



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, 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

ADOPTION

MULTI-COUNTY: SOUTHERN CALIFORNIA COMMUNITY COLLEGE JOINT POWERS AGENCY

PROTECTED INSURANCE PROGRAM FOR SCHOOLS JOINT POWER AUTHORITY

AMENDMENT

MULTI-COUNTY: WESTERN MUNICIPAL WATER DISTRICT

A written comment period has been established commencing on **February 6, 2009**, and closing on **March 23, 2009**. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **March 23, 2009**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

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

Geoff Feusahrens, Regulations Analyst
Victim Compensation and Government Claims Board
400 R Street
Sacramento, CA 95811

Comments may also be submitted by facsimile (FAX) at (916) 491-6439 or by e-mail to regulations@vcgcb.ca.gov.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

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

AUTHORITY AND REFERENCE

Government Code sections 13920 and 13974 authorize the Board to adopt these proposed regulations. The proposed regulations implement, interpret and make specific Government Code sections 13950, 13951, 13952, 13952.5, 13953, 13954, 13955, 13955, 13956, 13957, 13957.2, 13957.5, 13957.7, 13957.9, 13958, 13959, 13962, 13963, 13964, 13974.5, and Family Code sections 297 and 297.5.

TITLE 2. VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

VICTIM COMPENSATION PROGRAM REGULATIONS
Title 2, §§ 647.4, 649-649.62

[Notice Published February 6, 2009]

This rulemaking action clarifies and makes specific the Victim Compensation Program (Program) regulations and clarifies the Board's current practices. The current Program regulations are outdated. The rulemaking action includes numerous revisions for clarity and consistency with statutes or case law, including recommending the repeal of several regulations. It also deletes language that repeats the statute.

The Victim Compensation and Government Claims Board (Board) proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

The rulemaking action reorganizes the requirements of an application and supplemental claim for better organization. It clarifies that applications and supplemental claims are considered in the same manner and addresses the notice requirements for decisions to approve or deny an application or supplemental claim. It also clarifies the content of an application, including sensitive documents such as complete police reports or mental health treatment notes. It further addresses the factors that may be considered as good cause for late applications.

PUBLIC HEARING

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

The rulemaking action clarifies the process for verifying claims and other sources of payments. It redefines the term "collateral benefits" to "reimbursement sources" and expands the definition to include salary, sick leave, and bereavement leave. It requires that victims execute a lien to allow the Program to seek reimbursement when a civil case based on the crime results in any recovery of funds.

WRITTEN COMMENT PERIOD

Any interested individual, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes at 5:00 p.m. on March 23, 2009. The Board will consider only comments received at the Board's office by that time. Submit written comments to:

Several provisions clarify the status of derivative victims. The rulemaking clarifies that an applicant may only be a victim and derivative victim for the same qualifying crime for the purposes of income or support loss.

The rulemaking also clarifies that a person may only be eligible once as a derivative victim for a crime, regardless of the number of victims.

The rulemaking action amends the definitions related to the Program to ensure the equal treatment of domestic partners applying for Program benefits. It also amends the regulation regarding derivative victims who previously had a relationship with the victim substantially similar to a family member to be consistent with the statutory time period of two years. It also allows benefits to any person that was in a relationship similar to a spouse, including situations where one of the parties had another relationship.

Several new provisions address mental health providers. For example, one new regulation identifies mental health providers authorized to receive reimbursement under the Program. Another regulation was amended to state that the Program will only contract for a simplified and expedited procedure for paying claims with a qualified mental health provider who is reimbursed at a minimum of \$10,000 in the previous fiscal year for mental health services.

The proposed rule-making action includes several new regulations to codify the Board's interpretation of its statutes and current practices and provide guidance regarding the following areas: relocation expenses, funeral/burial expenses, income and support loss, medical-related expenses, human trafficking, and rehabilitation. The proposed rulemaking action allows for alternative methods for verifying the disability period for income and support loss, including reference to The Medical Disability Advisory, 5th edition, a commonly used reference guide for evaluating disabilities.

The proposed rulemaking action also addresses newly enacted Government Code section 13957(a)(2)(B)(iii) (AB 2809, Leno). It includes a new regulation that defines a minor witness and specifies the types of crimes that a minor witness must observe in order to receive compensation for mental health counseling.

The proposed rulemaking further clarifies how the Program evaluates involvement in a vehicle related crime. It clarifies how the Board evaluates whether an application should be denied in whole or in part because of the nature of an applicant's involvement in the events leading up to the crime, as well as the factors that mitigate or overcome any involvement. Under the proposed rule-making, an applicant's participation in any crime at the time that they became a victim would be a basis for denial.

The rule-making action also states that the Program staff may give significant weight to the conclusions of law enforcement when determining whether to deny an application for failure to cooperate with law enforcement. It allows the Program staff to deny an application

or supplemental claim when the applicant does not cooperate with the Program staff or provides or causes others to provide false information related to an application or supplemental claim.

Last, there are a number of proposed revisions to reflect the commonly used program name "VCP" and other terms used by the VCP staff. The language of the regulations was also revised to plain English.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board 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 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None

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

Adoption 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.

Significant effect on housing costs: None

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulations do not affect small businesses because the regulations only apply to individuals who apply to the program.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Geoff Feusahrens
Victim Compensation and Government Claims Board
400 R Street
Sacramento, CA 95811
Telephone: (916) 491-3863

The backup contact person for these inquiries is:

Roslyn Mack
Victim Compensation and Government Claims Board
400 R Street
Sacramento, CA 95811
Telephone: (916) 491-3605

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Geoff Feusahrens at the above address.

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies may be obtained by contacting Geoff Feusahrens at the address or phone number listed above.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

After holding the hearing, if requested, and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text available to the public at least 15 days before the Board adopts the regulations as revised. Please send requests for copies

of any modified regulations to the attention of Geoff Feusahrens at the address indicated above. The Board 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 Geoff Feusahrens at the above address.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the text of the regulations in underline and strikeout can be accessed through our website at www.vcgcb.ca.gov.

**TITLE 10. DEPARTMENT OF
INSURANCE**

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

NOTICE OF PROPOSED ACTION

DATE: January 26, 2009 REGULATION FILE: REG-2007-00007

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to add to Title 10, Chapter 5, Subchapter 1, Article 6.5 of the California Code of Regulations the following new Sections: 2187.5, 2187.6, 2187.7, 2188.2.5, 2188.5.5, 2188.50 and amend the following sections: 2186, 2186.1, 2187, 2187.1, 2187.2, 2187.3, 2187.4, 2188, 2188.1, 2188.2, 2188.3, 2188.23, 2188.24, 2188.4, 2188.5, 2188.8, and 2188.83. The regulations set forth the following:

- (1) the curriculum required to obtain an insurance agent license as a Life Agent, Life-Only Agent, Accident and Health Insurance Agent, and Limited Lines Automobile Insurance Agent;

- (2) the standards for approval of online preclicensing courses and the requirements for successful completion of the online preclicensing course by the student; (3) the qualifications for instructors including the specific requirements for online preclicensing course instructors; and, (4) the minimum number of review questions to be answered by the student per course, per section.

PUBLIC HEARING

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

Date and time: March 23, 2009

Location: Department of Insurance
300 Capitol Mall, 13th Floor
Conference Room
Sacramento, CA 95814

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

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on March 23, 2009. Please direct all written comments to the following contact person:

Elena Fishman, Senior Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3507

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

Charlene Ferguson, Chief
Producer Licensing Bureau
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3010

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact persons at his address listed above, no later than 5:00 p.m. on March 23, 2009. Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: fishmane@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Elena Fishman and sent to the following facsimile number: (916) 324-1883. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 1749, 1749.1, 1749.3, 1749.31, 1749.32, 1749.33, 1749.4, 1749.5, 1749.8, and 10234.93. Insurance Code section 1749.7 provides authority for this rulemaking, as do the following decisions of the California Supreme Court: *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.3d 805 (1989), and *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216 (1994).

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW

Existing law provides for the licensing of various classes of insurance agents and broker-agents including fire and casualty broker-agents, personal lines broker-agents, and life agents. Section 1749 sets forth the hourly requirements for preclicensing study and the required curriculum for each type of insurance agent and broker-agent license. Previous law required a certain number of hours of preclicensing education for each type of agent license to be conducted in a classroom. Previous law did not provide for online preclicensing education.

AB 2387 (Chapter 590, Statutes of 2006) deleted the word "classroom" from the preclicensing education course requirements permitting preclicensing education

students to access preclicensing courses outside a classroom environment. Subsection (g) established standards to ensure the integrity of online preclicensing education. The standards as well as online course curriculum and other requirements shall be approved by the curriculum board and submitted to the Commissioner for final approval. Subsection (h) provided for the expiration of the certificate of completion for a non-classroom preclicensing course three years from the completion date of the course, whether or not a license is issued.

AB 720 (Chapter 270, Statutes of 2007) and AB 797 (Chapter 271, Statutes of 2007) also amended section 1749 to add three new license types: (1) Life-Only agent; (2) Accident and Health Insurance agent; and, (3) Limited Lines Automobile Insurance agent. Course curriculum and hourly educational requirements for each of the new license types are specified. The revised "life agent" license requirements, which include both life agent and accident and health insurance agent, were included in this legislation as well. In addition, continuing education hours were clarified for licensees selling annuities and long-term care insurance. Lastly, AB 797 directed the Curriculum Board to approve standards for courses in business management practices for agents and brokers and specified the subject matter to be taught.

The policy underlying these statutory and regulatory changes is to provide alternate methods for individuals desiring to obtain a license either as an insurance agent or life agent to meet the preclicensing education requirements. These changes will allow individuals to access the education requirements through on-line education methodologies. It is anticipated that this will provide increased access for individuals in communities which do not currently offer classroom education and increased opportunities for individuals whose work or family commitments do not permit time off to attend classroom education. Further, the proposed regulations provide specific detailed requirements for education providers who choose to offer non-contact education courses for insurance and life agents and potential insurance and life agents.

EFFECT OF PROPOSED ACTION

The proposed regulations will define and make specific online preclicensing course activities, course curriculum, how credit hours are determined, online preclicensing course approval requirements for education providers, course review question criteria, and how successful completion of online preclicensing courses is determined. The proposed regulations will also include new required forms. In addition, the course curriculum

and requirements for the new licensing categories of 'life-only agents', 'accident and health insurance agents', and 'limited lines automobile insurance agents' will be defined and made specific in the proposed regulations.

Further, the proposed regulations address instructor qualifications for online preclicensing and continuing education courses. Details regarding instructor qualifications are provided in the proposed regulations as well as the requirements for maintenance by providers of instructor qualification documentation.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

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

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

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

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

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

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.

- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state.

The proposed regulations may result in the creation of jobs in the State of California for course authors. New education provider businesses may be created and/or expanded due to the potential increase in online students. The extent to which jobs and businesses will be lost will be relatively minor in terms of the State's aggregate economic activity. The proposed regulations will not eliminate jobs or new businesses in California.

FINDING OF NECESSITY

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

IMPACT ON HOUSING COSTS

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

ALTERNATIVES

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

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed amendments may affect small businesses to the extent that it affects education providers.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

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

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

AUTOMATIC MAILING

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

WEBSITE POSTINGS

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

to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2007-00007" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the Office of Administrative Law's notice file number assigned to the regulations ("Z2009-0127-01"), or search by keyword ("online precicensing course", "precicensing study", "education provider", "life-only agent", "limited lines automobile insurance agent", "accident and health insurance agent", "continuing education") the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Online Precicensing Education' link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

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

TITLE 13. CALIFORNIA HIGHWAY PATROL

NOTICE OF PROPOSED REGULATORY ACTION

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

COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD OUT-OF-SERVICE CRITERIA (CHP-R-08-06)

The California Highway Patrol (CHP) proposes to adopt by reference the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria, April 1, 2008 Edition, in Title 13, California Code of Regulations (13 CCR). The current regulation incorporates by reference the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria, January 1, 2004 Edition.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 34501(a)(1) of the California Vehicle Code (CVC) authorizes the CHP to adopt reasonable rules and regulations which, in the judgment of the Department, are designed to promote the safe operation of vehicles described in Section 34500 CVC. The CHP's authority to adopt regulations includes, but is not limited to, controlled substances and alcohol testing of drivers by motor carriers, drivers hours-of-service qualifications, equipment, fuel containers, fuel operations, inspection, maintenance, record keeping, accident reports and drawbridges. Section 2402 CVC provides the Commissioner with the authority to "make and enforce such rules and regulations as may be necessary to carry out the duties of the Department" and Section 2410 CVC provides the authority for the CHP to place vehicles out of service (Attorney General's Opinion NS 2520) in order to "ensure safety." Current regulations, adopt by reference the Commercial Vehicle Safety Alliance North America Standard Out-of-Service Criteria, January 1, 2004 Edition, which apply to those vehicles listed in Sections 260, 322, 15210 and 34500 CVC.

The intent of these regulations is to adopt specific uniform criteria for determining whether or not a vehicle and/or driver, inspected by an authorized representative of the CHP, is in such an unsafe condition that they are likely to constitute a hazard on a highway. These regulations will incorporate by reference specified portions of the standards contained within the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria, April 1, 2008 Edition. Adoption of this criteria will continue to provide consistency throughout California, with neighboring states, Canada and Mexico, and provide a regulatory basis for enforcement efforts as they relate to commercial vehicle out-of-service criteria.

PUBLIC COMMENTS

Any interested person may submit written comments on this proposed action via facsimile at (916) 446-4579, by email to cvsregs@chp.ca.gov, or by writing to:

CHP, Enforcement Services Division
Commercial Vehicle Section
ATTN: Officer Ron Leimer
P.O. Box 942898
Sacramento, CA 94298-0001

Written comments will be accepted until 5:00 PM, March 23, 2009.

No public hearing has been scheduled. If any person desires a public hearing, a written request must be re-

ceived by the CHP, Commercial Vehicle Section, no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based (the rulemaking file), and the proposed regulation text. Requests to review or receive copies of this information should be directed to the CHP at the above address, by facsimile at (916) 446-4579 or by calling the CHP, Commercial Vehicle Section, at (916) 445-1865. All requests for information should include the following information: the title of the rulemaking package, the requester's name, proper mailing address (including city, state and zip code), and a daytime telephone number in case the requestor's information is incomplete or illegible.

The rulemaking file is available for inspection at the CHP, Commercial Vehicle Section, 444 North Third Street, Suite 310, Sacramento, California. Interested parties are advised to call for an appointment.

