

**EMERGENCY**

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

|  |                                 |                              |  |
|--|---------------------------------|------------------------------|--|
| OAL FILE NUMBERS   | NOTICE FILE NUMBER<br><b>Z-</b> | REGULATORY ACTION NUMBER     | EMERGENCY NUMBER<br><b>2011-0214-03E</b> |
| For use by Office of Administrative Law (OAL) only                         |                                 |                              |  |
|  |                                 | 2011 FEB 14 PM 3:11          |  |
|  |                                 | OFFICE OF ADMINISTRATIVE LAW |  |
| NOTICE   |                                 | REGULATIONS                  |  |
| AGENCY WITH RULEMAKING AUTHORITY<br>California Emergency Management Agency |                                 |                              | AGENCY FILE NUMBER (If any)              |

**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

|   |  |  |                                |  |                       |
|---|--|--|--------------------------------|--|-----------------------|
| 1. SUBJECT OF NOTICE<br>Emergency Regulations for PNP Reimbursement   |  | TITLE(S)<br>19   | FIRST SECTION AFFECTED<br>3000 | 2. REQUESTED PUBLICATION DATE<br>February 14, 2011 |                       |
| 3. NOTICE TYPE<br><input type="checkbox"/> Notice re Proposed Regulatory Action <input checked="" type="checkbox"/> Other |  | 4. AGENCY CONTACT PERSON<br>Catherine Bernstein/L. MacRae  |                                | TELEPHONE NUMBER<br>(916) 322-1742                 | FAX NUMBER (Optional) |
| <b>OAL USE ONLY</b>   |  | ACTION ON PROPOSED NOTICE<br><input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn |                                | NOTICE REGISTER NUMBER                             | PUBLICATION DATE      |

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

|  |   |   |   |
|--|---|---|---|
| 1a. SUBJECT OF REGULATION(S)<br>Emergency Regulations - Private Non-Profit Organization Reimbursement  |   | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)<br>N/A     |   |
| 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)  |   |   |   |
| <b>SECTION(S) AFFECTED</b><br>(List all section number(s) individually. Attach additional sheet if needed.)  | ADOPT<br>3000, 3010, 3020, 3025, 3030, 3035, 3040, 3045, 3050, 3055, 3060, 3070, 3080, 3090   |   |   |
|  | AMEND   |   |   |
|  | REPEAL<br>TITLE(S)<br>19  |   |   |
| 3. TYPE OF FILING  |   |   |   |
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)   | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)  | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)   | <input type="checkbox"/> File & Print                               | <input type="checkbox"/> Print Only   |
| <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))   |   | <input type="checkbox"/> Other (Specify) _____                      |   |
| 4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1) |   |   |   |
| 5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)   |   |   |   |
| <input type="checkbox"/> Effective 30th day after filing with Secretary of State   | <input checked="" type="checkbox"/> Effective on filing with Secretary of State   | <input type="checkbox"/> §100 Changes Without Regulatory Effect     | <input type="checkbox"/> Effective other (Specify) _____                                    |
| 6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY   |   |   |   |
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)   | <input type="checkbox"/> Fair Political Practices Commission  | <input type="checkbox"/> State Fire Marshal                         |   |
| <input type="checkbox"/> Other (Specify) _____   |   |   |   |
| 7. CONTACT PERSON<br>Catherine Bernstein   |   | TELEPHONE NUMBER<br>(916) 322-1742                                  | FAX NUMBER (Optional)   |
|  |   | E-MAIL ADDRESS (Optional)<br>catherine.bernstein@calema.ca.gov      |   |

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

TYPED NAME AND TITLE OF SIGNATORY

Mike Dayton, Acting Secretary Cal EMA

For use by Office of Administrative Law (OAL) only

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PROPOSED EMERGENCY REGULATIONS**

**PNP Regulation**

**§ 3000. Definitions**

**(a) Essential Community Services:** Providing governmental type direct services to the community affected by an emergency or disaster, through the distribution of supplies and other disaster or emergency assistance activities. PNP activities are those that provide essential services including but not limited to food, water, and shelter.

**(b) Hazard Mitigation:** Any cost-effective measure which will reduce the potential for damage to a facility from a future disaster event.

**(c) Intermediary Private Nonprofit (Intermediary PNP):** Any private not for profit organization as defined in Section 3000(e) that, through written agreement with a local agency, is responsible for the coordination of multiple PNPs performing essential community services within the specific jurisdiction of that local agency.

**(d) Local Agency:** Any city, city and county, county, county office of education, community college district, school district, or special district.

