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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

AMENDMENT

STATE: Department of General Services

A written comment period has been established commencing on July 27, 2012, and closing on September 10, 2012. Written comments should be directed to the Fair Political Practices Commission, Attention Adrienne Tackley, 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 Direc-

tor of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than September 10, 2012. 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 Adrienne Tackley, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

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

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture adopted Section 3639 of the regulations in Title 3 of the California Code of Regulations pertaining to Huanglongbing (HLB) Disease Eradication Area as an emergency action that was effective on April 3, 2012. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than October 1, 2012.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on September 10, 2012. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as she deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate the pest (FAC Section 5761).

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

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

The adoption of section 3639 established the entire State as an eradication area for plant disease HLB, the hosts and the means and methods which may be used to eradicate HLB. The effect of this action was to establish authority for the Department to conduct eradication activities in California against this pest.

The specific anticipated benefits of the amendment of this regulation are:

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. The adoption of this regulation benefits the citrus industries (nursery and fruit) and the environment by establishing eradication authority enabling the removal of HLB-infested host material from the environment. By removing the sources of HLB inoculums it is more biologically feasible to confine HLB's devastating impacts to the smallest area possible.

FAC Section 401.5 states, "The department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state." The adoption of this regulation is one step to mitigate

the spread of HLB through its vector, Asian Citrus Psyllid (ACP). This prevents the ACP from naturally spreading HLB and increases the chances of successfully containing the disease to the smallest area possible.

All eradication activities are conducted by the Department. Except for curry plants, any other host material infected with HLB will die as there is no cure. Homeowners and others will benefit by having this host material removed at no cost to them.

The California consumers benefit as the fruit from host trees infected with HLB is inedible. Confining the HLB infestation to the smallest area possible ensures citrus fruits and other host fruits are available for consumption and at reasonable prices.

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

There is no existing, comparable federal regulation or statute.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

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

Significant effect on housing costs: None.

Small Business Determination

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

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Amendment of these regulations will not:

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

The Department is not aware of any specific benefits that the adoption of this regulation would have pertaining to California worker safety. The Department believes the adoption of this regulation benefits the general health and welfare of California residents by ensuring the availability of citrus for consumption at reasonable prices and protecting the economic benefits the estimated \$2.19 billion per year citrus industry brings to the State's economy. This regulation benefits over 99 percent of the citrus industries (nursery and fruit) that are located outside the quarantine area. The adoption of this regulation helps protect this economic engine and food source which benefits the general health and welfare of California residents. This does not count the many thousands of backyard gardeners all over California who produce large quantities of fruit for their own use, and support the traditions, especially in the Asian culture, that many families have for citrus fruit. The adoption of this regulation also promotes the economic well-being of agriculturally dependent rural California communities and reduces the potential adverse environmental impacts caused by HLB [Gov. Code Sec. 11346.3(b)].

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department adopted Section 3639 pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department adopted Section 3639 to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763, Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 220, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Lindsay Rains at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture adopted Section 3439 of the regulations in Title 3 of the California Code of Regulations pertaining to Huanglongbing (HLB) Disease Interior Quarantine as an emergency action that was effective on April 3, 2012. The Department proposes to continue the regulation as adopted with amendments and to complete this regulatory ac-

tion by submission of a Certificate of Compliance no later than October 1, 2012.

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

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on September 10, 2012. The Department will consider only comments received at the Department offices by that time. Submit comments to:

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

lations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate the pest (FAC Section 5761).

This regulatory action establishes the target pest and its vector, the quarantine area, articles and commodities covered, the restrictions, enforcement procedures and standards of cleanliness for nursery stock. The total quarantine area is approximately 93 square miles. The effect of this regulation is to establish authority for the Department to conduct a quarantine program against HLB.

The specific anticipated benefits of the amendment of this regulation are to:

Existing law, FAC section 401, provides that the Department shall promote and protect the agricultural industry of the State.