All documents regarding the proposed action are also available through our web site at www.chp.ca.gov/regulations.

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

CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or questions regarding the substance of the proposed regulations should be directed to Officer Ron Leimer or Captain Steve Dowling, CHP, Commercial Vehicle Section, at (916) 445-1865.

ADOPTION OF PROPOSED REGULATIONS

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

FISCAL AND ECONOMIC IMPACT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no affect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) involves no

nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Government Code Sections 17500-17630 require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California; and (5) will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states. The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

EFFECT ON SMALL BUSINESSES

The CHP has determined that the proposed regulatory action has minimal effect on small businesses.

ALTERNATIVES

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

AUTHORITY

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

REFERENCE

This action implements, interprets, or makes specific Sections 260, 322, 2402, 2410, 12500, 12502, 12515(b), 14603, 15210, 15250, 15275, 15278, 23152, 24002, 24400, 24252, 24600, 24603, 24604, 24952,

27154, 27155, 27465, 27501, 27903, 29001, 29002, 29003, 29004, 31401, 34500, 34501, 34506 and 34510 CVC.

TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING CONCERNING

EMISSION INSPECTION SYSTEM REVISIONS SPECIFICALLY VEHICLE LOOKUP TABLE ROW SPECIFIC EMISSIONS STANDARDS (CUTPOINTS); PASS/FAIL CRITERIA FOR ON-BOARD DIAGNOSTIC SYSTEM READINESS MONITORS; REVISIONS TO EMISSION INSPECTION SYSTEM SPECIFICATIONS; AND DISABLING PROCESS FOR NON-COMPLIANT EMISSION INSPECTION SYSTEMS

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs/Bureau of Automotive Repair (hereinafter "Bureau") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

SOUTHERN CALIFORNIA

March 23, 2009, 1:00 p.m.
Bureau of Automotive Repair
Conference/Training Room
1180 Durfee Avenue, Suite 120
South El Monte, CA 91733

NORTHERN CALIFORNIA

March 25, 2009, 10:00 a.m.
Contractors State Licensing Board
Hearing Room
9821 Business Park Drive
Sacramento, California 95827

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact

Person in this Notice, must be **received by the Bureau at its office no later than 5:00 p.m. on April 1, 2009**, or must be received by the Bureau at one of the above referenced hearings. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the instance of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 44002, 44003, 44012, 44013 and 44036 of the Health and Safety Code and Section 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 39032.5, 44002, 44003, 44005, 44011, 44011.3, 44012, 44013, 44014.5, 44015, 44017, 44032, 44036, 44062.1 and 44081 of the Health and Safety Code, and Sections 9884.8 and 9884.9 of the Business and Professions Code; the Bureau is proposing to adopt the following changes to Article 5.5 of Chapter 1, Division 33, Title 16, California Code of Regulations:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

INTRODUCTION:

The Bureau of Automotive Repair (BAR), within the Department of Consumer Affairs, is the state agency charged with the administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources, such as passenger vehicles and trucks, by requiring that these vehicles meet specific emissions standards. To ensure uniform and consistent vehicle testing, BAR licenses Smog Check stations and technicians and certifies inspection equipment.

This regulatory proposal implements the following four enhancements to the Smog Check Program:

- I. A revision of the emissions standards (cutpoints) to more accurately reflect the emission performance capability of individual vehicles. This proposed action will revise cutpoints based on analyses and recommendations from a report completed by Sierra Research (Sierra).
- II. The inclusion of pass/fail criteria for On-Board Diagnostic (OBDII) system readiness monitors. This proposed action complies with the U.S. Environmental Protection Agency (USEPA) Inspection and Maintenance (UM) Rule, which requires a test of the OBDII readiness monitors in order to determine whether the OBDII system is functioning properly.
- III. Incorporate by reference the revised Emission Inspection System (EIS) Specifications. The EIS Specifications are revised to accommodate the proposed Vehicle Lookup Table (VLT) Row Specific Emissions Standards (Cutpoints) and the proposed pass/fail criteria for OBDII system readiness monitors. Also included in the revised EIS Specifications are modifications that will allow Smog Check inspections on diesel-powered vehicles.
- IV. Clarification of existing language that prevents a station from using a non-compliant EIS to perform Smog Check inspections by specifying how the EIS will be disabled through the Vehicle Information Database (VID).

The proposed action also includes several minor technical, grammatical and editorial changes that have no regulatory effect or that are conforming.

BACKGROUND:

VLT Row Specific Emission Standards

Motor vehicles that require a loaded-mode Acceleration Simulation Mode (ASM) emissions test fail the emission portion of the Smog Check inspection when their emission readings exceed values specified in one of the cutpoint tables included in California Code of Regulations (CCR) section 3340.42. The table for passenger cars and light-duty trucks consists of only 52 different cutpoint categories. However, over 21,000 different vehicle configurations currently exist in the affected vehicle population. Research commissioned by the Air Resources Board (ARB) and BAR has shown that group-specific cutpoints would reduce emissions of hydrocarbons and oxides of nitrogen by an estimated 5.5 – 7.8 tons per day, depending on the stringency of the new cutpoints.

In a 2004 Smog Check Program evaluation report required by USEPA, ARB and BAR noted that there were large differences between the average emissions of vehicles passing the Smog Check inspection and those

that had failed and subsequently received repairs. For example, average hydrocarbon emissions were 0.76 grams per mile for passing vehicles and 1.09 grams per mile for vehicles that failed Smog Check, were subsequently repaired, and then passed a retest. In other words, a vehicle that passes its initial test is, on average, only 30 percent cleaner than a vehicle that passes a follow-up test after an initial failure. The agencies concluded that vehicles were not being fully repaired and announced plans to study the benefits of requiring more stringent after-repair cutpoints to encourage more thorough emissions-related repairs. However, in a 2005 study commissioned by ARB and BAR and performed by Sierra Research, it was determined that more meaningful benefits could be cost effectively achieved by tightening the initial emission failure cutpoints for selected vehicles that normally operate much cleaner than current cutpoints require.

When loaded-mode testing began in 1998, ARB and BAR created broad emission standard categories to be used for the Smog Check pass/fail decision on a vehicle's tailpipe emissions. Cutpoints were calculated within each emission standards category (ESC) as a function of individual vehicle test weight to better approximate the stringency of the Federal Test Procedure (FTP) test for new vehicles. While the current cutpoints do, on the whole, correlate reasonably well with a vehicle's performance on the FTP test, they do not take into account individual vehicle design considerations that may affect a vehicle's performance during the ASM test.

The study conducted by Sierra provides a compelling argument for a viable alternative to after-repair cutpoints and provides for significant emission reductions with a simple implementation process. Sierra compared Wisconsin and Arizona emissions data to California's. Both Wisconsin and Arizona use "transient testing" that more closely mimics the FTP test and actual driving conditions than the ASM steady state procedure used in California. Sierra divided vehicles into many categories, using model-year, manufacturer, make, model, engine displacement, and other factors.

Sierra's analysis only examined 1976 through 1995 model-year vehicles because comparable loaded-mode data for vehicles newer than the 1995 model-year were not available from either Wisconsin or Arizona.¹ For this reason, revised cutpoints for 1996 and newer vehicles could not be generated using the procedure developed by Sierra. For California's Smog Check Program, inspection procedures for 1996 and newer ve-

¹ Both of those states' programs inspect 1996 and newer vehicles using the OBDII protocol exclusively, in place of loaded-mode tests.

hicles includes both the loaded-mode ASM and the OBDII tests.

For 1976 through 1995 model-year vehicles, Sierra estimated that ASM failure rates could be increased from 10.4 percent to between 11.9 percent and 12.8 percent. This could be done while maintaining the error of commission rate (falsely failing vehicles) well within the statutory limit² of 5 percent. Further, Sierra estimated the emissions benefits include up to 7.8 tons per day (tpd) of Reactive Organic Gases (ROG) and Oxides of Nitrogen (NOx) and estimated the cost effectiveness of these emissions reductions to be up to \$8,200 per ton in 2010.

The procedure for utilizing VLT row specific cutpoints already exists within the current BAR-97 specifications. In all cases, the EIS software first accepts vehicle specific cutpoints passed down through the VID to the EIS. If no cutpoints are passed down, the EIS then accesses the VLT, resident on the EIS, to determine if vehicle-specific cutpoints exist. When the cutpoints are present, the software will use those cutpoints to determine the pass/fail result for a vehicle during the emissions portion of the inspection. If cutpoints are not found for the specific VLT row in question, the software will assign cutpoints based upon Tables I or II in the BAR regulations.

Pass/Fail Criteria for On-Board Diagnostic System Readiness Monitors

The USEPA required new vehicle manufacturers to incorporate On-Board Diagnostic (OBD) systems into all 1996 and newer model-year vehicles. An On-Board Diagnostic system is controlled by a computer located in the vehicle that alerts motorists via a dashboard display when either emission control components or powertrain systems that affect emissions are not functioning correctly. It is designed to encourage motorists to seek repairs in order to clear the dashboard display as a proactive means of addressing air quality issues.

The OBD system performs diagnostics on emission-related components by monitoring the system as the vehicle is being operated. (Thus, these self-diagnostic tests are commonly referred to as “monitors.”) Some of the monitoring is done continuously while the vehicle is being driven and other monitors only operate under certain conditions. If there is a malfunction of the vehicle’s components subject to monitoring, the OBD system records a code that indicates which component failed (referred to as a diagnostic trouble code or “DTC”). At the same time, a dashboard display illuminates the malfunction indicator light or “MIL”. The DTC and MIL remain until the OBD monitor reruns without finding a malfunction, presumably after the vehicle component

has been repaired. Technicians can manually clear both the DTC and the MIL to verify their repairs.

USEPA’s Inspection and Maintenance (I/M) Rule, 40 Code of Federal Regulation (CFR) Parts 51 and 85, set the guidelines for vehicle I/M programs nationwide to require a periodic test of the On-Board Diagnostic (OBD) System. An OBD inspection has been included as part of the Smog Check test since 2002. The OBD system test includes a check to see if there are any stored DTCs, if the MIL is illuminated, and if the light bulb for the MIL is operational.

In addition, because DTCs can be cleared on purpose or by accident³ prior to a Smog Check inspection, a check is made to ensure that the monitors have performed a diagnostic check of the emission control components since the last time the computer was reset. This check is referred to as a “readiness monitor check.” Due to the fact that some early OBD systems have difficulty performing diagnostic checks on specific components, some vehicles equipped with the early OBD systems are unable to report that all the monitors have completed their diagnostic check. To accommodate these early OBD systems, the I/M Rule permits continuation of the OBD test on 1996–2000 model-year vehicles providing no more than two monitors have yet to complete a diagnostic check. For model-year vehicles 2001 and newer, the I/M Rule permits continuation of the test if no more than one monitor has yet to complete a diagnostic check.

Currently, California’s Smog Check Program applies the federal standard for 1996 to 2000 model-year vehicles of “no more than two monitors” to all 1996 and newer vehicles. By applying the more lenient standard for older OBD equipped vehicles to vehicles with newer, more sophisticated OBD systems, California is not taking full advantage of the OBD technology.

For example, in 2007, approximately five percent of 2001 and newer model-year vehicles passed the Smog Check test with two monitors not ready, and would have failed if the standard proposed by this regulatory action was in place. As a result, an opportunity for identifying vehicles with repairable emission defects (thereby reducing harmful pollution) is not realized under California’s current readiness requirements.

The process for assigning model-year-specific OBDII readiness requirements already exists. The analyzer software obtains vehicle specific OBDII readiness information directly from the VLT. When limits are not available in the VLT, the software uses limits provided to the EIS through the VID.

³ For example, DTC clearing can occur if a vehicle battery cable is intentionally disconnected or accidentally becomes disconnected from the battery. This causes the OBD system to lose all stored information.

² Health and Safety Code section 44013.

Revisions to Emission Inspection System Specifications

Health and Safety Code section 44036 allows the department to revise the emissions inspection system specifications for Smog Check equipment annually if the cost of implementing the revision is less than 20 percent of the total system cost. More extensive revisions may also be required, but not more often than every 5 years. The specification revisions necessary to implement the revised VLT and implement revised OBDII readiness criteria are relatively simple and inexpensive. Current estimates place the cost of the update at less than \$300 per EIS system, well within the 20 percent limit when considering that an EIS system retails in the \$23,000 to \$36,000 range. Furthermore, the specifications were last revised in December 2001. Equipment manufacturers have been allowed to review and comment on the revised specifications, as required in H&S Code section 44036.

The current version of the *BAR-97 Emission Inspection System Specifications*, dated May 1996, revised December 2001, and incorporated by reference in CCR Section 3340.17(b) requires updating to allow the BAR-97 EIS to store multiple VLTs, provide a method for instructing analyzers which VLT table to reference for each vehicle being tested, and incorporate a method for assigning model-year-specific default records in place of the model-year-generic default records used in the past. Also included in the revised EIS Specifications are modifications that will allow Smog Check inspections on diesel-powered vehicles as required by law.⁴ The formal diesel test procedures and any other items related to testing diesel vehicles less than 14,000 Gross Vehicle Weight Rating (GVWR) will be addressed in a future regulation. The decision to include both cutpoints and diesel updates in the revised EIS Specifications was made to minimize fiscal impact to the State.

Disabling Process for Non-Compliant Emission Inspection Systems

Mandatory Smog Check inspections must be performed using Smog Check test equipment certified by BAR. This includes the software that operates the equipment. Currently, the Smog Check test is performed statewide using the BAR-97 EIS. Periodically, new or updated hardware and/or software are required to either address program changes or defects in the equipment or software. BAR certifies the revised hardware and/or software. Smog Check stations are notified of the changes and provided with a deadline for installing the updated hardware and/or software (identified by a unique version number).

In order to ensure that official Smog Check inspections are performed uniformly, BAR works with the stations and the private companies that create and update the software and hardware to minimize the amount of time that stations are operating with different versions. Regardless, some stations continue to perform tests without the latest version of BAR-certified hardware and/or software. As a result, vehicle owners could be subject to inconsistent inspections and mandated program changes may not be performed by all Smog Check stations.

Currently, BAR has the authority to disconnect any EIS that does not comply with the hardware and software requirements and specifications from the Bureau's centralized computer database and network. As a result, Smog Check stations are prohibited from performing Smog Check inspections and are unable to transmit certificates of compliance to the Department of Motor Vehicles until they are brought into compliance.