**(e) Private Nonprofit (PNP):** Any private not for profit organization that is compliant with 44 CFR Section 206.221(7) (f) having:

- (1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under Sections 501(c), (d), or (e) of the Internal Revenue Code of 1954,  
or
- (2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

**§ 3010. General Provisions for Eligible Private Nonprofit (PNP) Activities**

**(a) The PNP or Intermediary PNP applicant must meet all eligibility requirements described in this section.**

**(b) When a state of emergency is proclaimed by the Governor, an eligible PNP or the Intermediary PNP applicant may receive state assistance pursuant to Government Code Section 8692. This emergency regulation applies to any emergency proclaimed by the Governor on or after December 21, 2010, and until such time as this emergency regulation expires.**

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PROPOSED EMERGENCY REGULATIONS**

(c) An eligible PNP applicant may receive state financial assistance as reimbursement for the performance of essential community services provided such expenditures meet all of the eligibility requirements.

(d) An eligible Intermediary PNP applicant may receive state financial assistance as reimbursement for the coordination of multiple PNPs performing essential community services provided such expenditures meet all of the eligibility requirements.

(e) No PNP activities resulting from self-deployment will be eligible for reimbursement.

(f) No state financial assistance shall be made available for any activity that occurs more than six (6) months from the date of the Governor's Proclamation without prior written approval from the California Emergency Management Agency (Cal EMA).

(g) An eligible PNP applicant shall utilize the application process as described in Section 3050. An eligible Intermediary PNP applicant shall utilize the application process as described in Section 3055.

**§ 3020. PNP Applicant Eligibility**

(a) A PNP organization must meet all of the following criteria for eligibility to apply for state financial assistance.

(1) An eligible PNP applicant must meet the definition of PNP as defined in Section 3000(e).

(2) An eligible PNP applicant must provide essential community services as defined in Section 3000(a).

(b) A PNP organization is not eligible if it uses public funds for religious means as described in Government Code Section 8692(d) while providing emergency assistance activities.

**§3025. Intermediary PNP Applicant Eligibility**

(a) An Intermediary PNP organization must meet all of the following criteria for eligibility to apply for state financial assistance.

(1) An eligible Intermediary PNP applicant must meet the definition of an Intermediary PNP as defined in Section 3000(c).

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PROPOSED EMERGENCY REGULATIONS**

(2) An eligible Intermediary PNP applicant must be responsible for the coordination of multiple PNPs as described in a written agreement with the requesting local agency. The written agreement shall meet all of the following requirements.

(A) The written agreement shall contain a list of the PNPs performing essential community services that the Intermediary PNP is responsible for coordinating.

(B) The written agreement shall describe the process the requesting local agency will utilize to request the Intermediary PNP to provide the coordination of essential community services performed by the listed PNPs.

(C) The written agreement shall be executed within 30 days of the date of the Governor's State of Emergency Proclamation issued in response to an emergency or disaster.

(D) This deadline for the execution of the written agreement may be extended by the Cal EMA Secretary only for unusual or extraordinary circumstances upon written request by the Intermediary PNP or requesting local agency.

(3) An eligible Intermediary PNP as an applicant requesting reimbursement on behalf of the PNPs they are responsible for coordinating, must have a written agreement with these PNPs. The written agreement shall meet all of the following requirements.

(A) A description of the process for the local agency to request the performance of essential community services by the listed PNPs through the Intermediary PNP.

(B) An authorization statement with signature that the Intermediary PNP will comply with the procedures and requirements described in the agreement.

**§ 3030. PNP Activities Eligibility**

(a) To be eligible for state financial assistance, the PNP activities must meet all the following criteria.

(1) Eligible activities must be requested by a local agency or the state and completed within a timeframe established by the requesting agency. A written agreement between an eligible PNP and the requesting local agency may replace such request if the agreement specifies the requirements of deployment and is executed prior to providing the essential community services.

(2) Eligible activities must relate directly to a state of emergency as proclaimed by the Governor and be in support of the community affected by the emergency or disaster.

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PROPOSED EMERGENCY REGULATIONS**

(3) Consistent with Government Code Section 8692(d), eligible activities must comply with state and federal civil rights laws that prohibit discrimination, and the First Amendment to the United States Constitution with regard to the use of public funds for religious activities.

(b) Hazard mitigation, repair or permanent restoration to facilities or real property damaged by an emergency or disaster are not eligible activities under this section.

**§3035. Intermediary PNP Coordination Activities Eligibility**

(a) To be eligible for state financial assistance, the Intermediary PNP coordination activities must meet all the following criteria.

(1) Eligible coordination activities must be requested by a local agency in accordance with a written agreement between the Intermediary PNP and the local agency.

(2) Eligible activities include the coordination of multiple PNPs listed in the written agreement in the performance of essential community services for the requesting local agency.

