0544

File# 2013-1017-01  
 DEPARTMENT OF BUSINESS OVERSIGHT  
 Escrow Law Surety Bond Regulation

The Department of Business Oversight adopted section 1718.1 of title 10 of the California Code of Regulations to specify the form of the surety bond required of escrow agents by Financial Code section 17202.

Title 10  
 California Code of Regulations  
 ADOPT: 1718.1  
 Filed 11/27/2013  
 Effective 01/01/2014  
 Agency Contact: Karen Fong (916) 322-3553

File# 2013-1115-01  
 DEPARTMENT OF DEVELOPMENTAL SERVICES  
 Licensed Residential Facilities — Secured Perimeters

This emergency action by the Department of Developmental Services (DDS), re-adopts the regulations adopted in OAL File No. 2013-0604-01E, which adopted and amended sections of Title 17 of the California Code of Regulations. These changes authorize the installation of secured perimeters around adult residential facilities and group homes utilizing delayed egress devices, and the installation of delayed egress and secured perimeters in and around specified facilities.

Title 17  
 California Code of Regulations  
 ADOPT: 56068, 56069, 56070, 56071, 56072, 56073, 56074, 56620, 56621, 56622, 56623, 56624, 56625 AMEND: 56101  
 Filed 11/21/2013  
 Effective 12/11/2013  
 Agency Contact: Eric Gelber (916) 654-1844

File# 2013-1119-01  
 DEPARTMENT OF FINANCE  
 Major Regulations

This rulemaking action adds three subdivisions to section 2002 of Title 1 of the California Code of Regulations (CCR).

The added subdivisions complete the list of requirements for the content of the Standardized Regulatory Impact Analysis which must be completed by state agencies in connection with the adoption of "major regulations," as defined by Title 1 CCR section 2000(g), pursuant to Government Code section 11346.3(c).

Title 1  
 California Code of Regulations  
 ADOPT: 2002(c)(4), 2002(c)(5), 2002(c)(8)  
 Filed 11/21/2013  
 Effective 12/01/2013  
 Agency Contact: Irena Asmundson (916) 322-2263

File# 2013-1015-03  
 DEPARTMENT OF FISH AND WILDLIFE  
 Mountain Lion Possession Permitting

This regulatory action amends section 251.4 to establish the permitting requirements to possess a mountain lion carcass or any part or product thereof as allowed by Fish and Game Code section 4800(b)(3): (A) The carcass or carcass part or product is prepared or being prepared for display, exhibition, or storage, for a bona fide scientific or educational purpose, at a nonprofit museum or government-owned facility generally open to the public or at an educational institution, including a public or private postsecondary institution; (B) the mountain lion was legally taken in California; and (C) the Department has authorized the possession for these purposes. This regulatory action also repeals the prior \$5.00 fee.

Title 14  
 California Code of Regulations  
 AMEND: 251.4  
 Filed 11/21/2013  
 Effective 01/01/2014  
 Agency Contact: Craig Martz (916) 653-4674

File# 2013-1121-04  
 DEPARTMENT OF FOOD AND AGRICULTURE  
 Asian Citrus Psyllid Interior Quarantine

This emergency regulatory action will expand the quarantine area for the Asian Citrus Psyllid (ACP) *Diaphorina citri* by approximately 234 square miles in the Exeter, Lemon Cove, and Porterville areas of Tulare County. The effect of the amendment provides authority for the state to perform quarantine activities against ACP within this additional area, along with the existing

regulated areas in the entire counties of Imperial, Los Angeles, Orange, San Bernardino, San Diego, Santa Barbara, Riverside, Ventura and a portion of Fresno, Kern and Tulare counties that are already under quarantine for the ACP, totaling approximately 46,323 square miles.

Title 3  
California Code of Regulations  
AMEND: 3435(b)  
Filed 11/25/2013  
Effective 11/25/2013  
Agency Contact: Lindsay Rains (916) 654-1017

File# 2013-1015-10  
DEPARTMENT OF INSURANCE  
Commissioner's Review of Unlawful Health Insurance Terminations

This rulemaking action provides a procedural mechanism for the Department to review the lawfulness of health insurance terminations following a consumer's request for review, a proper complaint and the insurer's request for a hearing. These regulations also provide specificity as to the type of evidence that insurers may provide in order to demonstrate that a termination was lawful.

Title 10  
California Code of Regulations  
ADOPT: 2274.50, 2274.51, 2274.52, 2274.53, 2274.54, 2274.55, 2274.56, 2274.57, 2274.58, 2274.59, 2274.60  
Filed 11/20/2013  
Effective 01/01/2014  
Agency Contact: Eugene Kalinsky (415) 538-4113

File# 2013-1112-02  
DEPARTMENT OF INSURANCE  
Mental Health Parity

The Department of Insurance (Department) submitted this emergency readoption action to keep in effect the regulations adopted in OAL File Nos. 2013-0228-04E and 2013-0829-01EE. In those actions, the Department adopted in title 10 of the California Code of Regulations four sections pertaining to treatment of autism under a new article pertaining to mental health parity. The regulations pertain to insurer coverage under disability or health insurance policies, as further specified under Insurance Code sections 10144.5 and 10144.51, of therapies for individuals diagnosed with pervasive developmental disorder or autism. The proposed regulations prohibit specified conditions or limitations on coverage of these therapies when determined to be medically necessary to ensure compliance with the Mental Health Parity Act.