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

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

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

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

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. The adoption of this regulation benefits the host industries, more specifically the citrus industries (nursery and fruit) and the environment by having a quarantine program to prevent the artificial spread of HLB over long distances; thus confining its devastating impacts to the smallest area possible. Almost all of the commercial citrus fruit and nursery stock production is located outside this proposed quarantine boundary area.

The California consumers benefit as the fruit from host trees infected with HLB is inedible. Confining the HLB infestation to the smallest area possible ensures citrus fruits and other host fruits are available for consumption and at reasonable prices.

FAC section 401.5 states, “the Department shall seek to protect the general welfare and economy of the State and seek to maintain the economic well-being of agriculturally dependent rural communities in this State.” The adoption of this regulation is confining HLB to a primarily urban environment and achieves this statutory goal. HLB is generally distributed in Florida. The University of Florida IFAS Extension calculated and compared the impact of having and not having HLB present in Florida and concluded HLB had a total impact of \$3.64 billion and eliminated seven percent of the total Florida workforce. The overall California economy benefits by the adoption of this regulation which is intended to prevent HLB from becoming generally distributed in California and resulting in a similar effect on our economy as to what happened in Florida.

The United States Department of Agriculture (USDA) maintains a federal domestic quarantine regulating the interstate movement of host material. If the State does not have a parallel interior quarantine which is substantially the same as the federal domestic regulation, the USDA cannot regulate less than the entire State. The adoption of this State regulation will prevent the USDA from having to unnecessarily regulate the entire State.

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

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

Cost impacts on a representative private person or business: The estimated cost impact of the adopted regulation on a representative private person or business may be significantly adverse. The Department does not have a way to determine the average costs a representa-

tive business would incur. However, for intrastate movement out of the regulated area a host production nursery within the regulated area may incur costs similar to those the Department determined in 2010 for building an insect-resistant structure meeting the requirements for our Citrus Nursery Stock Pest Cleanliness Program:

- \$3.48 to \$5.63 per square foot to construct a new budwood house
- \$12.79 per square foot to construct a new propagation house
- \$1.93 to \$6.07 to renovate an existing structure

The costs now are likely to be higher than the above costs and the costs for any building permits would be additional costs.

For movement within the quarantine area, nursery stock must be produced and/or continuously maintained in a departmentally approved insect-resistant structure under the terms of a compliance agreement with the Department or agricultural commissioner's office. A room within a building, a green house, screen house, plastic covered structure, etc., could all be potentially approved as an insect-resistant structure. An area within the center of a "big box store" could also potentially qualify. The expenses for establishing and constructing these types of approved insect-resistant structures are not known at this time.

For both types of structures, host production and retail nurseries vary so widely in size and propagative types of trees and shrubs produced and maintained it is not possible to develop an average cost per business.

In the event Asian Citrus Psyllid (ACP) is detected in an approved structure, treatment for ACP will need to be applied or the stock will have to be destroyed in a manner approved by the Department. Treating for ACP involves the application of approved foliar and drench products. Costs of purchasing approved foliar products for citrus and ornamental hosts range from \$150.00-\$1200.00 per gallon. Costs of purchasing approved drench products range from \$4.00-\$11.00 per ounce. An additional cost is associated with application of each of the products. It is impossible to estimate the average cost per business as it would be entirely dependent upon the number of host plants present.

There were a total of 37 production and retail nurseries which had host material valued at a total of \$304,612.00 (including production costs and anticipated profit from sale). All of this stock ended up having to be destroyed. The average loss for all nurseries was \$8,233. The future profit losses are unknown. The average profit loss per grower is \$1,000 per month.

Significant effect on housing costs: None.

Small Business Determination

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

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Amendment of these regulations will not:

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

The Department is not aware of any specific benefits that the adoption of this regulation would have pertaining to California worker safety. The Department believes the adoption of this regulation benefits the general health and welfare of California residents by ensuring the availability of citrus for consumption at reasonable prices and protecting the economic benefits the estimated \$2.19 billion per year citrus industry brings to the State's economy. This regulation benefits over 99 percent of the citrus industries (nursery and fruit) that are located outside the quarantine area. The adoption of this regulation also promotes the economic well-being of agriculturally dependent rural communities and benefits the environment [Gov. Code sec. 11346.3(b)].