(3) Consistent with Government Code Section 8692(d), eligible activities must comply with state and federal civil rights laws that prohibit discrimination, and the First Amendment to the United States Constitution with regard to the use of public funds for religious activities.

(4) Eligible coordination activities must relate directly to a state of emergency as proclaimed by the Governor and be in support of the community affected by the emergency or disaster.

**§ 3040. PNP Cost Eligibility**

(a) Eligible activities must result in documented extraordinary costs.

(b) Reasonable equal value replacement costs for documented pre-event inventory provided to the community affected by the proclaimed emergency or disaster may be eligible for reimbursement if the inventory is necessary to the PNP's ability to provide the essential community services requested by the local agency or the state.

(c) PNP costs as described below are ineligible for state financial assistance.

(1) No state financial assistance will be provided for costs or expenditures prohibited by the federal or state constitution, federal or state law, or federal or state regulation.

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PROPOSED EMERGENCY REGULATIONS**

(2) No reimbursement will be provided for donated resources received by the PNP on or after the first day of the incident period as specified in the Governor's State of Emergency Proclamation for the emergency or disaster for which the PNP is seeking reimbursement by the state.

(3) No reimbursement will be provided for donated or volunteer labor.

(4) No reimbursement will be provided for vouchers, debit cards or other monetary relief provided to the community affected by an emergency or disaster.

(5) No state financial assistance will be provided for damages caused by negligence or intentional acts.

(6) No funds allocated shall be used to supplant state or federal funds otherwise available in the absence of state financial relief or assistance.

**§3045. Intermediary PNP Cost Eligibility**

(a) Eligible coordination activities of multiple PNPs performing essential community services must result in documented extraordinary costs.

(b) Intermediary PNP coordination costs as described below are ineligible for state financial assistance.

(1) No state financial assistance will be provided for costs or expenditures prohibited by the federal or state constitution, federal or state law, or federal or state regulation.

(2) No funds allocated shall be used to supplant state or federal funds otherwise available in the absence of state financial relief or assistance.

**§ 3050. PNP Application Process**

(a) An eligible PNP applicant must submit to the Cal EMA, a completed PNP application within 60 days after the date of a Governor's Proclamation.

(1) The Secretary or his/her designee may extend this deadline only for unusual or extraordinary circumstances.

(2) Prior to application approval by Cal EMA, an eligible applicant shall also submit a resolution designating an authorized representative.

(b) An eligible PNP applicant must submit a PNP activities claim within 60 days of the completion of all eligible activities.

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PROPOSED EMERGENCY REGULATIONS**

- (1) After receipt of the PNP activities claim, Cal EMA may schedule an onsite review of supporting documentation.
- (2) The state shall provide one hundred (100) percent of the total cost of eligible PNP activities.
- (3) Upon approval of eligible costs, Cal EMA will process an allocation through the State Controller's Office. The state shall make no allocation less than one thousand dollars (\$1,000).
- (4) If the state allocation is less than the total costs submitted on the activities claim, an eligible PNP applicant has the right to a fair hearing pursuant to Section 3060.
- (c) An eligible PNP applicant providing sustained operations may submit a PNP activities claim prior to the completion of all eligible activities providing the PNP can demonstrate financial hardship.

**§ 3055. Intermediary PNP Application Process**

(a) An eligible Intermediary PNP applicant must submit to Cal EMA, a completed PNP application within 60 days after the date of a Governor's Proclamation.

(1) The Secretary or his/her designee may extend this deadline only for unusual or extraordinary circumstances.

(2) Prior to application approval by Cal EMA, an eligible Intermediary PNP applicant shall also submit a resolution designating an authorized representative.

(b) An eligible Intermediary PNP applicant must submit a PNP activities claim within 60 days of the completion of all eligible coordination activities.

(c) The PNP activities claims form submitted by the Intermediary PNP may include the eligible costs for all of the PNPs listed in their agreement that provided essential community services for the local agency. The Intermediary PNP will be responsible for processing the reimbursement to those listed PNPs included on their PNP activities claim form.

(1) After receipt of the Intermediary PNP activities claim, Cal EMA may schedule an onsite review of supporting documentation.

(2) The state shall provide the Intermediary PNP one hundred (100) percent of the total eligible cost of the coordination activities and the total eligible cost paid by the Intermediary PNP to the PNPs they are responsible for coordinating.

## CALIFORNIA EMERGENCY MANAGEMENT AGENCY PROPOSED EMERGENCY REGULATIONS

(3) Upon approval of eligible costs, Cal EMA will process an allocation through the State Controller's Office. The state shall make no allocation less than one thousand dollars (\$1,000).

(4) If the state allocation is less than the total costs submitted on the activities claim, an eligible Intermediary PNP applicant has the right to a fair hearing pursuant to Section 3060.