Title 10  
California Code of Regulations  
ADOPT: 2562.1, 2562.2, 2562.3, 2562.4  
Filed 11/20/2013  
Effective 12/09/2013  
Agency Contact: George Teekell (415) 538-4390

File# 2013-1014-01  
DEPARTMENT OF INSURANCE  
Hazardous Financial Conditions; Corrective Actions

This rulemaking action adds six regulations to Title 10 of the California Code of Regulations to specify, among other things, the criteria to be used by the Insurance Commissioner to determine whether an insurer is in such financial condition that continuance of its business may be hazardous to policy holders, creditors, or the general public.

Title 10  
California Code of Regulations  
ADOPT: 2598.1, 2598.2, 2598.3, 2598.4, 2598.5, 2598.6  
Filed 11/26/2013  
Effective 01/01/2014  
Agency Contact: Jack Hom (415) 538-4129

File# 2013-1015-07  
FISH AND GAME COMMISSION  
Abalone

This regulatory action amends section 29.15 that deals with the take of abalone. No abalone may be taken in the Fort Ross area. Abalone may now only be taken from 8:00 a.m., instead of one-half hour before sunrise, to one-half hour after sunset. The bag limit was changed from the prior limit of 24 abalone to 18 abalone during the calendar year, except not more than 9 abalone of the yearly trip may be taken south of the boundary between Sonoma and Mendocino counties to the line drawn due west magnetic from the center of the mouth of San Francisco Bay. No other changes to the take of abalone were made.

Title 14  
California Code of Regulations  
AMEND: 29.15  
Filed 11/20/2013  
Effective 01/01/2014  
Agency Contact: Sherrie Fonbuena (916) 654-9866

File# 2013-1009-01  
FRANCHISE TAX BOARD  
Combined Reporting

This rulemaking action by the Franchise Tax Board amends section 25106.5 of title 18 of the California Code of Regulations by changing the combined report mechanics to be used in apportioning multistate taxpay-

ers' income attributable to activities in California, as required by section 25135 of the Revenue and Taxation Code.

Title 18  
 California Code of Regulations  
 AMEND: 25106.5  
 Filed 11/21/2013  
 Effective 01/01/2014  
 Agency Contact: Colleen Berwick (916) 845-3306

**CCR CHANGES FILED  
 WITH THE SECRETARY OF STATE  
 WITHIN June 26, 2013 TO  
 November 27, 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**

11/21/13 ADOPT: 2002(c)(4), 2002(c)(5), 2002(c)(8)  
 10/29/13 ADOPT: 2000, 2001, 2002, 2003, 2004

**Title 2**

11/19/13 ADOPT: 21001.1, 21001.2, 21001.3  
 AMEND: 21000, 21001, 21002, 21003, 21004, 21005, 21006, 21007 (re-numbered to 21004.5), 21008, 21009 (re-numbered to 21005.5)  
 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

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 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

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06/26/13 AMEND: 1230,2641.57

**Title 18**  
 11/26/13 ADOPT: 2000,2001  
 11/21/13 AMEND: 25106.5  
 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

**Title 19**  
 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

**Title 20**  
 10/17/13 AMEND: 1680, 1681, 1683, 1684  
 08/28/13 ADOPT: 1240, 3200, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208

**Title 21**  
 09/23/13 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

**Title 23**  
 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  
 08/07/13 ADOPT: 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013, 5014, 5015, 5016  
 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

**Title 27**  
 08/08/13 AMEND: 25805  
 07/11/13 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  
 07/01/13 ADOPT: 40-038 AMEND: 22-071, 22-072, 22-305, 40-036, 40-103, 40-105, 40-107, 40-119, 40-125, 40-128, 40-131, 40-173, 40-181, 40-188, 40-190, 41-405, 42-209, 42-213, 42-221, 42-302, 42-406, 42-407, 42-716, 42-721, 42-751, 42-769, 44-101, 44-102, 44-111, 44-113, 44-115, 44-133, 44-205, 44-207, 44-211, 44-304, 44-305, 44-313, 44-314, 44-315, 44-316, 44-317, 44-318, 44-325, 44-327, 44-340, 44-350, 44-352, 47-220, 47-320, 48-001, 80-301, 80-310, 82-612, 82-812, 82-820, 82-824, 82-832, 89-110, 89-201 REPEAL: 44-400, 44-401, 44-402, 44-403