This regulatory amendment clarifies existing language that prevents a station from using a non-compliant EIS to perform Smog Check inspections by specifying how the EIS will be disabled through the VID.

CURRENT REGULATION:

Existing regulation in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 5.5, is summarized as follows:

Section 3340.17 specifies the test equipment, electronic transmission, and maintenance and calibration requirements that are necessary in order to conduct the Smog Check inspections. This section also incorporates by reference the emission inspection system specifications necessary to Smog Check test equipment.

Section 3340.42 prescribes various inspection and test procedures that are to be performed in the course of a Smog Check inspection. This section also establishes the cutpoints applicable to vehicles subject to the Program. The standards are set forth in three tables that also include provisions for limited adjustment of the individual cutpoints.

There is no current regulation addressing the pass/fail criteria for On-Board Diagnostic System Readiness Monitors.

EFFECT OF REGULATORY ACTION:

The proposed action will make the following changes to existing regulation:

1. Amend Section 3340.17 of Article 5.5 of Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
 - a. Amend subsection (b) to change the revision date of the EIS Specifications, incorporated by reference from December 2001 to August 2008.

⁴ Chapter 739, Statutes of 2007 (AB 1488, Mendoza).

- b. Amend subsection (g) as follows: “disconnected from the bureau’s” has been changed to read “disabled from communicating with the bureau’s” and “also known as the Vehicle Information Database (VID)” has been inserted. A sentence has been added to the end of the paragraph stating “When any non-compliant EIS communicates with the VID, the Bureau will send a command from the database to disable the ability of the EIS to perform Smog Check tests or inspections.”
2. Amend Section 3340.42 of Article 5.5 of Chapter 1, Division 33, Title 16, California Code of Regulations, as follows:
- a. The first sentence of Section 3340.42 is edited to include BAR-97 Emissions Inspections System Specifications referenced in Section 3340.17 (a) and Section 3340.42.2.
 - b. Amend subsection (a) as follows: “The loaded mode test method,” has been changed to read “A loaded mode test,” and “to inspect vehicles registered” has been inserted. “The loaded-mode test equipment shall be. . . (ASM)” has been edited to read “The loaded-mode test shall use. . . (ASM).” Amend subsection (1) to replace “driving wheels” with “drive wheels.”
 - c. Amend subsection (3) to add language stating that the current emission standards tables will remain in use until such time as a revised cutpoint table(s) is adopted into regulation and activated.
 - d. The current subsection (4) is renumbered to (5) and a new subsection (4) is added to incorporate by reference the new *Vehicle Lookup Table (VLT) Row Specific Emissions Standards (Cutpoints) Table*, dated August 30, 2008, which will include the new row specific cutpoints table to be used with the ASM test. When activated, the new row specific table will take precedence over the current cutpoint Tables I and II. The current Tables I and II will be used as defaults for vehicles not included in the new row specific table. This subsection indicates that exhaust emissions shall be measured and compared to the applicable emissions standards contained in the *VLT Row Specific Emissions Standards (Cutpoints) Table* or Tables I and II, for purposes of determining whether the vehicle fails or passes the ASM emissions test portion of a Smog Check inspection.
 - e. The first sentence of subsection (b) is edited to change “The two-speed idle” to “A two-speed idle,” and to insert “unless otherwise specified” and “to inspect vehicles registered.” The first sentence is also edited to replace “other than the enhanced program areas” with “except those areas where the enhanced program has been implemented.” A sentence has been added to the end of the paragraph which matches the language in subsection (4) stating that a vehicle passes the test if all of its emissions are less than or equal to the standards specified in the applicable tables.
 - f. In subsection (d)(3), “Fuel Evaporative Controls” is changed to read “Liquid Fuel Leak.”
 - g. In subsection (g)(1), “loaded-mode testing method” has been changed to “loaded-mode test.”
 - h. In paragraphs (1) and (3) of subsection (h), “Tables I, II or III” has been changed to “the tables described in subsections (a) and (b), as applicable.”
3. Add 3340.42.2 Pass/Fail Criteria for On-Board Diagnostic System Readiness Monitors

FISCAL IMPACT ESTIMATES

FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES OR COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:

BAR plans to absorb the cost associated with the software update.

NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:

None.

LOCAL MANDATE:

None.

COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH GOVERNMENT CODE SECTIONS 17500-17630 REQUIRE REIMBURSEMENT:

None.

BUSINESS IMPACT:

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

The following studies/relevant data were relied upon in making the above determination:

VLT Row Specific Emission Standards

The proposed action will revise cutpoints based on analyses and recommendations from a report completed by Sierra Research (Sierra) in July 2005. The fact that the Smog Check industry would expect additional repair revenue potentially generated from repairing vehicles that fail due to the revised cutpoints support that this regulation will not impose adverse impact on businesses.

Pass/Fail Criteria for On-Board Diagnostic System Readiness Monitors

The proposed action complies with the U.S. Environmental Protection Agency Inspection and Maintenance (I/M) Rule, which requires a test of the OBDII readiness monitors in order to determine whether the OBDII system is functioning properly. The fact that the Smog Check industry would expect additional repair revenue potentially generated from repairing vehicles that fail due to OBDII support that this regulation will not impose adverse impact on businesses.

Revisions to Emission Inspection System Specifications

The proposed action incorporates by reference the revised EIS Specifications. The revisions include the VLT update, pass/fail criteria for OBDII system readiness monitors, and the addition of the diesel functionality. The fact that BAR is absorbing the cost associated with this proposed action supports that this regulation will not impose adverse impact on businesses.

Disabling Process for Non-Compliant Emission Inspection Systems

The proposed action clarifies existing language that prevents a station from using a non-compliant EIS to perform Smog Check inspections by specifying how the EIS will be disabled through the VID. The fact that this regulation does not enact additional requirements, rather it clarifies action that is to be taken with non-compliant EIS, supports that it will not impose adverse impact on businesses.

IMPACT ON JOBS/NEW BUSINESSES

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The cost impacts that a representative private person or business would necessarily incur in reasonable com-

pliance with the proposed action, other than the Business Impact described above, and that are known to the Bureau are:

VLT Row Specific Emission Standards

Smog Check Station Impact

More stringent cutpoints will result in an increased failure rate and additional retest inspections for vehicles that initially fail the Smog Check inspection.

Smog Check stations that perform repairs will derive revenue through increased repairs necessary to correct failing vehicles. Stations that perform retests may derive revenue through additional inspection fees. In its report, Sierra Research estimated that failure rates could be increased from 10.4 percent to between 11.9 percent and 12.8 percent with the implementation of VLT row specific emission standards. Assuming cutpoint changes result in a two percent increase in the vehicle failure rate, it is estimated that 186,000 additional vehicles will fail out of the 9,300,000 vehicles that are tested annually. Using 2007 calendar year data, this translates to \$38.5 million in additional repair revenue, based on an average repair cost of \$206.82, as reported by Smog Check stations into the Smog Check inspection equipment.

Consumer Impact

Consumers with failing vehicles will be required to obtain repairs in order to pass the Smog Check inspection. It is estimated that 186,000 more consumers per year could have their vehicles fail the emissions portion of the test due to more stringent cutpoints.

Furthermore, consumers may be required to pay additional retest fees due to the implementation of this regulation. The average inspection fee is \$47.26 and the average repair cost is \$206.82. This results with a total consumer impact of \$254.08.

However, for low-income consumers and consumers directed to Test-Only or Gold Shield stations, BAR has a program in place to help mitigate the cost of emissions-related repairs needed to bring a vehicle into compliance with the Smog Check Program. The Consumer Assistance Program (CAP) provides up to \$500 in financial assistance toward emissions-related repairs to qualifying consumers.

BAR projects an increase in consumers seeking financial assistance under CAP to repair their vehicles as a result of this regulation, which can be absorbed within existing resources.

Overall, better identification of high emitting vehicles via VLT row-specific cutpoints offers more opportunity to reduce air pollution through emissions reducing repairs. Californians will benefit from improved health and reduced medical costs from better air quality.

Pass/Fail Criteria for On-Board Diagnostic System Readiness Monitors

Smog Check Station Impact

Revising the OBDII requirement for 2001 and newer model-year vehicles will result in an increased failure rate and additional retest inspections for vehicles that initially fail the inspection.

Smog Check stations that perform repairs will derive revenue through increased repairs necessary to correct failing vehicles. Stations that perform retests may derive revenue through additional inspection fees. Based on Smog Check program data, an estimated 100,000 additional vehicles would have failed in calendar year 2007 from the 2,300,000 vehicles that are model-year 2001 and newer. However, vehicles with more than one unset readiness monitor, resulting in a failure, may not necessarily have repairable defects. Instead, additional time may be necessary to allow the monitors time to complete the diagnostic tests. Thus, the potential repair revenue associated with these additional failures is difficult to accurately quantify, but could be as much as \$20.7 million in additional repair revenue, based on an average repair cost of \$206.82, as reported by Smog Check stations into the Smog Check inspection equipment.

Consumer Impact

Consumers with failing vehicles will be required to obtain repairs in order to pass the Smog Check inspection. It is estimated that 100,000 more consumers per year will have vehicles that fail the OBDII portion of the test due to the change in the readiness monitor requirement.

Furthermore, consumers may be required to pay additional retest fees due to the implementation of this regulation. The average inspection fee is \$47.26 and the average repair cost is \$206.82. This results with a total consumer impact of \$254.08.

For low-income consumers and consumers directed to Test-Only or Gold Shield stations, BAR has a program in place to help mitigate the cost of emissions-related repairs needed to bring a vehicle into compliance with the Smog Check Program. The Consumer Assistance Program (CAP) provides up to \$500 in financial assistance toward emissions-related repairs to qualifying consumers.

Overall, better identification of newer vehicles needing repairs using existing OBD technology offers more opportunity to reduce air pollution. Californians will benefit from improved health and reduced medical costs from better air quality.

Revisions to Emission Inspection System Specifications

The revision of the EIS Specifications and incorporation by reference of the updated version will have no adverse impact on businesses.

BAR plans to absorb the cost associated with the software update; thus, Smog Check stations will not incur the additional expense traditionally associated with such an update.

Disabling Process for Non-Compliant Emission Inspection Systems

This regulatory amendment clarifies existing language that prevents a station from using a non-compliant EIS to perform Smog Check inspections by specifying how the EIS will be disabled through the VID. There is no new business or consumer impact associated with this proposed change to the language.

EFFECT ON HOUSING COSTS

None.

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon

request from the Bureau of Automotive Repair at 10240 Systems Parkway, Sacramento, California, 95827.

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

CONTACT PERSON

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

Virginia Vu
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-2135
Fax No.: (916) 255-1369
E-mail: virginia_vu@dca.ca.gov

The backup contact person is:

Kathy Runkle
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4300
Fax No.: (916) 255-1369
E-mail: kathy_runkle@dca.ca.gov

WEB SITE ACCESS

Materials regarding this proposal can also be found on the Bureau's Web site at www.smogcheck.ca.gov.

TITLE 17. AIR RESOURCES BOARD

**NOTICE OF PUBLIC HEARING TO
CONSIDER THE ADOPTION OF THE
PROPOSED REGULATION TO REDUCE
GREENHOUSE GAS EMISSIONS FROM
VEHICLES OPERATING WITH
UNDER INFLATED TIRES**

The Air Resources Board (ARB or the Board) will conduct a public hearing at the time and place noted be-

low to consider the adoption of a regulation to reduce greenhouse gas emissions (GHG) from vehicles operating with under inflated tires.

DATE: March 26, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection
Agency
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., March 26, 2009, and may continue at 8:30 a.m., March 27, 2009. This item may not be considered until March 27, 2009. Please consult the agenda for the meeting, which will be available at least 10 days before March 26, 2009, to determine the day on which this item will be considered.

If you require special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by Fax at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

INFORMATIVE DIGEST OF PROPOSED ACTION
AND POLICY STATEMENT OVERVIEW

Section Affected: Proposed adoption to California Code of Regulations, title 17, article 1, chapter 1, subchapter 10, division 3, new section 95550.

Background

In 2006, the Legislature passed and Governor Schwarzenegger signed the California Global Warming Solutions Act of 2006 (AB 32). In AB 32, the Legislature declared that global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The Legislature further declared that global warming will have detrimental effects on some of California's largest industries, including agriculture and tourism, and will increase the strain on electricity supplies. While national and international actions are necessary to fully address the issue of global warming, the Legislature recognized that action taken by California to reduce emissions of GHG will have far reaching effects by encouraging other states, the federal government, and other countries to act. By requiring in law a reduction of GHG emissions to 1990 levels by 2020, California set the stage for its transition to a sustainable, clean energy future.

The ARB is the lead agency for implementing AB 32, which set the major milestones for establishing the program. ARB has met a number of the milestones includ-

ing: developing a list of discrete early actions to begin reducing GHG emissions, adopting a Scoping Plan outlining the State's strategy to achieve the 2020 GHG emissions limit, assembling an inventory of historic emissions, establishing GHG emission reporting requirements, and setting the 2020 emissions limit.

In 2007, the Board approved a list of nine discrete early action measures. The list includes the "Tire Inflation Program" (Proposed Regulation). The Proposed Regulation is designed to implement this discrete early action measure.

Description of the Proposed Regulatory Action

The Proposed Regulation would reduce GHG emissions from vehicles operating with under inflated tires. Properly inflated tires reduce the rolling resistance of a vehicle resulting in the vehicle's engine having to do less work to move the vehicle at roadway speeds. The end result is a fuel savings that staff estimates will reduce GHG emissions by an estimated 1.4 million metric tons in 2020. Since the vehicle's engine has to do less work, Californians can also expect minor reductions in exhaust emissions for both particulate matter and oxides of nitrogen, as well as prolonged tire life, and the associated health and environmental benefits. The Proposed Regulation applies to all automotive service providers performing or offering to perform automotive maintenance or repair services in California. Examples of automotive service providers include but are not limited to automotive dealerships, maintenance garages, oil change facilities, tire centers, and smog check or test only facilities.

The Proposed Regulation requires that beginning July 1, 2010, all automotive service providers will perform a tire inflation service (check and inflate) on all passenger vehicles that are brought in to a facility for service or repair. The automotive service providers would be required to indicate on the vehicle service invoice that the tire pressure service was performed and what the tire pressures were after the service was completed to verify compliance with the regulation. The regulation also requires that the automotive service providers use and maintain an American National Standards Institute grade tire gauge and a tire inflation reference manual to ensure the highest level accuracy.