### **§ 3060. Fair Hearing Processes**

(a) LEVEL ONE: The PNP or the Intermediary PNP shall submit a formal written description of the grievance with supporting documentation, to the Director of Statewide Operations (Director) of Cal EMA. The Director or his/her designee shall respond with a written decision within ten (10) working days from receipt. Should the PNP or the Intermediary PNP disagree with the decision, the PNP or the Intermediary PNP may appeal to the second level.

(b) LEVEL TWO: The PNP or the Intermediary PNP shall prepare a formal response disputing the decision made by the Director. The PNP or the Intermediary PNP response shall include the original description of the grievance with supporting documentation, together with a copy of the response from the Director. This response shall be sent to the Assistant Secretary of Prevention, Information Analysis and Operations (Assistant Secretary) of Cal EMA within thirty (30) working days from receipt of the decision of the Director. The Assistant Secretary or his/her designee shall issue a written decision to the PNP or the Intermediary PNP within sixty (60) working days of receipt of the PNP's or the Intermediary PNP's formal response. This written decision shall be deemed a final judgment for purposes of this fair hearing process.

### **§ 3070. Audit**

The Secretary or his/her duly authorized representative shall conduct audits and investigations as necessary to ensure compliance with these regulations. State auditors, and the Secretary or his/her duly authorized representative, shall have the right to question any person, as appropriate and to access all financial and program records and supporting documentation pertinent to any activity funded under these regulations. The rights of access shall last for the full length of the retention period as required under these regulations.

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PROPOSED EMERGENCY REGULATIONS**

**§ 3080. Retention Requirements for Records**

The PNP or the Intermediary PNP applicant shall retain all financial and program records and supporting documentation, reasonably considered as pertinent to these regulations for three years from the starting date of the retention period. The Secretary or his/her duly authorized representative will notify each PNP or the Intermediary PNP applicant of the starting date of the retention period.

**§ 3090. Original Source Documentation**

Microfilm, microfiche, or other representations of original source documents may be accepted in lieu of original source documents, if the eligible PNP or the Intermediary PNP applicant provides to Cal EMA an independent or internal auditor's report attesting to the accuracy of the alternate forms of original source documents.



February 14, 2011

Office of Administrative Law  
300 Capitol Mall, Suite 1250  
Sacramento, California 95814-4339

Subject: Request for Adoption of Emergency Regulations to Facilitate the Immediate Provision of Relief to Victims of a Federally Declared Major Disaster - Severe Winter Storms

Dear Gentleperson:

Enclosed for your review and approval is a package of emergency regulations proposed by California Emergency Management Agency (Cal EMA). The purpose of the proposed emergency regulations is to get critical aid to people in need. It is Cal EMA's business to anticipate and prepare for disasters. Accordingly, prior to this request, Cal EMA had developed similar regulations and engaged in pursuing their adoption through the formal APA process. However, the recent series of severe winter storms, which resulted in a federally declared major disaster, have made it essential that we now enlist the help of the Office of Administrative Law to effect the immediate adoption of the proposed emergency regulations.

As you may know, the Presidential Declaration of Major Disaster for the counties impacted by the severe winter storms denied individual assistance. This means that many impoverished storm victims and their families are in dire need of help. Fortunately, private non-profit organizations (PNPs) have been providing aid to these disaster survivors. But the resources of the PNPs are limited, and without reimbursement for extraordinary costs, they cannot sustain their relief efforts. The adoption of Cal EMA's proposed emergency regulations would immediately implement the statutorily authorized reimbursement of PNPs currently providing needed succor to the winter storm survivors. I greatly appreciate your consideration of our request, and any assistance you can provide.

Thank you,



MIKE DAYTON, Acting Secretary

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
NOTICE OF EMERGENCY REGULATION**

CALIFORNIA CODE OF REGULATIONS  
TITLE 19. PUBLIC SAFETY  
DIVISION 2. OFFICE OF EMERGENCY SERVICES  
CHAPTER 6 CALIFORNIA DISASTER ASSISTANCE ACT (CDAА)

Notice is hereby given that the California Emergency Management Agency (Cal EMA) proposes to adopt emergency regulations as described below.