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department adopted Section 3437 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department adopted Section 3439 to implement, interpret and make specific Sections 5301, 5302 and 5322, Food and Agricultural Code.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, pro-

posed actions, location of the rulemaking files, and request for a public hearing may be directed to: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 220, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Lindsay Rains at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 14. DEPARTMENT OF FISH AND GAME

The Department of Fish and Game (Department) proposed to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department will hold a public hearing meeting on September 10, 2012, at the address of 1416^{9th} Street, Sacramento, California, from 1:30-3:30 p.m. in the first floor auditorium. The auditorium is wheelchair accessible. At the public hearing, any person may present statements or arguments orally or in writing relevant to

the proposed action described in the Informative Digest. The Department requests but does not require that the persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. All written comments must be received by the Department at this office no later than 5:00 p.m. on September 10th. All written comments must include the true name and mailing address of the commenter.

Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Game
Nicole Carion
601 Locust Street
Redding, CA 95811
Fax: (530) 357-3478
Email: ncarion@dfg.ca.gov

AUTHORITY AND REFERENCE

Fish and Game Code Section 2150.2 authorizes the Department to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Sections 2150-2195 of the Fish and Game Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Fish and Game Code Section 2150.2 authorizes the department to establish fees for permits, permit applications, and facility inspections in amounts sufficient to cover the costs of administering, implementing and enforcing this chapter.

Existing regulations specify the conditions under which an individual or entity can lawfully possess restricted species in California. The proposed regulatory change provides for inspection and cost recovery. The fee for inspections would be based on the number of enclosures that a facility has, using actual inspection information that the Department gained from limited testing of the method on permitted facilities.

Additionally, there is a provision in regulation that essentially delegated Department authority for facility inspections to veterinarians and resulted in waived fees to permit holders. The Department has determined that the authority needs to be with the Department in order to properly comply with state law; and that the Department still had incurred costs/expenses even when a vet-

erinarian exercised the approval. Consequently, the Department has not been recovering costs of the program as is specified in the current statute.

The Department is not aware of any specific benefits that the adoption of this regulation would have pertaining to California worker safety. The department believes the adoption of the regulation benefits the health and welfare of California residents by ensuring captive wild animal regulations are complied with. By the department conducting the Restricted Species Facilities Inspections there will be a more consistent inspection process conducted by more appropriate personnel, law enforcement officers.

The Department is unaware of any inconsistencies or incompatibilities with state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Costs or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Costs 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:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Considering the small number of permits issued over the entire state, this proposal is economically neutral to business and applies evenly to resident and nonresident permittees.

Cost impacts on a representative private person or business:

As the number of permitted persons for all Restricted Species permits is small (approximately 300 permittees statewide) the impacts are not consequential to the State. However, there will be cost impacts that a representative private person or business who is among the 300 permittees would necessarily incur in reasonable compliance with this proposed action. Fish and Game Code Section 2150.2 states the Department “shall establish fees. . . in amounts sufficient to cover the costs. . .” The reason that costs/person will increase is that previously, the Department did not inspect all faci-

lities, which it must now do, or must now enter into an agreement to do. There is a high amount of Department staff time needed for reviewing/approving applications and/or conducting inspections. The inspection fees created by this mandated regulatory package will range from \$221.27–\$2994.77 depending on the number of enclosures a permittee has. The majority of the permittees have less than 100 animals listed on their inventory of animals submitted to the Department placing them in a category where the maximum inspection fee would be \$512.22 annually. The annual increase in fees for the majority of the permittees will be almost \$600.00 annually. The facilities with the largest number of enclosures are mostly larger zoos or businesses.

Significant effect on housing costs: None.