The Proposed Regulation does not apply to auto body and paint facilities, auto glass installers, auto parts distributors and retailers, auto wreckers or dismantlers, unless automotive repair and maintenance services are also offered, or any vehicle with a gross vehicle weight rating of 10,000 pounds or more. In addition, an automotive service provider is not required to perform a check and inflate service on any tire deemed to be unsafe. Further, it is only required to perform a tire pressure check on tires inflated with pure nitrogen. Inflation

would not be required unless the facility had pure nitrogen inflation capabilities onsite.

COMPARABLE FEDERAL REGULATIONS

There are no comparable mandatory federal regulations to control GHG emissions from vehicles operating with under inflated tires.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

ARB staff has prepared a comprehensive Staff Report supporting the proposed regulatory action. The Staff Report includes a summary of the economic and environmental impacts of the proposal and the proposed regulatory language. The Staff Report is entitled, "Staff Report: Initial Statement of Reasons for the Proposed Rulemaking — Proposed Regulation for Under Inflated Vehicle Tires."

Copies of the Staff Report with the full text of the proposed regulatory language can be accessed on the ARB's Web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on March 26, 2009.

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

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Michael Miguel, Manager of the Project Support Section, at (916) 445-4236, or Jessica Johnston, Air Pollution Specialist, at (916) 327-5608.

Further, the agency representative and designated back-up contact persons, to whom non-substantive inquiries concerning the proposed administrative action may be directed, are Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-4011, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the Staff Report, and all subsequent regulatory documents, including the FSOR, when completed, are also available on the ARB Web site for this rulemaking at www.arb.ca.gov/regact/2009/tirepres09/tirepres09.htm.

IMPACTS TO PUBLIC AGENCIES AND
TO REPRESENTATIVE BUSINESSES
AND PRIVATE PERSONS

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

Costs

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

The Executive Officer has determined that the Proposed Regulation would create costs to a State agency in the form of costs to ARB to implement and enforce the regulation. Staff estimates that the annual costs to implement and enforce the Proposed Regulation would be about \$167,000 (2008 dollars). No costs or savings affecting other State agencies were identified.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses. Automotive service providers may be affected to the extent that implementation may require an initial capital investment and annual labor compensation. Staff expects labor costs to be approximately \$4 per vehicle per year which would likely be passed on to the consumer. Additionally, staff expects annual capital and operating costs to be approximately \$125. With an estimated vehicle population of 25 million, the total annual cost of the Proposed Regulation is estimated to be \$96 million (2008 dollars). A detailed assessment of the economic impacts of the proposed regulatory action can be found in the Staff Report.

Benefits

Staff estimates that the Proposed Regulation will generate a net benefit for California. Staff expects California consumers to realize benefits from the Proposed Regulation from increased fuel savings and prolonged vehicle tire life as a result of proper tire inflation. Staff expects that California consumers will see a net savings of approximately \$20 per vehicle per year for a total annual net savings of approximately \$534 million (2008 dollars). These benefits are in addition to any resulting health benefits for Californians. A detailed assessment of the economic impacts and benefits of the

proposed regulatory action can be found in the Staff Report.

Requirements

In accordance with Government Code sections 11346.3 and 11346.5(a)(10), the Executive Officer has determined that the proposed regulatory action may affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California. Staff expects the Proposed Regulation to have a marginal positive impact on job creation by creating a demand for tire service specialists.

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

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

In accordance with Health and Safety Code sections 43013(a) and (b), the Executive Officer has determined that the standards and other requirements in the Proposed Regulation are necessary, cost-effective, and technologically feasible.

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

SUBMITTAL OF COMMENTS

Interested members of the public may also present comments orally or in writing at the meeting, and in writing or by e-mail before the meeting. To be considered by the Board, written comment submissions not physically submitted at the meeting must be received **no later than 12:00 noon, Pacific Standard Time, March 25, 2009**, and addressed to the following:

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

- Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>
- Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 6250 et seq.), written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request. Additionally, this information may become available via Google, Yahoo, and other search engines.

The Board requests, but does not require, that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under the authority granted to ARB in Health and Safety Code sections 38510, 38560, 39600, and 39601. This action is proposed to implement, interpret and make specific Health and Safety Code sections 38510, 38560, 39600.

HEARING PROCEDURES

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

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

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

GENERAL PUBLIC INTEREST

AIR RESOURCES BOARD

NOTICE OF POSTPONEMENT

NOTICE OF PUBLIC HEARING TO CONSIDER REGULATIONS FOR GASOLINE DISPENSING FACILITY HOSES

BY NOTICE dated October 14, 2008, and published in the October 24, 2008, California Notice Register, Register 2008, No. 43-Z, the Air Resources Board (the Board or ARB) announced it would conduct a public hearing to consider amendments to regulations and certification procedure, and adoption of test procedures for gasoline dispensing facility hoses. The hearing was scheduled for December 11, 2008, at 9:00 a.m., and then postponed to January 22, 2009, and February 26, 2009. The hearing has been further postponed.

PLEASE BE ADVISED that the hearing has been postponed to the following date:

DATE: **May 28, 2009**

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., May 28, 2009, and may continue at 8:30 a.m., May 29, 2009. This item may not be considered until May 29, 2009. Please consult the agenda for the meeting, which will be available at least ten days before May 28, 2009, to determine the day on which this item will be considered.

For individuals with sensory disabilities, this document and other related material can be made available in Braille, large print, audiocassette, or computer disk. For assistance, please contact ARB's Reasonable Accommodations/Disability Coordinator at (916) 323-4916 by voice, or through the California Relay Services at 711, to place your request for disability services, or go to <http://www.arb.ca.gov/html/ada/ada.htm>

If you are a person with limited English and would like to request interpreter services to be available at the Board meeting, please contact ARB's Bilingual Manager at (916) 323-7053.

**TITLE 2. DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING**

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

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

Bay Recycling
800 77th Avenue
Oakland, CA 94621

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

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

Fries Landscaping
25421 Clough
Escalon, CA 95320

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

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

Peoples Ridesharing
323 Fremont Street
San Francisco, CA 94105

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

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

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

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

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

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

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —

Public Interest Notice

For Publication February 06, 2009
CESA CONSISTENCY DETERMINATION
REQUEST FOR
Alameda Siphons Seismic Reliability
Upgrade Project
Alameda County
2080-2009-001-03

The Department of Fish and Game (Department) received a notice on January 21st, 2009, that the San Francisco Public Utilities Commission (SFPUC) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). This project consists of the construction of a new Alameda Siphon, an underground pipeline, and seismic retrofits of existing facilities associated with operation of the existing siphons; it will also include the upgrade of two bridges, access roads, moving a petroleum products pipeline, and burial of overhead power lines (Project). As a result of Project activities, all of the San Joaquin kit foxes (*Vulpes macrotis mutica*) and Alameda whipsnakes (*Masticophis lateralis euryxanthus*) inhabiting or utilizing a 22.8 acre area are anticipated to be subject to take.

The U.S. Fish and Wildlife Service (Service) issued a "no jeopardy" federal biological opinion (81420-2008-F-1490)(BO) and incidental take statement (ITS) to the U.S. Army Corps of Engineers on November 20, 2008, which considered the effects of the Project on the Federally endangered and State threatened San Joaquin kit fox and Federally threatened and State threatened Alameda whipsnake.

Pursuant to California Fish and Game Code Section 2080.1, SFPUC is requesting a determination that the BO and ITS are consistent with CESA for purposes of

the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, SFPUC will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**California Environmental Protection Agency
Office of Environmental Health Hazard
Assessment
Notice to Interested Parties**

February 6, 2009

**ANNOUNCEMENT OF SECOND PUBLIC
COMMENT PERIOD**

**Draft Technical Support Document on Proposed
Public Health Goal for 1,2,3-Trichloropropane in
Drinking Water**

The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is announcing the availability of the revised draft technical support document for a proposed Public Health Goal (PHG) for 1,2,3-trichloropropane (an organic solvent) in drinking water. The 1,2,3-trichloropropane document has been prepared in response to a request from the Department of Public Health for development of a PHG for this chemical. The Office previously offered a 45-day public comment period and held a public workshop on this chemical on October 9, 2007. A request for an outside peer review was received after the public workshop, and the first draft document was submitted for comment to three University of California scientists for a formal peer review. Their comments and OEHHA responses to their comments are posted on the OEHHA Web site (www.oehha.ca.gov), along with the revised draft PHG document.

OEHHA is currently soliciting comments on the revised draft report during a 30-day comment period. OEHHA follows the requirements set forth in Health and Safety Code Sections 57003(a) and 116365 for receiving public input. OEHHA will evaluate all the comments received and revise the draft PHG document as appropriate. Written comments must be received at the OEHHA address below by 5:00 p.m. on March 9, 2009, to be considered before publication of the final document.

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996 (codified as Health and Safety Code, section 116270 et. seq.) requires OEHHA to develop PHGs based exclusively on public health considerations (Health and Safety Code section 116365(c)). PHGs published by OEHHA are considered by the California Department of Public Health in setting drinking water standards (Maximum Contaminant Levels, or MCLs) as required by Health and Safety Code section 116365(a-b).

If you would like to receive further information on this announcement or have questions, please contact OEHHA at (510) 622-3170 or the address below.

Michael Baes (mbaes@oehha.ca.gov)
Pesticide and Environmental Toxicology Branch
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1515 Clay St., 16th floor
Oakland, California, 94612

Attention: PHG Project

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

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

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

**Chemicals Under Consideration For
Possible Listing
Via The Authoritative Bodies Mechanism:
Request For Relevant Information
EXTENSION OF PUBLIC COMMENT PERIOD
February 6, 2009**

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 or the Act), which is codified as Health and Safety Code section 25249.5 et seq., requires the Governor to publish, and update at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. The Act describes the mechanisms for administratively listing chemicals as known to the State to cause cancer or reproductive toxicity (Health and Safety Code section 25249.8).

On December 5, 2008, OEHHA published a notice in the *California Regulatory Notice Register* (Register 08 No. 49–Z) soliciting information which may be relevant to the evaluation of *carbaryl*, *metofluthrin*, and *spirodiclofen* under consideration for possible listing within the context of the Proposition 65 administrative listing regulatory criteria in Title 27 of the California Code of Regulations section 25306 (formerly Title 22 of the California Code of Regulations section 12306.)

The publication of the notice initiated a 60–day public comment period which would have closed on February 3, 2009. OEHHA has received requests from interested parties seeking an extension of the comment period to allow for the submission of complete and relevant scientific information for *carbaryl*, *inetofluthrin*, and *spirodiclofen*. **OEHHA hereby extends the public comment period for these chemicals for 30 days to 5 p.m., Thursday, March 5, 2009.**

Written comments on *carbaryl*, *metofluthrin*, and *spirodiclofen*, along with supporting information, may be submitted to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812–4010
Fax No.: (916) 323–8803 Telephone: (916) 445–6900
E–mail to: coshita@oehha.ca.gov

Comments may also be delivered in person or by courier to the above address. It is requested that hard–copy comments be submitted in triplicate. In order to be considered, comments must be received at OEHHA by 5 p.m., Thursday, March 5, 2009.

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

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

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

**Notice Of Intent To List Methanol
EXTENSION OF PUBLIC COMMENT PERIOD
February 6, 2009**

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 or the Act), which is codified as

Health and Safety Code section 25249.5 et seq., requires the Governor to publish, and update at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. The Act describes the mechanisms for administratively listing chemicals as known to the State to cause cancer or reproductive toxicity (Health and Safety Code section 25249.8).

On January 2, 2009, OEHHA published a notice in the *California Regulatory Notice Register* (Register 09 No. 1–Z) soliciting information which may be relevant to the evaluation of *methanol* under consideration for possible listing within the context of the Proposition 65 administrative listing regulatory criteria in Title 27 of the California Code of Regulations section 25306 (formerly Title 22 of the California Code of Regulations section 12306.)

The publication of the notice initiated a 30–day public comment period which would have closed on February 2, 2009. OEHHA has received a request from an interested party seeking an extension of the comment period to allow for the submission of complete and relevant scientific information for *methanol*. **OEHHA hereby extends the public comment period for *methanol* for 30 days to 5 p.m., Wednesday, March 4, 2009.**

Written comments on *methanol*, along with supporting information, may be submitted to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812–4010
Fax No.: (916) 323–8803 Telephone: (916) 445–6900
E–mail to: coshita@oehha.ca.gov

Comments may also be delivered in person or by courier to the above address. It is requested that hard–copy comments be submitted in triplicate. In order to be considered, comments must be received at OEHHA by 5 p.m., Wednesday, March 4, 2009.

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**California Environmental Protection Agency
Office of Environmental Health
Hazard Assessment
Notice to Interested Parties**

February 6, 2009

**ANNOUNCEMENT OF SECOND
PUBLIC COMMENT PERIOD**

**Draft Technical Support Documents on Proposed
Public Health Goals for Lead, Oxamyl,
Pentachlorophenol and Trichloroethylene in
Drinking Water**

The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is announcing the availability of the revised draft technical support documents for proposed Public Health Goals (PHGs) for inorganic lead (a metal usually derived from pipes and fixtures), oxamyl (a pesticide), pentachlorophenol (a wood preservative), and trichloroethylene (an organic solvent) in drinking water. The draft documents are posted on the OEHHA Web site (www.oehha.ca.gov). OEHHA is soliciting comments on the draft reports during a 30-day comment period. OEHHA follows the requirements set forth in Health and Safety Code Sections 57003(a) and 116365 for receiving public input.

OEHHA will evaluate all the comments received and revise the document as appropriate. Written comments must be received at the OEHHA address below by 5:00 p.m. on March 9, 2009, to be considered before publication of the final document. The final document will be posted on the OEHHA Web site along with responses to the major comments received during the public review and scientific comment periods.

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996 (codified as Health and Safety Code, section 116270 et. seq.) requires OEHHA to develop PHGs based exclusively on public health considerations (Health and Safety Code section 116365(c)). PHGs published by OEHHA are considered by the California Department of Public Health in setting drinking water standards (Maximum Contaminant Levels, or MCLs) as required by Health and Safety Code section 116365(a-b).

If you would like to receive further information on this announcement or have questions, please contact OEHHAe at (510) 622-3170 or the address below.