**PROPOSED EMERGENCY ACTION**

Cal EMA proposes to add the following sections to Chapter 6, Division 2, Title 19 of the California Code of Regulations:

Section 3000. Definitions  
Section 3010. General Provisions for Eligible Private Nonprofit (PNP) Activities  
Section 3020. PNP Applicant Eligibility  
Section 3025. Intermediary PNP Applicant Eligibility  
Section 3030. PNP Activities Eligibility  
Section 3035. Intermediary PNP Coordination Activities Eligibility  
Section 3040. PNP Cost Eligibility  
Section 3045. Intermediary PNP Cost Eligibility  
Section 3050. PNP Application Process  
Section 3055. Intermediary PNP Application Process  
Section 3060. Fair Hearing Processes  
Section 3070. Audit  
Section 3080. Retention Requirements for Records  
Section 3090. Original Source Documentation

**FINDING OF EMERGENCY:**

The state has been recently impacted by a series of severe winter storms necessitating the distribution of emergency relief to individuals and households. Although Cal EMA has been engaged in the formal process of adopting regulations to facilitate the ability of private nonprofit organizations to provide the necessary assistance to the affected communities, the emergency passage of the proposed regulations is now critical to the victims of the recent winter storms.

In accordance with Title 2, Division 1, Chapter 7.5, Section 8692(e) of the Government Code (Govt. Code), Cal EMA shall adopt regulations to govern the administration of Article 6, Nonprofit Organizations. Cal EMA is currently in the process of formally adopting regulations pursuant to Govt. Code Section 8692. The second formal comment period has commenced; however, the proposed regulations provide that they will apply only to events proclaimed by the Governor after the effective date of the proposed regulations.

During the pendency of the above-described regulation process, unanticipated winter storms swept through much of the state with such severity and magnitude that the Governor proclaimed an emergency within thirteen (13) California counties. In response to a gubernatorial request, Cal EMA received a letter from the President dated January 27, 2010, declaring a federal major disaster for the severe winter storms. However, the federal individual assistance programs that can be made available to victims in the affected counties were denied. While governmental agencies will obtain relief through this federal declaration, there will be no programs available to meet the unmet needs of the citizens of the state impacted by the disaster. In addition, Cal EMA's due diligence to implement the proposed regulations pursuant to Govt. Code 8692 within the formal process defined in the Administrative Procedures Act (APA) will not assist the victims affected by this event.

Therefore, emergency regulations are imperative in order to immediately implement Govt. Code Section 8692 until the regulations are adopted utilizing the formal process under the APA. This will enable individual community members and their families victimized by the storm to more readily recover by receiving essential community services from private nonprofit organizations (PNPs). The affected communities encompass of a range social and economic demographics. The negative impact of the disaster to the impoverished populations creates an urgency within these regions for the passage of this regulation as an emergency.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

In accordance with Title 2, Division 1, Chapter 7.5, Section 8692(e) of the Govt. Code, Cal EMA shall adopt regulations to govern the administration of Article 6, Nonprofit Organizations.

The California Disaster Assistance Act (Act) was amended by Assembly Bill 903 – Chapter 400; approved by the Governor on October 10, 2007 [Title 2, Division 1, Chapter 7.5, of the Govt. Code] to require the Secretary of the Cal EMA to administer a program that provides state financial assistance as reimbursement to private nonprofit organizations (PNPs) for the distribution of supplies and other emergency or disaster assistance activities resulting in extraordinary costs. Prior to this amendment, the program provided state financial assistance to local agencies. For the purposes of the program, a PNP is defined as any private not for profit organization that is compliant with Title 44 of the Code of Federal Regulations (44 CFR) Section 206.221(7) (f). The program may be implemented only in the event of a Governor's State of Emergency Proclamation.

**Effect on Small Business:** Cal EMA has determined that the proposed regulations will not affect small business. These proposed regulations are necessary to implement PNP eligibility for state financial assistance as mandated in Section 8692 of the Act.

### **AUTHORITY AND REFERENCE**

This regulation is proposed in accordance with Title 2, Division 1, Chapter 7.5, Section 8692(e) of the Government Code. This Section 8692(e) requires the California Emergency Management Agency to adopt regulations to govern the administration of the newly enacted Article 6, Nonprofit Organizations.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

Cal EMA has made the following 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 commencing with Government Code section 17500: *none*
- Other nondiscretionary cost or savings imposed on local agencies: *none*
- Cost or savings in federal funding to the state: *none*
- Effect on business: Cal EMA has made an initial determination that the adoption of these regulations will not have a significant statewide adverse economic impact directly affecting California businesses including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: Cal EMA 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*
- The proposed Rules do not conflict with, or duplicate Federal regulations.

### **STATEMENT OF COMPLIANCE WITH GOVERNMENT CODE SECTION 11346.1(a)2**

On February 7, 2011, CalEMA posted notice and text of the proposed regulations to its agency website and distributed via e-mail to interested parties.

**CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
PURPOSE FOR EMERGENCY REGULATIONS**

CALIFORNIA CODE OF REGULATIONS  
TITLE 19. PUBLIC SAFETY  
DIVISION 2. OFFICE OF EMERGENCY SERVICES  
CHAPTER 6, CALIFORNIA DISASTER ASSISTANCE ACT

**General Purpose Statement:**

The existing regulations (Title 19, Division 2, Chapter 6 of the California Code of Regulations (19 CCR) Sections 2900 – 2990) describe the implementation of the program under the Act for local agencies. Local agencies have the jurisdictional authority and responsibility to provide emergency response and recovery activities to an impacted community.