Effect on Small Business

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

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Amendment of these regulations will not:

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

The Department is not aware of any specific benefits that the adoption of this regulation would have pertaining to California worker safety. The department believes the adoption of the regulation benefits the health and welfare of California residents by ensuring captive wild animal regulations are complied with. By the department conducting the Restricted Species Facilities Inspections there will be a more consistent inspection process conducted by more appropriate personnel, law enforcement officers.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Nicole Carion
 Address: 601 Locust Street
 Redding, CA 96001
 Telephone No.: 530-357-3986
 Fax No.: 916-357-3478
 E-mail Address: ncarion@dfg.ca.gov

The backup contact person is:

Name: Eric Loft
 Address: 1812 Ninth Street
 Sacramento, CA 95811
 Telephone No.: 916-445-3553
 Fax No.: 916-445-4048
 E-mail Address: eloft@dfg.ca.gov

Website Access: Materials regarding this proposal can be found at: www.dfg.ca.gov/news/pubnotice.

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

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

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 1812 Ninth Street, Sacramento, CA 95811. As of the date this notice is published, 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 Mr. Eric Loft.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Mr. Eric Loft at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Eric Loft at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: www.dfg.ca.gov/news/pubnotice.

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 210, 215, 219, 220, 240, 315, 316.5, 713, 1050, 1053 and 7149.8, Fish and Game Code. Reference: Sections 200, 201, 202, 203.1, 205, 206, 215, 220, 316.5, 713, 1050, 1053, 1055 and 7149.8, of said Code, proposes to Amend Sections 1.77, 2.25, 2.30, 4.20, 5.00, 5.05, 5.10, 5.40, 5.60, 5.80, 5.81, 7.00, 7.50, 8.00, 27.85, 27.90, 27.91, 28.90, 28.95, and 701; and Add Sections 1.45 and 5.91, Title 14, California Code of Regulations, relating to Sport Fishing Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

General Sport Fishing Regulations — 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00

This Department proposal is a combination of Department and public requests for Title 14, California Code of Regulations (CCR) changes for the 2012 Sport Fishing Review Cycle. This proposal will revise yellow perch and bow and arrow regulations, eliminate take of listed eulachon, update and revise the low flow regulations, add regulations on filleting of salmonids, and correct other regulatory problems that increase public confusion of the regulation’s intent and improve regulatory enforcement.

The Department is proposing the following changes to current regulations as discussed in the following paragraphs:

YELLOW PERCH

Yellow perch are not common throughout California and have large populations with stunted size ranges

where found. There are several public requests to remove this species from the sunfish bag limit. The potential increased harvest will not affect existing populations.

Amend Section 1.77, Sunfish.

- This section will be amended to remove yellow perch from the combined sunfish and crappie bag limit.

Add Section 5.91, Yellow Perch.

- This section will be added to clarify that yellow perch have a year-round season with no limit.

BOW AND ARROW FISHING

These changes are proposed to reduce public confusion:

Amend Section 2.25, Bow and Arrow Fishing.

- Clarify where the designated salmon spawning areas are defined.
- Clarify Walker River exception.

ELIMINATE TAKE OF LISTED EULACHON

Eulachon were listed as federally threatened under the Federal Endangered Species Act in February 2010 and have extremely low abundance in the past twenty years. This change is necessary to increase protection for a listed species.

Amend Section 5.10, Candlefish or Eulachon.

- This section will be amended to specify that eulachon may not be taken or possessed under the authority of a sport fishing license to align state and federal regulations.

UPDATE THE LOW FLOW REGULATIONS

The Department proposed the following changes to increase salmonid protection and reduce public confusion:

Amend Section 8.00, Low Flow Regulations.

- Increase Smith River minimum flow trigger from 400 cfs to 600 cfs.
- Revise and clarify stream reaches in Van Duzen and Smith rivers.
- Remove outdated information in subsection (c).
- Make minor changes to align the structure of the regulations.