Michael Baes (mbaes@oehha.ca.gov)
Pesticide and Environmental Toxicology Branch
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1515 Clay St., 16th floor
Oakland, California, 94612

Attention: PHG Project

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

California Environmental Protection Agency
Office of Environmental Health Hazard Assessment

NOTICE TO INTERESTED PARTIES

February 6, 2009

**PROPOSITION 65
REGULATORY UPDATE PROJECT
WARNINGS FOR EXPOSURES TO LISTED
CHEMICALS IN FOODS**

**OPPORTUNITY FOR PUBLIC PARTICIPATION
NOTICE OF OPEN CONFERENCE CALL**

The Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for implementation of Proposition 65 (The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5, et. seq., hereafter referred to as Proposition 65 or the Act). The Act requires that businesses provide "clear and reasonable" warnings for exposures to listed chemicals prior to exposure (Health and Safety Code section 25249.6). This requirement applies to exposures to listed chemicals in foods.

OEHHA has been investigating the possibility of amending the existing warning regulations currently located in Title 27, California Code of Regulations, section 25601. This proposed amendment will add specific options for both the method and content for warnings for exposures to listed chemicals in foods. OEHHA is also considering the possibility of adopting regulations that determine the level of responsibility between retailers and manufacturers for these warnings.

Many interested parties have requested that OEHHA provide more guidance concerning acceptable methods for providing warnings to consumers for exposures to listed chemicals in foods purchased at retail stores. OEHHA was also requested to clarify the relative responsibilities of product manufacturers versus retailers. Existing regulations currently provide limited guidance concerning the range of possible options for providing Proposition 65 warnings for exposures from foods in the retail context. Guidance may also be needed concerning the content of any required warning (i.e. what additional information may be provided and in what format that would still be considered "clear and reasonable" under the Act).

On March 14, 2008, OEHHA held a public workshop at the California Environmental Protection Agency Headquarters Building in Sacramento. Suggestions

were then invited from the public and business communities about the options available for this regulatory project. Among several suggestions, one recommendation was that a workgroup be created, composed of representatives from different interest groups. This group would work with OEHHA to develop a proposed regulation. A workgroup was created, and information about the meetings of the group was posted on the OEHHA Web site. After receiving input in four workgroup meetings, OEHHA developed a draft framework for this regulation. A second public workshop was held on December 3, 2008, where the draft framework was presented to the public. OEHHA solicited comments and all comments subsequently received have been posted on the OEHHA website.

On February 18, 2009, OEHHA will hold an informal conference call at 10:00 a.m. to discuss these comments and to discuss the next steps. We encourage interested parties participate in this conference call.

Conference toll-free number: (877) 322-9648
Participant Code: 341735

If you have special accommodations or language needs, please contact Monet Vela at (916) 323-2517 or mvela@oehha.ca.gov by February 13, 2009.

**RULEMAKING PETITION
DECISION**

AIR RESOURCES BOARD

January 20, 2009

Ms. Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Riverside, California 92519

Mr. Jesse Marquez
Coalition for a Safe Environment
140 West Lomita Boulevard
Wilmington, California 90744

Mr. Bahram Fazeli
Communities for a Better Environment
1440 Broadway, No. 701
Oakland, California 94612

Ms. Jan Misquez
Westside Residents for Clean Air Now
255 North "D" Street, Suite 308
San Bernardino, California 92401

Mr. Angelo Logan
Executive Director

East Yard Communities for Environmental Justice
2317 Atlantic Boulevard
Commerce, California 90040

Dear Ms. Newman, Mr. Marquez, Mr. Fazeli, Ms. Misquez, and Mr. Logan:

In a letter dated September 17, 2008, the Center for Community Action and Environmental Justice (CCA EJ), joined by four other community organizations,¹ submitted to the Air Resources Board a "Request for Reconsideration of Denial of Petition for Rulemaking [Cal Gov. Code § 11340.7(c)]."² This reconsideration request was in response to my July 23, 2008, denial, as the Air Resources Board's (ARB) Executive Officer, of the initial petition. The California Administrative Procedure Act at Government Code section 11340.7(c) provides that any interested person may, within 60 days from the date that an agency responds to a petition, request reconsideration to any part or all of the agency's response to the petition. The request for reconsideration must be in accordance with Government Code section 11340.6 of the California Administrative Procedure Act (APA) and include the reason or reasons why the agency should reconsider its previous decision.

The APA further provides that the agency shall notify the petitioner in writing of its receipt of the request for reconsideration and shall (1) within 30 days either deny the request for reconsideration and set forth its reasons therefore in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of the APA or (2) "may grant or deny the petition, in part, and may grant any other relief or take any other action as it may determine to be warranted by the petition...."³ ARB's response to the request for reconsideration was initially due by October 18, 2008. Petitioners subsequently granted ARB two extensions, and ARB's response is due on or before January 30, 2009.

Denial of April 24, 2008 Petition and Subsequent Events

In the initial petition filed on April 24, 2008, Petitioners requested that the Board adopt ten specific regulatory control measures pursuant to Health and Safety Code sections 43000, 43000.5, 43013(b), and 43018.⁴ On July 23, 2008, ARB denied the petition, for the follow-

¹ East Yard Communities for Environmental Justice, Coalition for a Safe Environment, Westside Residents for Clean Air Now, and Communities for a Better Environment

² The Request for Reconsideration is attached hereto as Attachment 1

³ Government Code section 11340.7(a) and (b). ARB notified the Petitioners on September 19, 2008 of its receipt of the Request for Reconsideration.

⁴ These measures, as well as an eleventh one added as part of the Request for Reconsideration are set forth on p 6 of the Request for Reconsideration.

ing reasons: (1) the uncertainty of ARB's authority to adopt certain of the proposed regulations under the federal Clean Air Act and the Interstate Commerce Commission Termination Act, and (2) the effectiveness of other proposed measures to achieve emission reductions that will appreciably benefit the affected communities, especially when weighed against other measures ARB could take to reduce locomotive and rail yard emissions.

In denying the petition, I explained that ARB has completed health risk assessments at 16 major railyards that clearly demonstrate that activities within and around these railyards are responsible for an unacceptably high risk of exposure to diesel particulate matter in nearby communities. I further agreed with your position that substantial additional emission reductions are necessary to reduce this risk and indicated that ARB was committed to evaluating the measures you identified as part of our comprehensive effort to address and reduce the health risk exposures experienced by communities neighboring California railyards.

Since that time, in December 2008, ARB released a draft report entitled *Technical Options to Achieve Additional Emissions and Risk Reductions from California Locomotives and Railyards (Technical Analysis)*. In that analysis, staff evaluated 37 different options to achieve emission reductions from locomotives and at railyards statewide. The draft report evaluated technical feasibility based on the state of development and ability to implement a particular technology or operational measure. Staff further calculated potential emission reductions for each measure, the costs associated with development and implementation of each measure where data existed, and the cost-effectiveness of each option where possible. Based on this initial evaluation, staff identified and made preliminary recommendations of what options technically have the potential to achieve significant emission reductions in the near term. The draft report has been publicly distributed, and comments are being solicited before a final report is issued.

Response to Request for Reconsideration

In the request for reconsideration, Petitioners request that ARB reconsider its denial of the April 24, 2008 petition because they contend that the mitigation plans submitted by Union Pacific Railroad Company and BNSF Railway Company (the Railroads) for their Hobart, Commerce, ICTF, Dolores, and San Bernardino railyards are "patently inadequate" and demonstrate that "the railroad companies are unwilling to take voluntary action necessary to reduce their pollution to levels necessary to safeguard the health of the communities surrounding the rail yards."⁵ For this reason, Petitioners requested that ARB reconsider each of its pre-

viously submitted 10 proposals as well as an eleventh one, which requests "[r]egulation of State proprietary activities as a market participant."⁶ Petitioners provided no new information in support of their request for reconsideration other than referencing the alleged inadequacy of the above mitigation plans.

Upon further consideration of the information provided by Petitioners and of the draft *Technical Analysis* by ARB staff, I am addressing the Petitioners' reconsideration request by granting other relief, one of the options under Government Code section 11340.7(b). Specifically, I am directing that ARB staff, by the end of June 2009, present to the Board at one of the regularly scheduled meetings a proposed plan to achieve additional emission reductions from locomotives and at state railyards beyond the reductions that have been achieved or will be achieved from previously adopted federal and state regulations and state memoranda of understanding. I believe that this approach satisfies, in part, your objectives. The plan presented to the Board will focus on the measures identified in the final *Technical Analysis* report that could achieve significant emission reductions in a technologically feasible and cost-effective manner. The goal is to reduce health risk by achieving maximum possible reductions in public exposure to air toxics. The final *Technical Analysis* report will evaluate cost-effectiveness using both traditional and Carl Moyer methodologies. The plan will also present staff's recommendations on how best to implement the options. The implementation options to be evaluated include the use of state and federal regulations, incentive funds, voluntary action by the railroads, and enforceable agreements with the railroads. In presenting its recommendations, staff recognizes that under state law it has authority to adopt regulations for locomotives and other railyard sources to the extent that specific control measures are not preempted by federal law. Staff's recommendation on its authority will be based on an analysis of federal preemption laws, decisions of court and agency interpretations of those laws, and the specific facts applicable to implementing different control measure options.

Petitioners' reconsideration request asks ARB conduct a hearing to specifically consider the adoption of the 11 control measure delineated in the attached request. However, most, if not all, of the 10 measures set forth in the April 24, 2008 petition are included as part of the 37 options evaluated by staff in the December 2008 draft *Technical Analysis* and to be considered as part of the upcoming staff presentation to the Board to be scheduled before June 30, 2009. Thus, I am granting the relief outlined above. Regarding Petitioners' request that ARB consider regulations to the extent that

⁵ *Id.*, at p 2.

⁶ *Id.*, at p 6.

the state is engaged as a market participant at California railyards, to the best of ARB's knowledge, the state has no such involvement. Thus, I am denying this last request as unnecessary.

Finally, while my denial of the initial petition on July 23, 2008, was not based on the ability of the railroad mitigation plans to achieve emission reductions that will effectively reduce risk for communities neighboring local railyards, it did state that the mitigation plans would complement the comprehensive plan that ARB is developing. In the September 17, 2008, request for reconsideration, you argue that the 11 proposed control measures are necessary because the mitigation plans will not achieve any meaningful reductions. At this time, we must be mindful that the mitigation plan process is still continuing, with community meetings to review the railroads' proposals still taking place around the state.⁷ At these meetings, community members have been and will be afforded the opportunity to ask questions and provide oral and written comments on the railroad proposals. Such input will be fully considered by ARB, as well as the railroads, before the railroads release their final mitigation plans.

ARB is hopeful that the railroads will voluntarily undertake significant action to achieve emission and risk reductions as part of their final plans. To the extent that they may not, this does not undermine or thwart the need for the comprehensive strategy that ARB will be presenting to the Board for its consideration before June 30, 2009.

Conclusion

In conclusion, for the reasons set forth above, Petitioners' request for reconsideration is granted to the extent that I am issuing other relief. Specifically, as stated above, I am directing ARB staff, by June 30, 2009, to present to the Board a plan to achieve significant locomotive and railyard emission reductions through a variety of mechanisms. At the meeting, staff anticipates that the Board will provide direction on the next steps that it deems appropriate to pursue additional emission reductions associated with rail activities in California. In addition, it bears repeating that ARB is committed to evaluating the measures you identified as part of the comprehensive plan that will be presented to the Board.

ARB continues to believe that the most effective way to implement this commitment is through a collaborative effort that involves ARB, the air pollution control and air quality management districts, the local community, and the railroads. ARB is committed to address the issues surrounding railyard emissions and risks and looks forward to working with you in our common ef-

⁷ The first community meeting did not take place until October 2008, the month after CCAEJ submitted its petition for reconsideration

fort to achieve maximum feasible emission reductions as expeditiously as possible.

If you have any questions, please call Mr. Robert D. Fletcher, Chief, Stationary Source Division at (916) 324-8167.

Sincerely,

/s/
James N. Goldstene
Executive Officer

Attachment

cc: Mr. Gideon Kracov, Esq.
801 South Grand Avenue, 11th Floor
Los Angeles, California 90017

Mr. Richard Drury, Esq.
Lozeau Drury, LLP
1516 Oak Street, Suite 216
Alameda, California 94501

Mr. Gary Tavetian
Deputy Attorney General
Office of the Attorney General
300 S. Spring Street #5000
Los Angeles, California 90013

Ms. Mary D Nichols
Chairman

Ms. Ellen M. Peter
Chief Counsel

Mr. Robert D. Fletcher, Chief
Stationary Source Division

ATTACHMENT

September 17, 2008

Mary D. Nichols, Chair of the Board
James N. Goldstene, Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95812

Re: Request for Reconsideration of Denial of Petition for Rulemaking [Cal. Gov. Code 11340.7(c)]

Dear Board Chairperson Nichols and Executive Officer Goldstene:

The Center for Community Action and Environmental Justice (CCA EJ) and the undersigned environmental organizations pursuant to *Cal. Gov. Code* § 11340.7(c) hereby request that the California Air Resources Board ("CARB") reconsider its July 23, 2008 denial of our

Petition for Rulemaking dated April 24, 2008 that requested that CARB adopt regulations as provided in *Cal. Gov. Code* § 11346 to further control criteria and toxic emissions from railyard sources in California as set forth in the Petition. The denial letter is attached hereto.

I. Reason for the Request for Reconsideration of the Denial of the Petition [Gov. Code § 11340.7(c)] — The Railroads’ Own Mitigation Plans Are Weak and CARB Must Use its Regulatory Authority

We have completed our review of the CARB’s denial letter, as well as the Diesel Particulate Mitigation Plans prepared by the BNSF and Union Pacific Railroads for the Hobart, Commerce, ICTF, Dolores, and San Bernardino rail yards released in September 2008.

CARB’s denial stated that the agency was hopeful that the voluntary Mitigation Plans being developed at that time by the railroad companies would provide a basis for future pollution controls at the rail yards. Unfortunately, the Mitigation Plans prove the opposite, and show that the railroads will respond to nothing short of enforceable regulations. We hope that in light of the inadequate Mitigation Plans, CARB will reconsider its decision to deny our petition for rulemaking.

The Mitigation Plans are woefully inadequate. The Mitigation Plans merely outline activities that are already under way, planned to be implemented, or that have already been implemented at the rail yards pursuant to pre-existing rules and regulations. Most importantly, the Plans set forth no specific additional measures that the railroad companies are willing to implement. For example, under the heading, “Evaluation of Additional Mitigation Measures,” the Mitigation Plan for the UP Commerce Rail Yard states as follows:

“In addition to the proposed mitigation measures discussed above, UPRR will evaluate the use of other mitigation measures on a case-by-case basis. Measures that are found to be technologically feasible and cost effective will be implemented.” (UP Commerce Rail Yard Mitigation Plan, p. 13)

Obviously, this vague language falls far short of the specific control measures that are necessary to address the public health crisis created by lack of pollution controls at the rail yards.