With the increased impact of emergency management activities on local government coupled with the current economic climate, it has become critical to rely on a holistic community approach to emergency response and recovery. In order to promote this community effort, the Governor and the Legislature have provided a mechanism by statute to reimburse PNPs for the extraordinary costs of their emergency assistance activities.

These proposed regulations are necessary to implement PNP eligibility for state financial assistance as mandated in Section 8692 of the Act. These regulations are consistent with the current practices for reimbursement to local agencies while providing the specificity and flexibility necessary for PNPs to recoup their extraordinary costs for emergency or disaster activities.

For example, Govt. Code Section 8685.2 requires local agencies to proclaim a local emergency within 10 days of an incident in order to qualify for state financial assistance under the Act. However, PNPs have neither the responsibility nor the authority to proclaim a local emergency.

Specifically, Cal EMA proposes to add new sections to 19 CCR beginning with Section 3000 as detailed in the table beginning on page 3.

**Technical, Theoretical, and/or Empirical Study, Reports, or Documents:**

Unless otherwise stated in a particular regulatory section, Cal EMA did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the changes to these regulations.

**Description of Alternatives Considered and the Reasons for Rejecting Such Alternatives:**

Pursuant to Govt. Code Section 8692(e), Cal EMA is specifically mandated to adopt regulations to implement the statute.

**Alternatives to the Proposed Regulatory Action That Would Lessen Any Adverse Impact on Business:**

The statute and regulations implemented by Cal EMA have no impact on businesses in California. The proposed regulations would provide a mechanism to allow eligible PNPs to receive state financial assistance as reimbursement for extraordinary costs during a state of emergency as proclaimed by the Governor.

| Section Number | Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address:                | Specific purpose and necessity of the amended regulation:  | Technical, theoretical, and/or empirical studies, reports, or documents                |
|----------------|--|--|--|
| 3000(a)        | The regulations contain no definition of “essential community services.”   | Utilizing and defining the term “essential community services” will provide clarity and consistency for the PNP activities eligible for state financial assistance under this section.   | Title 44 of the Code of Federal Regulations (44 CFR), Section 206.62(c)(1)             |
| 3000(b)        | The regulations currently contain a definition of “hazard mitigation” but the definition is specific to the state Public Assistance Program. | Defining ‘hazard mitigation’ as it relates to the PNP activities program is required for clarity of eligibility requirements within Section 3030(b).   |  |
| 3000(c)        | The regulations contain no definition of “intermediary private nonprofit (Intermediary PNP) organizations.”                                  | The definition of Intermediary PNP organizations provides understanding and clarity to the concept of an umbrella organization that will apply on behalf of the multiple PNPs and will coordinate these PNPs in the performance of essential community services. |  |
| 3000(d)        | The regulations currently contain a definition of “local agency” but the definition is specific to the state Public Assistance Program.      | Defining ‘local agency’ as it relates to the PNP activities program is required for clarity of eligibility requirements within the proposed regulation.  |  |
| 3000(e)        | The regulations contain no definition of “private nonprofit organizations.”  | The definition of PNP is required as the statute specifically addresses PNP organizations.   | 44 CFR Section 206.221(7)(f); U.S. Internal Revenue Code, Section 5019(c), (d) or (e). |

| Section Number | Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address: | Specific purpose and necessity of the amended regulation:   | Technical, theoretical, and/or empirical studies, reports, or documents  |
|----------------|---|---|--|
| 3010           | The regulations contain no General Provisions that apply to PNP applicants.   | This section provides a description of the general provisions applicable to all PNP and Intermediary PNP applicants. As an applicant, the PNP or the Intermediary PNP must meet all eligibility requirements. This emergency regulation applies to any emergency proclaimed by the Governor on or after December 21, 2010, and until such time as this emergency regulation expires. PNP activities must meet the definition of "essential community services." No PNP activities resulting from self deployment will be eligible for reimbursement. Eligibility will be limited to six (6) months following the Governor's proclamation unless an extension is approved by Cal EMA. The PNP applicant must utilize the application process described in Section 3050. The Intermediary PNP applicant must utilize the application process described in Section 3055. | Consistent with but separate from provisions in Title 19 of the California Code of Regulations (19 CCR), Chapter 6.                              |
| 3020           | The regulations currently contain no description of PNP applicant eligibility requirements.                                   | This section provides the specific elements required for PNP applicant eligibility. A PNP must meet the federal definition of a private, not for profit organization. A PNP must provide essential community services as defined in Section 3000(a). In addition, a PNP must not use public funds to provide religious content in the provision of emergency assistance activities as described in statute.   | 44 CFR Section 206.62(c)(1); Govt. Code Section 8607(e); Govt. Code Section 8692(d); Earthquake Recovery: A Survival Manual for Local Government |