The patently inadequate Mitigation Plans make clear that the railroad companies are unwilling to take voluntary action necessary to reduce their pollution to levels necessary to safeguard the health of the communities surrounding their rail yards. As we have discussed in prior correspondence and communications with your staff, there are numerous feasible control technologies that could drastically reduce pollution at the rail yards

and protect public health. The Mitigation Plans make clear that the railroad companies will not implement these measures voluntarily.

Since the railroad companies are unwilling to take voluntary action, it is more apparent than ever that CARB will need to take aggressive regulatory action to reduce railroad pollution. We once again urge CARB to promulgate aggressive, enforceable regulations to force the railroad companies to reduce their particulate matter pollution. As we have discussed, such measures are technologically feasible, legally required, and do not run afoul of federal law preemption.¹

II. Reason for the Rulemaking Request [Gov. Code § 11340.6(b)] — CARB’s Risk Assessments Show Intolerable Cancer and Health Risks from Emissions at California Railyards

CARB’s own 2007 and 2008 risk assessment for California railyards shows significantly increased air toxic cancer and non-cancer health risks. Extensive criteria emissions also are documented.

For example, CARB’s April 16, 2008 draft health risk assessment for residential cancer risks adjacent to the San Bernardino BNSF railyard showed cancer risk as high as 2030 in one million. *See Exhibit A* to the Petition. Non-cancer risks from such studies are estimated by the South Coast AQMD to be at least ten times higher. These localized, environmental justice impacts will not be significantly mitigated by an effort focused on line-haul locomotives alone. Moreover, enforceable mitigation plans for California’s railyards are not yet developed. The findings of the risk assessments provide substantial justification to enable CARB to take more aggressive measures than the 2005 CARB/Railroad Memorandum of Understanding (“MOU”). These unacceptable and far above the regulatory threshold health risk findings render empty any threat that the railroads will terminate the MOU and act to pollute the environment.

CARB’s models also show high levels of criteria and greenhouse pollutants emitted by California railyards. For example, in the South Coast and San Joaquin Air

¹ CARB is well-aware of the Railroads’ environmental commitments for the proposed SCIG and ICTF expansions including: electric cranes and yard equipment, upgrading entrances and infrastructure, clean truck fleet, minimizing diesel and integrating alternative fuels, soundwalls, urban forest and reduced lighting impacts. The question must be asked: if the above-listed measures are feasible and can reasonably be implemented by the rail companies for the SCIG and ICTF expansions, then why (with a reasonable schedule and timetable) not at existing yards? In light of the empirical health risk data and urgent community concerns at existing yards such as San Bernardino and Commerce, these measures at a minimum should be included in CARB’s own upcoming statewide railyard air toxic mitigation regulatory plan.

Basins, CARB estimates baseline NOx emissions from locomotive engines alone of 31 tons per day (“tpd”) and 22 tpd respectively. See Exhibit B attached to the Petition. These estimates do not include the numerous and extensive non-locomotive emissions at railyards including yard equipment and indirect sources such as heavy duty on-road diesel trucks. In fact, CARB’s 2007 State Implementation Plan (“SIP”) strategy documents admit that “. . .the severity of the region’s PM2.5 problem and the attainment deadline make it necessary to further mitigate locomotive emissions in 2014.” See Exhibit C attached to the Petition.

III. Authority for the Request [Gov. Code § 11340.6(c)] — CARB Has Authority to Further Regulate Railyard Sources

CARB commits in its 2007 SIP strategy to undertake a 2008 railroad rulemaking. See Exhibit C attached to the Petition.

Pursuant to California law, CARB has authority to enforce mobile source controls, *H&S Code* § 43000, 43000.5, 43013(b) and 43018. With regard to railroad sources, the CARB is given the duty by § 43013(b) that it:

“shall . . . adopt standards and regulations for . . . off-road or nonvehicle engine categories, including, but not limited to, off-highway motorcycles, off-highway vehicles, construction equipment, farm equipment, utility engines, **locomotives**, and, to the extent permitted by federal law, marine vessels.” (Emphasis added.)

The *H&S Code* § 43018 provides the duty that CARB achieve maximum reductions possible to comply with the NAAQS and state air quality standards:

“The state board shall endeavor to achieve **the maximum degree of emission reduction possible from vehicular and other mobile sources** in order to accomplish the attainment of the state standards at the earliest practical date.” (emphasis added.)

Pursuant to *H&S Code* § 41503.5, CARB has a duty to:

“[A]ssure that a district’s attainment plan and plan revisions meet the requirements of this part. . . and **that every reasonable action is taken to achieve the state ambient quality standards . . . at the earliest practicable date.**” (emphasis added)

Under the Tanner Act, CARB has a duty to adopt measures to control TAC emissions from both non-vehicular sources (such as off-road diesel engines and equipment, marine vessels, etc.) and from vehicular sources such as on-road diesel trucks. *H&S Code* §§ 36658, 39666, 39667.

Further, CARB has public nuisance authority pursuant to *H&S Code* §41700 *et seq.* and California Civil

Code §§ 3479 and 3480. *Diamond v. General Motors* (1971) 20 Cal.App.3d 374; *City of Bakersfield v. Miller* (1966) 64 Ca1.2d 93.

IV. Authority for the Request [Gov. Code § 11340.6(b)] — An Appropriately Tailored Rulemaking Is Not Preempted

A rulemaking is justified by the District Court’s 2007 opinion in the SCAQMD Rules 3501 case *Association of American Railroads v. South Coast AQMD*, 2007 U.S. Dist. LEXIS 65685 (C.D.Cal. 2007). See Exhibit D attached to the Petition. The Court expressly held that the Interstate Commerce Commission Termination Act, 9 U.S.C. §10501(b) does not preempt the federal Clean Air Act (“Act”). As the Court held:

“The District is correct that the ICCTA does not preempt the CAA, as the STB has repeatedly held that Nothing in section 10501(b) is intended to interfere with the role of state and local agencies in implementing Federal environmental statutes, such as the Clean Air Act, the [Clean Water Act], and the [Safe Water Drinking Act].” *Boston and Maine Corp. and Town of Ayer, MA*, STB Fin. Docket No. 33971, 2001 WL 458685, at *5 (STB, Apr. 30, 2001); see also *Cities of Auburn and Kent — Burlington Northern Railroad Co.*, STB Fin. Docket No. 33200, 1997 WL 362017, at *4 (STB, July 1, 1997) (“Nothing in . . . this decision is intended to interfere with the role of the states and local entities in implementing these federal laws.”).

The case provides a sound, new basis that CARB, acting under its delegated Act and *Health & Safety Code* authority, can further regulate railroad emissions.

Also, the United States Environmental Protection Agency’s (“USEPA’s”) railroad preemption rule and new railroad rulemaking confirm that USEPA does not preempt all state authority for railroad and locomotive matters. Nothing in *PMA v. Goldstene*, 517 F.3d 1108 (9th Cir. 2008) changes this analysis because a different provision of the Act is involved with regard to locomotives [§ 209(e)(1)(b) of the Act]. See also *Engine Manufacturers Association v. EPA* 88 F.3d 1075, 1093–94 (D.C. Cir. 1996) (states can adopt “programs to control extended idling of vehicles”).

USEPA preemption generally is limited to new engines and engine remanufacture and USEPA’s analysis in support of its new locomotive regulations admits that the Act does not, for example, preempt switcher locomotive rules which “may be subject to regulation by California and other states.” 72 *Fed. Reg.* 15971. See Exhibit E attached to the Petition. According to CARB’s own models, switchers are responsible for 11% of the total PM emissions from the four Commerce Railyards, See Exhibit F attached to the Petition.

V. Substance and Nature of the Request [Gov. Code § 11340.6(a), 113407.(c)] — CARB Should Institute a Rulemaking Including Measures Set Forth Herein

In light of the foregoing, the undersigned pursuant to *Cal. Gov. Code* § 11340.7(c) hereby requests that CARB reconsider its denial of the Rulemaking Petition filed April 24, 2008. The undersigned requests that CARB it adopt regulations as provided in *Cal. Gov. Code* § 11346 to control criteria and toxic emissions from railyard sources. A proposed regulatory program must include the following principles:

1. CARB action must be SIP enforceable
2. CARB action must be transparent and allow public participation
3. CARB should refuse to consider a “poison pill” provision

Appropriately tailored measures to address the localized environmental justice and criteria pollutant impacts documented in the CARB risk assessments that should be considered in CARB’s regulatory program include:

1. Regulation of switchers and medium duty intrastate locomotives
2. Electric rail-mounted container gantry cranes
3. CARB enactment of South Coast AQMD Rules 3501–3503 for idling limits, recordkeeping and modeling rules for all interstate and intrastate locomotives
4. Idling and plug-in rules for refrigerated units while not in transit
5. In-use testing for compliance with federal standards
6. Remote sensing for compliance with federal standards
7. Diesel particulate filters on all interstate and intrastate locomotives
8. Idling regulations for locomotive maintenance facilities and/or for stationary emission control device regulations (such as hood technology)
9. Stepped-up enforcement with more rigorous standards than the 2005 MOU
10. Regulatory measure that requires the development and implementation of emissions reduction plan for each Railyard with components that address proximity to sensitive receptors
11. Regulation of State proprietary activities as a market participant (*See East Yard v. City of Bell*, LASC Case No. 111726)

We thank you in advance for your reconsideration of the denial of the Petition. Pursuant to *Gov. Code* § 11340.7, please notify us of the receipt of this request

for reconsideration. That section allows the agency thirty days to decide to schedule the matter for public hearing in accordance with governing notice and hearing requirements. Should you have any questions or need further information, please contact Rachel Lopez at the Center for Community Action and Environmental Justice at (951) 360–8451.

Sincerely,

/s/

Penny Newman
Executive Director
Center for Community Action and Environmental Justice

THIS REQUEST FOR RECONSIDERATION IS JOINED BY THE FOLLOWING PURSUANT TO CAL. GOV. CODE § 11340.6:

East Yard Communities for Environmental Justice
2317 Atlantic Blvd., Commerce, CA 90040

Communities for a Better Environment
1440 Broadway #701, Oakland, CA 94612

Coalition for a Safe Environment
140 West Lomita Blvd., Wilmington, CA 90744

Westside Residents for Clean Air Now
255 N. “D” St., Suite 308, San Bernardino, CA 92401

Attachment

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

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

File# 2008–1231–01
BOARD OF BARBERING AND COSMETOLOGY
Cosmetology Curriculum Regulations

This rulemaking action amends section 950.2 of Title 16 of the California Code of Regulations regarding cosmetology school curriculum. It specifies the subjects and minimum hours of technical instruction and minimum number of practical operations for each subject which students must receive and perform, respectively, in order to be certified.

Title 16
 California Code of Regulations
 AMEND: 950.2
 Filed 01/28/2009
 Effective 02/27/2009
 Agency Contact: Kevin Flanagan (916) 575-7104

Title 3
 California Code of Regulations
 ADOPT: 3591.21(a), 3591.21(b), 3591.21(c)
 Filed 01/21/2009
 Agency Contact:
 Stephen S. Brown (916) 654-1017

File# 2008-1212-04
 BOARD OF BEHAVIORAL SCIENCES
 Acceptance of Degrees from Approved Institutions

Board of Behavioral Sciences proposes adoption of title 16, section 1832.5 to recognize specified educational degrees, approved by the Bureau for Private Post-secondary and Vocational Education as of June 30, 2007, to meet the degree requirements for Marriage and Family Therapist licensure applicants and intern registrants, provided that the degree is awarded on or before June 30, 2012.

Title 16
 California Code of Regulations
 ADOPT: 1832.5
 Filed 01/28/2009
 Effective 02/27/2009
 Agency Contact: Tracy Rhine (916) 574-7847

File# 2008-1209-01
 DEPARTMENT OF HEALTH CARE SERVICES
 Processing Timeframes for Physicians

This change without regulatory effect is intended to bring the amended CCR sections into conformity with statutory mandates. The bills (1 passed in 1999, 2 in 2007) were designed to make changes to the Welfare and Institutions Code to curb fraud and abuse. The changes to the regulations consist of changes to the application process for participation in the Medi-Cal program. Other changes involve the issuing of provider numbers.

Title 22
 California Code of Regulations
 AMEND: 51000.6.1, 51000.8, 51000.16, 51000.20, 51000.20.1, 51000.24.1, 51000.25.2, 51000.30, 51000.50, 51000.51, 51000.52, 51000.53, 51000.55, 51000.60
 Filed 01/23/2009
 Agency Contact: Ben Carranco (916) 440-7766

File# 2008-1217-01
 DEPARTMENT OF FOOD AND AGRICULTURE
 False Codling Moth Eradication Area

This filing is a certificate of compliance for an emergency regulatory action which proclaimed the entire state of California an eradication area for the false codling moth (*Thaumatotibia leucotreta*) and lists the hosts and methods of eradication.

Title 3
 California Code of Regulations
 ADOPT: 3591.22(a), 3591.22(b), 3591.22(c), 3591.22(d)
 Filed 01/21/2009
 Agency Contact:
 Stephen S. Brown (916) 654-1017

File# 2008-1210-01
 DEPARTMENT OF HEALTH CARE SERVICES
 Section 100 to Implement Assembly Bill 442

This change without regulatory effect is intended to bring the amended and repealed California Code of Regulations (CCR) sections into conformity with statutory mandates. The bills (1 passed in 2002, 1 in 2007) were designed to make changes to the Welfare and Institutions Code sections that deal with Medi-Cal pharmacy benefits. Specifically the changes to the statutes affect the Medi-Cal List of Contract Drugs, the list of medical supplies covered by Medi-Cal and the maximum allowable costs for items on these lists.

Title 22
 California Code of Regulations
 AMEND: 51313.6, 51320, 51476, 51510, 51510.1, 51510.2, 51510.3, 51511, 51513, 51520 REPEAL: 51513.5, 51520.1, 51520.2, 59998
 Filed 01/26/2009
 Agency Contact: Ben Carranco (916) 440-7766

File# 2008-1217-02
 DEPARTMENT OF FOOD AND AGRICULTURE
 Asian Citrus Psyllid Eradication Area

This filing is a certificate of compliance for an emergency regulatory action which proclaimed the entire State of California as an eradication area for *Diaphorina citri* (Asian citrus psyllid) and specified hosts and possible carriers and the means or methods for eradication, control, or suppression.

File# 2008-1223-01
 DEPARTMENT OF HEALTH CARE SERVICES
 California Children's Services (CCS) Program

This change without regulatory effect renumbers and nonsubstantively amends numerous California Chil-

dren's Services regulations in Title 22 of the California Code of Regulations. This action corrects Authority and Reference Citations which have been repealed and re-enacted, it updates agency names, corrects errors in the code and repeals several sections for which there is no longer statutory authority.

Title 22

California Code of Regulations

AMEND: 41508, 41509, 41510, 41511, 41512, 41514, 41515, 41515.1, 41515.2, 41516, 41516.1, 41516.3, 41517, 41517.3, 41517.5, 41517.7, 41518, 41518.2, 41518.3, 41518.4, 41518.5, 41518.7, 41518.8, 41518.9, 41519, 41610, 41611, 41670, 41671, 41672, 41700, 41800, 41811, 41815, 41819, 41823, 41827, 41831, 41832, 41835, 41839, 41844, 41848, 41852, 41856, 41864, 41866, 41868, 41872, 41900, 42000, 42050, 42075, 42110, 42115, 42120, 42125, 42130, 42131, 42132, 42140, 42160, 42180, 42305, 42320, 42321, 42326, 42330, 42400, 42401, 42402, 42403, 42404, 42405, 42406, 42407, 42420, 42700, 42701, 42702, 42703, 42705, 42706, 42707, 42708, 42709, 42710, 42711, 42712, 42713, 42714, 42715, 42716, 42717, 42718, 42719, 42720 REPEAL: 42800, 42801

Filed 01/28/2009

Agency Contact: Ben Carranco (916) 440-7766

File# 2008-1208-01

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Mobilehome Parks & Special Occupancy Parks Act

This regulatory action updates the existing regulations for mobilehome parks and special occupancy parks.

Title 25

California Code of Regulations

ADOPT: 1322, 1426, 2426 AMEND: 1000, 1002, 1004, 1005, 1006, 1018, 1020, 1020.1, 1020.6, 1032, 1183, 1210, 1211, 1212, 1216, 1312, 1320, 1333, 1429, 1432, 1438, 1468, 1474, 1504, 1612, 1752, 1756, 2002, 2004, 2005, 2006, 2018, 2183, 2210, 2211, 2212, 2216, 2312, 2327, 2429, 2438, 2474, 2504, 2612, 2752, 2756

Filed 01/21/2009

Effective 01/21/2009

Agency Contact: Ruth Ibarra (916) 327-2796

File# 2008-1222-01

DEPARTMENT OF JUSTICE

Department of Motor Vehicles Bond Form

This is an amendment to the Department of Motor Vehicles' (DMV) Business Partner Automation Surety Bond Form, submitted on behalf of DMV by the De-

partment of Justice (DOJ). The form was approved by DOJ and is submitted to OAL for filing with the Secretary of State and printing in the California Code of Regulations only.

Title 11

California Code of Regulations

AMEND: 51.19

Filed 01/28/2009

Effective 01/28/2009

Agency Contact: Karen W. Yiu (415) 703-5385

File# 2008-1208-02

DEPARTMENT OF PUBLIC HEALTH

Skilled Nursing Facility Nursing Staff-To-Patient Ratios

This regulatory action defines terms, sets nurse-to-patient staffing for three 8-hour shifts, describes documentation and posting requirements and specifies a procedure for obtaining a waiver of the established staffing per shift for Skilled Nursing Facilities (SNFs). Implementation is contingent on an appropriation in the annual Budget Act or another statute in accordance with Health & Safety Code section 1276.65(i).

Title 22

California Code of Regulations

ADOPT: 72038, 72077.1, 72329.1 AMEND: 72077, 72329

Filed 01/22/2009

Effective 01/22/2009

Agency Contact:

Barbara S. Gallaway (916) 440-7689

File# 2008-1219-01

DEPARTMENT OF VETERANS AFFAIRS

Veterans Home Admission

The California Department of Veterans Affairs (Department) amends Title 12 of the California Code of Regulations, section 501 to add subdivision (e) to establish the conditions of admission to the California Veterans Home.

Title 12

California Code of Regulations

AMEND: 501

Filed 01/27/2009

Effective 02/26/2009

Agency Contact:

Robert D. Wilson (916) 654-7022

File# 2008-1230-04

FISH AND GAME COMMISSION

Sport Fish Report Card & Tagging Fee Adjustments

This change without regulatory effect amends Title 14 section 701 by adjusting the fees for fishing cards pursuant to section 713 of the Fish and Game Code.

Title 14
 California Code of Regulations
 AMEND: 701
 Filed 01/28/2009
 Agency Contact: Jon Snellstrom (916) 653-4899

AMEND: 1859.104.1
 Filed 01/26/2009
 Effective 01/26/2009
 Agency Contact: Robert Young (916) 445-0083

File# 2008-1219-05
 OCCUPATIONAL SAFETY AND HEALTH
 STANDARDS BOARD
 Properly Rigged (Handling Loads)

File# 2008-1229-01
 STATE LANDS COMMISSION
 Performance Standards for the Discharge of Ballast
 Water for Vessels

This rulemaking clarifies that it is the rigger of lifted loads who is the "qualified person" who must be trained and capable of ensuring the safe lifting and handling of loads by cranes and other devices. The rulemaking also adds a Note which identifies where in the California Code of Regulations rigging and signaling requirements can be found. The rulemaking also requires that the use of slings in rigging loads complies with specified Code requirements for the use of slings.

This change without regulatory effect amends Title 2 section 2294 to make it consistent with Public Resources Code (PRC) Section 71205.3. Senate Bill 1781 amended PRC section 71205.3 to change the implementation schedule for the performance standards for the discharge of ballast water. The deadline was changed from 2009 to 2010. The amendment to Title 2 section 2294 changes the date from 2009 to 2010 to be consistent with the statute.

Title 8
 California Code of Regulations
 AMEND: 4999
 Filed 01/28/2009
 Effective 02/27/2009
 Agency Contact: Marley Hart (916) 274-5721

Title 2
 California Code of Regulations
 AMEND: 2294
 Filed 01/27/2009
 Agency Contact:
 Maurya Falkner (916) 574-2568

File# 2008-1205-02
 STATE ALLOCATION BOARD
 Leroy F. Greene School Facilities Act of 1998; ORG
 Program Amendments

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN August 27, 2008 TO
 January 28, 2009**

This action amends regulations of the school facilities program, particularly the overcrowding relief grant program, to specify grant application requirements and make funds separately available for site acquisition through condemnation based upon financial hardship.

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

Title 2
 California Code of Regulations
 ADOPT: 1859.184.1 AMEND: 1859.2, 1859.103,
 1859.184
 Filed 01/21/2009
 Effective 01/21/2009
 Agency Contact: Robert Young (916) 445-0083

Title 1
 01/20/09 AMEND: 260
 01/20/09 AMEND: Appendix A, Std. Form 400

File# 2008-1222-05
 STATE ALLOCATION BOARD
 Leroy F. Greene School Facilities Act of 1998; Material
 Inacc. on PIW

Title 2
 01/27/09 AMEND: 2294
 01/26/09 AMEND: 1859.104.1
 01/21/09 ADOPT: 1859.184.1 AMEND: 1859.2,
 1859.103, 1859.184
 01/12/09 AMEND: div. 8, ch. 24, secs. 45100,
 45127, 45128
 01/08/09 ADOPT: 18420.1
 01/08/09 ADOPT: 18944.3 AMEND: 18944.1
 12/30/08 AMEND: 714
 12/29/08 ADOPT: 2298
 12/15/08 AMEND: 17463, 17470, 17519

This regulatory action provides that a school district providing the best available information in an SFP Project Information Worksheet will not be subject to a Material Inaccuracy penalty for that information.

Title 2
 California Code of Regulations

CALIFORNIA REGULATORY NOTICE REGISTER 2009, VOLUME NO. 6-Z

12/09/08 ADOPT: 25100
 12/08/08 AMEND: 1700
 11/03/08 AMEND: 647.1, 647.2, 647.3, 647.20,
 647.20.1, 647.21, 647.22, 647.23,
 647.24, 647.25, 647.26, 647.30, 647.31,
 647.32, 647.33, 647.35, 647.36, 648.1,
 648.3, 648.5, 649.20, 649.21
 10/31/08 AMEND: 18545, 18703.4, 18730,
 18940.2, 18942.1, 18943
 10/31/08 ADOPT: 18402.1 AMEND: 18427
 10/22/08 ADOPT: 59600
 10/21/08 ADOPT: 1859.41.1, 1859.42.1 AMEND:
 1859.2, 1859.41, 1859.42, 1859.43,
 1859.51, 1859.147, Form SAB 50-01,
 Form SAB 50-03
 10/20/08 ADOPT: 20120, 20121, 20122, 20123,
 20124, 20125, 20126, 20127
 09/04/08 ADOPT: 18530.45
 09/04/08 AMEND: 18946.4

Title 3

01/21/09 ADOPT: 3591.22(a), 3591.22(b),
 3591.22(c), 3591.22(d)
 01/21/09 ADOPT: 3591.21(a), 3591.21(b),
 3591.21(c)
 01/20/09 REPEAL: 3664, 3665, 3666, 3667, 3668,
 3669
 01/14/09 AMEND: 3434(b)
 01/13/09 AMEND: 3434(b)
 01/12/09 AMEND: 3589(a)
 12/30/08 AMEND: 3417(b)
 12/18/08 AMEND: 3417(b)
 12/18/08 AMEND: 3406(b)
 12/16/08 AMEND: 1358(b)
 12/12/08 AMEND: 3434(b)
 12/10/08 AMEND: 3589
 12/04/08 AMEND: 3435(b)
 11/26/08 AMEND: 3406(b)
 11/20/08 ADOPT: 6400
 11/12/08 AMEND: 3591.5(a)
 11/12/08 AMEND: 3434(b)
 11/07/08 AMEND: 3433(b)
 10/30/08 ADOPT: 1430.142 AMEND: 1430.43
 REPEAL: 1430.44.5
 10/29/08 AMEND: 3435(b)
 10/28/08 ADOPT: 3408
 10/22/08 AMEND: 3700(c)
 10/20/08 AMEND: 3433(b)
 10/20/08 AMEND: 3434(b)
 10/17/08 AMEND: 3423(b)
 10/15/08 AMEND: 3433(b)
 10/14/08 AMEND: 3434(b)
 10/14/08 AMEND: 3423(b)
 10/01/08 AMEND: 3434(b)
 09/24/08 AMEND: 810.1 REPEAL: 810

09/23/08 AMEND: 3591.20(a)
 09/23/08 AMEND: 3434(b)
 09/18/08 AMEND: 3591.20(a)
 09/17/08 AMEND: 3435(b)
 09/11/08 AMEND: 3591.20(a)
 09/10/08 AMEND: 3434
 09/05/08 ADOPT: 3435
 09/03/08 AMEND: 6452.2
 09/02/08 AMEND: 3433(b)
 09/02/08 AMEND: 3591.6(a)

Title 4

01/13/09 ADOPT: 4027, 4027.1, 4027.2, 4027.3,
 4027.4, 4027.5
 12/29/08 AMEND: 12482
 11/24/08 ADOPT: 8102, 8102.1, 8102.2, 8102.3,
 8102.4, 8102.5, 8102.6, 8102.7, 8102.8,
 8102.9, 8102.10, 8102.11, 8102.12,
 8102.13, 8102.14, 8102.15 AMEND:
 8090, 8091, 8092, 8093, 8094, 8095,
 8096, 8097, 8098, 8099, 8100, 8101
 11/17/08 AMEND: 1505
 10/30/08 AMEND: 1606
 10/16/08 ADOPT: 12047, 12048, 12050, 12348
 AMEND: 12002
 10/03/08 ADOPT: 12008 AMEND: 12122,
 12200.14, 12200.20, 12202, 12203A,
 12203.2, 12205.1, 12218.13, 12220.14,
 12220.20, 12220.20A, 12222, 12237,
 12301, 12342, 12343, 12344, 12345
 09/29/08 AMEND: 1843.2
 09/02/08 AMEND: 1850

Title 5

01/20/09 ADOPT: 9517.1
 01/05/09 AMEND: 80004
 12/09/08 ADOPT: 18131.1 AMEND: 18131
 11/06/08 AMEND: 42723
 10/17/08 ADOPT: 100000, 100001, 100002,
 100003, 100004, 100005, 100006,
 100007, 100008, 100009, 100010,
 100011, 100012, 100013, 100014,
 100015
 10/14/08 ADOPT: 42729
 09/10/08 AMEND: 41000
 09/09/08 ADOPT: 19828.3, 19837.2 AMEND:
 19816, 19816.1, 19828.2, 19837.1,
 19846

Title 8

01/28/09 AMEND: 4999
 01/20/09 AMEND: Appendix B following
 sections 1529, 5208, 8358
 01/15/09 AMEND: 2500.7
 01/13/09 ADOPT: 29, 31.1, 31.3, 31.7, 32.6, 36.5,
 41.5, 41.6, 41.7, 63, 120, 121, 122, 123,