| Section Number | Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address: | Specific purpose and necessity of the amended regulation:  | Technical, theoretical, and/or empirical studies, reports, or documents |
|----------------|---|--|---|
| 3025           | <p>The regulations currently contain no description of Intermediary PNP applicant eligibility requirements.</p>               | <p>This section provides the specific elements required for Intermediary PNP applicant eligibility. An Intermediary PNP must meet the definition of a Intermediary PNP as defined in Section 3000(c). An Intermediary PNP must be responsible for the coordination of multiple PNPs through a written agreement with a local agency. The written agreement shall contain a list of the PNPs that the Intermediary PNP will be coordinating and the process for the local agency to request the Intermediary to coordinate the essential community services provided by the listed PNPs. This written agreement with the local agency shall be executed within 30 days of the date of the Governor's State of Emergency Proclamation. In addition, an Intermediary PNP must have a written agreement with the listed PNPs, including a description of the process for the request the performance of essential community services through the Intermediary PNP and an authorization statement with signature that the Intermediary PNP will comply with the procedures and requirements described in the agreement.</p> |   |

| Section Number | Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address: | Specific purpose and necessity of the amended regulation:  | Technical, theoretical, and/or empirical studies, reports, or documents                                     |
|----------------|---|--|---|
| 3030           | The regulations contain no description of requirements for eligible PNP activities.   | This section provides the specific elements required for PNP activities eligibility. PNP activities must be requested by a local agency or the state and completed within a timeframe established by the requesting agency. A written agreement between an eligible PNP and the requesting local agency may replace such request if the agreement specifies the requirements of deployment and is executed prior to providing the essential community services. The activities must support the community affected by an emergency or disaster. Eligible PNP activities must comply with civil rights laws and must be free of religious content. Ineligible PNP activities include hazard mitigation, repair or permanent restoration to damaged facilities or real property. | Govt. Code Section 8607(e);<br>Govt. Code Section 8692(a) and (d);<br>Debris Removal: Title 19 Section 2925 |
| 3035           | The regulations contain no description of the requirements for eligible Intermediary PNP coordination activities.             | This section provides the specific elements required for the Intermediary PNP coordination activities eligibility. Eligible coordination activities must be requested by the local agency through a prior written agreement as required in section 3025(a)(2). The coordination activities must pertain to the performance of essential community services by the multiple PNPs listed in the agreement required in section 3025(a)(2)(A). Eligible Intermediary PNP coordination activities must comply with civil rights laws and must be free of religious content. These coordination activities must relate to the state of emergency as proclaimed by the Governor and support the community affected by the emergency or disaster.                                      |   |

| Section Number | Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address: | Specific purpose and necessity of the amended regulation:  | Technical, theoretical, and/or empirical studies, reports, or documents  |
|----------------|---|--|--|
| 3040           | The regulations contain no description of cost eligibility requirements.  | Only documented extraordinary costs are eligible for reimbursement under this section. No state financial assistance will be provided for activities prohibited by federal and state constitution, law or regulations. The reasonable equal value replacement costs for documented pre-event inventory provided to the affected community may be reimbursable if the inventory is necessary to the PNPs ability to provide the essential community services requested by the local agency or the state. In addition, no state reimbursement will be provided for any donated resources received by the PNP on or after the first day of the incident period as specified in the Governor's State of Emergency proclamation. No reimbursement will be provided for donated or volunteer labor. No reimbursement will be provided for vouchers, debit cards or other monetary relief provided to the community affected by the emergency or disaster. Reimbursement for damages caused by negligence or intentional acts will not be eligible under this section, and no funds can be used to supplant other state or federal funds. | Govt. Code Section 8692(a) [extraordinary costs]; Govt. Code 8690.6(e) [supplanting language]; 44 CCR 2910(g) [administrative allowance allocated to local agencies] |
| 3045           | The regulations contain no description for the cost eligibility requirements of the Intermediary PNP.                         | Only documented extraordinary costs of eligible coordination activities of multiple PNPs performing essential community services are eligible for reimbursement under this section. No state financial assistance will be provided for costs associated with activities prohibited by federal and state constitution, law or regulations. No funds can be used to supplant other state or federal funds.   |  |