	124 AMEND: 1, 10, 11, 11.5, 12, 13, 14, 15, 16, 17, 18, 19, 20, 30, 30.5, 31, 31.5, 32, 33, 34, 35, 35.5, 36, 38, 39, 39.5, 40, 41, 43, 44, 45, 46, 46.1, 47, 49, 49.2, 49.4, 49.6, 49.8, 49.9, 50, 51, 52, 54, 55, 56, 57, 60, 61, 62, 65, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 116, 117, 118, 119, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159 REPEAL: 10.5, 32.5, 37, 53, 70, 71, 72, 73, 74, 75, 76, 76.5, 77, 101, 114, 115		10750, 10751, 10753, 10754, 10755, 10770, 10779, 10840, 10842, 10843, 10846, 10848, 10850, 10860, 10865, 10866, 10946, 10950, 10953 REPEAL: 10306, 10308, 10347, 10390, 10391, 10392, 10395, 10396, 10414, 10415, 10416, 10417, 10514, 10520, 10548, 10555, 10563, 10590, 10591, 10592, 10610, 10630, 10758, 10762, 10771, 10867, 10890, 10952, 10955, 10957, 10995, 10996
12/22/08	ADOPT: 16404, 16430, 16435.5 AMEND: 16421, 16422, 16423, 16424, 16425, 16426, 16427, 16428, 16429, 16431, 16432, 16434, 16435, 16436, 16437, 16439	11/12/08	AMEND: 15600, 15601, 15602, 15603, 15604, 15605, 15606, 15607, 15611
12/02/08	AMEND: 2940.6, Appendix C	11/06/08	AMEND: 2540.8, 2540.9, 2548.23, 2719, 2740, 2741, 2880, 2980
12/01/08	AMEND: 5198(f)(2)(A)	10/01/08	AMEND: 3412, 3413, 3414, 3416
11/19/08	AMEND: 1658(p)	09/23/08	AMEND: 5155
11/17/08	ADOPT: 10116, 10116.1, 10116.2, 10116.3, 10116.5, 10116.6, 10116.7, 10116.8 AMEND: 10123.1 renumbered to 10116.4, 10001 renumbered to 10116.9, 10002 renumbered to 10117, 10003 renumbered to 10118, 10004 renumbered to 10119, 10005 renumbered to 10120, 10123, 10127, 10127.1, 10128, 10133.13, 10133.14, 10133.16, 10133.22, 10133.53, 10133.54, 10133.55, 10133.56, 10133.57, 10133.58 REPEAL: 10133.3, 10133.50	09/22/08	ADOPT: 1530.1
		09/17/08	AMEND: 1512
		Title 9	
		01/07/09	AMEND: 7400
		11/18/08	ADOPT: 9550
		Title 10	
		01/15/09	AMEND: 2699.6707, 2699.6711, 2699.6721, 2699.6723, 2699.6725, 2699.6809
		01/14/09	AMEND: 2698.100, 2698.200, 2698.201, 2698.206, 2698.300, 2698.301
		01/12/09	AMEND: 2498.5
		12/31/08	ADOPT: 2194.50, 2194.51, 2194.52, 2194.53, 2194.54, 2194.55
		12/02/08	AMEND: 2652.1
		11/12/08	AMEND: 2498.4.9
		11/12/08	AMEND: 2498.4.9
		11/07/08	AMEND: 2498.5
		11/03/08	AMEND: 2498.5
		09/22/08	AMEND: 2699.6500, 2699.6803, 2699.6805
		09/15/08	AMEND: 2699.6619, 2699.6700, 2699.6703, 2699.6705, 2699.6709, 2699.6711, 2699.6713, 2699.6715, 2699.6717, 2699.6721, 2699.6723, 2699.6725
		09/11/08	AMEND: 2330.1
		Title 11	
		01/28/09	AMEND: 51.19
		12/31/08	AMEND: 1005(d)
		12/02/08	AMEND: 1005, 1007, 1008
		11/07/08	AMEND: 1005, 1081
		10/27/08	AMEND: 1005, 1007, 1008, 1052
		10/16/08	AMEND: 1081
		10/14/08	AMEND: 1005
		10/02/08	AMEND: 1003, 9040, 9041, 9073(b)
		10/02/08	AMEND: 1081
11/17/08	ADOPT: 10150.1, 10150.2, 10150.3, 10150.4, 10151, 10151.1, 10166.1 AMEND: 10150, 10160, 10160.1, 10160.5, 10161, 10161.1, 10162, 10164, 10165, 10166, 10167 REPEAL: 10168		
11/17/08	ADOPT: 10397, 10403, 10409, 10508, 10550, 10593, 10603, 10629, 10770.5, 10770.6, 10782, 10785, 10844, 10845 AMEND: 10301, 10302, 10324, 10346, 10400, 10410, 10411, 10412, 10450, 10500, 10505, 10507, 10510, 10541, 10561, 10589, 10608, 10616, 10626,		

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09/23/08	ADOPT: 44.3	4970.51, 4970.52, 4970.53, 4970.54, 4970.55, 4970.56, 4970.57, 4970.58, 4970.59, 4970.60, 4970.61, 4970.62, 4970.63, 4970.64, 4970.65, 4970.66, 4970.67, 4970.68, 4970.69, 4970.70, 4970.71, 4970.72
Title 12		
01/27/09	AMEND: 501	
01/12/09	AMEND: 503	
Title 13		
01/20/09	AMEND: 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2708, 2709, 2710	12/31/08 AMEND: 957 REPEAL: 957.11, 957.12
12/22/08	AMEND: 553.70	12/29/08 AMEND: 243, 245 REPEAL: 241
12/05/08	AMEND: 110.04	12/17/08 ADOPT: 1032 AMEND: 895, 895.1, 929.1, 949.1, 969.1, 1032.7, 1032.9, 1037.3, 1054.5, 1055.3, 1056.3, 1090.1, 1090.2, 1090.4, 1090.6, 1090.17, 1092.03, 1092.04, 1092.06, 1092.18, 1104.3 REPEAL: 1032
12/01/08	AMEND: 1956.8	
11/24/08	ADOPT: 2027	
11/03/08	AMEND: 25.06, 25.07, 25.08, 25.09, 25.10, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, 25.22	12/11/08 AMEND: Division 5, Appendix M
10/20/08	ADOPT: 346.00, 346.02, 346.04, 346.06, 346.08, 346.10, 346.12, 346.14, 346.16	12/10/08 ADOPT: 120.1, 120.2 AMEND: 120, 120.3 REPEAL: 120.01
10/07/08	AMEND: 935	
10/02/08	AMEND: 423.00	11/26/08 AMEND: 1257
10/02/08	AMEND: 15.00, 15.03	11/24/08 AMEND: 749.3
09/08/08	AMEND: 2449	11/13/08 ADOPT: 18660.40
08/29/08	ADOPT: 2260(a)(0.5), 2260(a)(0.7), 2260(a)(6.9), 2260(a)(7.5), 2260(a)(8.5), 2260(a)(10.5), 2260(a)(10.7), 2260(a)(19.7), 2260(a)(19.8), 2260(a)(23.5), 2260(a)(23.7), 2260(a)(37), 2260(a)(38), 2260(a)(39), 2262.3(d), 2264.2(a)(3), 2264.2(b)(5), 2264.2(d), 2265(c)(4), 2265.1, 2265.5, 2266(b)(3), 2266(b)(4), 2266(b)(5)	11/07/08 AMEND: 895.1, 919.9, 939.9
	AMEND: 2261, 2262, 2262.3, 2262.4, 2262.5, 2262.9, 2263, 2263.7, 2264.2, 2265, 2266, 2266.5, 2270, 2271, 2273	11/07/08 AMEND: 1038(i)
		11/07/08 AMEND: 895.1, 898, 914.8, 916, 916.2, 916.9, 916.11, 916.12, 923.3, 923.9, 934.8, 936, 936.2, 936.9, 936.11, 936.12, 943.3, 943.9, 954.8, 956, 956.2, 956.9, 956.11, 956.12, 963.3, 963
		10/30/08 AMEND: 29.85
		10/23/08 AMEND: 163, 164
		10/22/08 AMEND: 1052.4
		10/21/08 AMEND: 15387 Appendix C
		10/09/08 AMEND: 791, 791.7, 795
		09/22/08 AMEND: 4900 REPEAL: 4901, 4902, 4903, 4904
		09/15/08 AMEND: 502
		09/11/08 AMEND: 10310, 10360, 10810, 10820, Appendix D, Appendix F
		09/09/08 ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5, 17987.6
		09/04/08 AMEND: 670.2
		08/27/08 AMEND: 300
Title 13, 17		
12/03/08	AMEND: 2299.3, 93118.3	
10/20/08	ADOPT: 2299.5, 93118.5	
Title 14		
01/28/09	AMEND: 701	
01/13/09	AMEND: 300	
01/12/09	ADOPT: 4970.00, 4970.01, 4970.02, 4970.03, 4970.04, 4970.05, 4970.06.1, 4970.06.2, 4970.06.3, 4970.07, 4970.07.1, 4970.07.2, 4970.08, 4970.09, 4970.10, 4970.10.1, 4970.10.2, 4970.10.3, 4970.10.4, 4970.11, 4970.12, 4970.13, 4970.14, 4970.14.1, 4970.14.2, 4970.14.3, 4970.15, 4970.15.1, 4970.15.2, 4970.15.3, 4970.15.4, 4970.16, 4970.17, 4970.18, 4970.19, 4970.19.1, 4970.19.2, 4970.19.3, 4970.19.4, 4970.19.5, 4970.19.6, 4970.20, 4970.21, 4970.22, 4970.23, 4970.23.1, 4970.23.2, 4970.24, 4970.25.1, 4970.25.2, 4970.25.3, 4970.26 REPEAL: 4970.49, 4970.50,	
		Title 15
		12/19/08 REPEAL: 4826, 4985
		12/16/08 ADOPT: 3099
		12/15/08 ADOPT: 3334 AMEND: 3000
		12/11/08 AMEND: 3323
		12/09/08 AMEND: 3000, 3001, 3041.3, 3075.3, 3294.5, 3356, 3369.5, 3370, 3376.1, 3382, 3383, 3393, 3401, 3402, 3405, 3406, 3407, 3408, 3410, 3411, 3414, 3430, 3432, 3433
		11/26/08 ADOPT: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.5, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1756,

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1757, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792	Title 19
10/30/08 AMEND: 3000, 3375, 3376.1, 3379	11/14/08 AMEND: 2900, 2910, 2915, 2920, 2930, 2940, 2945, 2950, 2955, 2960, 2965, 2966, 2970, 2980
10/28/08 ADOPT: 3999.7	09/24/08 AMEND: 560
10/23/08 ADOPT: 1417 AMEND: 1029, 1206, 1248, 1357, 1358, 1461	09/24/08 AMEND: 906.3
10/15/08 ADOPT: 3999.6	Title 21
09/15/08 ADOPT: 3269	11/26/08 AMEND: 6633.2
09/03/08 AMEND: 2253	Title 22
08/29/08 AMEND: 3000, 3261.1, 3261.2, 3261.4, 3261.5, 3261.7, 3267	01/28/09 AMEND: 41508, 41509, 41510, 41511, 41512, 41514, 41515, 41515.1, 41515.2, 41516, 41516.1, 41516.3, 41517, 41517.3, 41517.5, 41517.7, 41518, 41518.2, 41518.3, 41518.4, 41518.5, 41518.7, 41518.8, 41518.9, 41519, 41610, 41611, 41670, 41671, 41672, 41700, 41800, 41811, 41815, 41819, 41823, 41827, 41831, 41832, 41835, 41839, 41844, 41848, 41852, 41856, 41864, 41866, 41868, 41872, 41900, 42000, 42050, 42075, 42110, 42115, 42120, 42125, 42130, 42131, 42132, 42140, 42160, 42180, 42305, 42320, 42321, 42326, 42330, 42400, 42401, 42402, 42403, 42404, 42405, 42406, 42407, 42420, 42700, 42701, 42702, 42703, 42705, 42706, 42707, 42708, 42709, 42710, 42711, 42712, 42713, 42714, 42715, 42716, 42717, 42718, 42719, 42720 REPEAL: 42800, 42801
Title 16	01/26/09 AMEND: 51313.6, 51320, 51476, 51510, 51510.1, 51510.2, 51510.3, 51511, 51513, 51520 REPEAL: 51513.5, 51520.1, 51520.2, 59998
01/28/09 AMEND: 950.2	01/23/09 AMEND: 51000.6.1, 51000.8, 51000.16, 51000.20, 51000.20.1, 51000.24.1, 51000.25.2, 51000.30, 51000.50, 51000.51, 51000.52, 51000.53, 51000.55, 51000.60
01/28/09 ADOPT: 1832.5	01/22/09 ADOPT: 72038, 72077.1, 72329.1 AMEND: 72077, 72329
01/09/09 ADOPT: 2504.1, 2517.5, 2564.1, 2575.5 AMEND: 2537, 2540.6, 2590, 2592.6	01/15/09 AMEND: 101115
12/30/08 AMEND: 1387	01/06/09 AMEND: 66270.60, 67450.30
12/18/08 AMEND: 3340.28, 3340.29	12/09/08 AMEND: 51521
12/17/08 AMEND: 4170	12/09/08 AMEND: 100031, 100032, 100033, 100034, 100035, 100036, 100037, 100038, 100039, 100040, 100042, 100043 REPEAL: 100041
12/11/08 AMEND: 1336	11/24/08 AMEND: 2706-1
12/09/08 AMEND: 1399.25 REPEAL: 1399.26	11/20/08 AMEND: 3254(i)-2
11/24/08 AMEND: 1419, 1419.1, 1419.3	11/13/08 ADOPT: 97234, 97267 AMEND: 97215, 97225, 97226, 97227, 97241, 97244, 97248
10/30/08 AMEND: 1399.571	11/06/08 AMEND: 2706-2, 3302-1, 3303.1(c)-1
10/17/08 ADOPT: 1399.610, 1399.612 AMEND: 1399.502	
10/07/08 AMEND: 832.47	
10/02/08 AMEND: 3351.2	
09/29/08 AMEND: 2522, 2524, 2579, 2579.10 REPEAL: 2522.5, 2579.1	
09/22/08 AMEND: 4154, 4155	
09/19/08 AMEND: 11.5, 12, 12.5, 37, 87.1	
09/10/08 ADOPT: 1028.2, 1028.3, 1028.4, 1028.5 AMEND: 1021	
08/27/08 AMEND: 2250 REPEAL: 2274, 2277	
Title 17	
12/30/08 AMEND: 30195.1	
12/26/08 ADOPT: 100501	
12/02/08 ADOPT: 95100, 95101, 95102, 95103, 95104, 95105, 95106, 95107, 95108, 95109, 95110, 95111, 95112, 95113, 95114, 95115, 95125, 95130, 95131, 95132, 95133	
10/30/08 AMEND: 100407, 100408	
09/24/08 AMEND: 52082, 56103, 56104, 58670	
09/18/08 ADOPT: 94800, 94801, 94802, 94803, 94804, 94805, 94806, 94807, 94808, 94809, 94810	
09/05/08 ADOPT: 98100 REPEAL: 96100	
Title 18	
01/02/09 AMEND: 1702.5	
12/01/08 AMEND: 1602.5	
11/14/08 AMEND: 1591, 1602	
09/24/08 AMEND: 1574	
09/24/08 AMEND: 1599	

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10/29/08 AMEND: 64413.1, 64414, 64431,
64432, 64432.2, 64432.8, 64433.3,
64445.1, 64447.2, 64482
10/28/08 AMEND: 87102, 87105
10/15/08 AMEND: 2051-3
09/26/08 AMEND: 3258-1, 3267-1, 3267-2

Title 23

01/07/09 ADOPT: 3939.34
01/05/09 ADOPT: 3006
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