| Section Number | Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address:                                       | Specific purpose and necessity of the amended regulation:  | Technical, theoretical, and/or empirical studies, reports, or documents   |
|----------------|---|--|---|
| 3050(a)        | <p>The regulations contain no prescribed application process for PNPs to obtain state financial assistance under this section for essential community services.</p> | <p>To be consistent with the application process for local agencies, a similar process has been developed for PNPs. A completed PNP application must be submitted to Cal EMA within 60 days after the date of the Governor's Proclamation. This date is consistent with the local agency program and may be extended by the Cal EMA Secretary for unusual circumstances. The PNP applicant must also submit a resolution designating an authorized representative. This resolution is also consistent with the requirements for local agencies.</p>  | <p>19 CCR, Section 2970(a)(4)</p>   |
| 3050(b)        | <p>The regulations contain no prescribed claims process for PNPs to obtain state financial assistance under this section for essential community services.</p>      | <p>A PNP must submit an activities claim to Cal EMA within 60 days of the completion of all eligible activities. The time frame is consistent with that required of local agencies.</p> <p>State Reimbursement Rate: The state shall provide one hundred (100) percent of the total cost of eligible PNP activities.</p> <p>Threshold for Reimbursement: The state shall make no allocation less than \$1,000 for eligible PNP costs. This threshold is lower than the threshold of \$2,500 for local agencies in order to decrease the financial burden of extraordinary costs of PNP organizations when performing essential community services following an emergency or disaster.</p> <p>The PNP has the right to a fair hearing if the state allocation is less than the total costs submitted.</p> | <p>19 CCR, Section 2980(a)</p> <p>Govt. Code 8685.6;<br/>19 CCR, Section 2970(e)</p> <p>Govt. Code 8686(d)<br/>[threshold described for local agencies]<br/>19 CCR, Section 2970(e)</p> |

| Section Number | Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address:   | Specific purpose and necessity of the amended regulation:  | Technical, theoretical, and/or empirical studies, reports, or documents |
|----------------|---|--|---|
| 3050(c)        | The regulations contain no prescribed partial payment process for PNPs to obtain state financial assistance under this section for essential community services.  | The current regulations provide a process for local agencies to submit a reimbursement request for partially completed projects. In order to ensure that PNP applicants have a similar option, Cal EMA has included a provision for partial payment when PNPs provide sustained operations and they can demonstrate financial hardship.  | 19 CCR, Section 2970(d)   |
| 3055(a)        | The regulations contain no prescribed application process for the eligible Intermediary PNP applicant to obtain state financial assistance.   | A completed application must be submitted to Cal EMA within 60 days after the date of the Governor's Proclamation. This date is consistent with the local agency program and may be extended by the Cal EMA Secretary for unusual circumstances. The Intermediary PNP applicant must also submit a resolution designating an authorized representative. This resolution is also consistent with the requirements for local agencies. |   |
| 3055(b)        | The regulations contain no prescribed claims process for Intermediary PNPs to obtain state financial assistance under this section for coordination activities.   | An Intermediary PNP must submit an activities claim to Cal EMA within 60 days of the completion of all eligible coordination activities.   |   |
| 3055(c)        | The regulations contain no prescribed process for Intermediary PNPs to obtain state financial assistance under this section for essential community services provided by the multiple PNPs that the Intermediary PNP is responsible for coordinating. | The PNP activities claims form may include the eligible costs of all of the PNPs listed in their agreement that provided essential community services for the requesting local agency. The Intermediary PNP will be responsible for processing the reimbursement to those PNPs included on the claims form.<br><br>State Reimbursement Rate: The state shall provide one hundred (100) percent of the total cost of the              |   |

| Section Number   | Public problem, administrative requirement, or other condition or circumstance the amended regulation is intended to address:  | Specific purpose and necessity of the amended regulation:  | Technical, theoretical, and/or empirical studies, reports, or documents |
|------------------|--|--|---|
|                  |  | <p>coordination activities and the total eligible cost paid by the Intermediary PNP to the PNPs they are responsible for coordinating.</p> <p>Threshold for Reimbursement: The state shall make no allocation less than \$1,000 for eligible Intermediary PNP costs.</p> <p>The Intermediary PNP has the right to a fair hearing if the state allocation is less than the total costs submitted.</p> |   |
| 3060             | The regulations contain no prescribed fair hearing process for PNPs or Intermediary PNPs to obtain state financial assistance under this section for essential community services. | Consistent with local agency provisions, PNP or Intermediary PNP applicants have the right to a fair hearing. However, determination authority has been changed to reflect the organization of the newly formed Cal EMA.   | 19 CCR, Section 2990  |
| 3070, 3080, 3090 | The regulations contain no prescribed audits and documentation requirements for PNP or Intermediary PNP applicants receiving state grant assistance.                               | Audits, Retention Requirement for Records, and Original Source Documentation all mirror the provisions for local agencies.   | 19 CCR, Sections 2980(d), (e),(f)                                       |