FILLETING OF SALMONIDS IN INLAND WATERS

Currently shore-based anglers can fillet or cut into pieces salmon and steelhead in the field. The current Fish and Game Code sections (5508, 5509) only cover fish on a vessel until it is brought ashore. Salmon and steelhead once on shore can currently be filleted or cut into pieces. Once this is done the department no longer

has the ability to determine the origin (wild or hatchery), species, or size of the fish.

There is currently no regulation that prohibits filleting of fish (for all species) along the shores and banks of inland anadromous waters in California. As a result, a loophole is created in which an angler could harvest a wild steelhead/rainbow trout illegally by filleting the fish and discarding/disposing of the carcass along the stream. If encountered by enforcement, there is no way to immediately distinguish if the fillets are from a wild or hatchery fish without observing the condition of the adipose fin.

This proposed regulation will give the department the ability to determine the origin (wild or hatchery), the species (Coho, Chinook or steelhead), and the size (jack, adult, or undersized ocean salmon) of salmon and steelhead taken, possessed and transported. The limitation of “where a sport fishing license is required” eliminates this requirement for legally purchased commercial salmon. There may be serious opposition for the ocean salmon fishery which is almost exclusively a boat fishery. This proposed regulation could easily be written for inland waters where a sport fishing license is required.

Add Section 1.45, Filleting of Salmonids

- This section will be added that all salmon and steelhead taken in inland waters where a sport fishing license is required, must be kept in such a condition that species and size can be determined until placed at the angler’s permanent residence, a commercial preservation facility or prepared for immediate consumption.

OTHER REGULATORY PROBLEMS

The Department is proposing additional minor revisions in the following areas of Title 14, CCR, regulations. While these problems are minor when viewed individually, they must be corrected to clarify regulations, reduce public confusion, align regulations, and improve regulatory enforcement.

Amend Section 4.20, Bait Fish Use in the Valley and South Central Districts.

- remove the reference in subsection (d)(2) to Yuba River downstream of Daguerre Point Dam that allows the use of bait fish when only artificial lures with barbless hooks are allowed under subsection 7.50(b)(212)(A).

Amend Section 5.40, Lamprey.

- remove reference to other species as traps were repealed in 2009 as approved gear.
- remove the reference to traps in subsection (c) which is an illegal gear for the harvest of lamprey.

The benefits of the proposed regulations are sustainable management of sport fishing resources, protection

of listed and special status species, and promotion of businesses that rely on California’s sport fisheries.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

Spear Fishing for Striped Bass in Inland Waters
— Section 2.30

Spear fishing as defined under Section 2.30, Title 14 is restricted to the Colorado and Valley Districts and a small area of the Kern River with species and exemptions.

The Commission has requested the option to discuss spear fishing regulations for striped bass under the upcoming Sport Fishing Review Cycle. The Department has serious reservations about allowing spear fishing for striped bass and can only support offering an option to consider spear fishing in existing areas allowed in Section 2.30 at this time.

The expansion of any spear fishing for striped bass outside of these areas is a very complicated subject and needs a larger coordination effort than can be achieved under the current Sport Fishing Review cycle. There are significant issues related to listed and special status species that will require comprehensive review and coordination with the federal and local agencies and stakeholders.

Proposal Overview

This Department is proposing the following two regulatory options for Commission consideration of allowing the take of striped bass in inland waters with spear fishing as requested by various spear fishing groups.

OPTION 1 — NO HARVEST OF STRIPED BASS

Amend Section 2.30, Spearfishing.

- Open all of Black Butte Lake to spear fishing to eliminate an enforcement issue because half of the lake is located in Tehama County (Sierra District) and the other half in Butte County (Valley District).
- Clarify where the designated salmon spawning areas are defined.

OPTION 2 — ALLOW HARVEST OF STRIPED BASS

Amend Section 2.30, Spearfishing.

- This section will be amended to allow the harvest of striped bass by spear fishing in the Valley

district under the authority of a sport fishing license.

- Open all of Black Butte Lake to spear fishing to eliminate an enforcement issue because half of the lake is located in Tehama County (Sierra District) and the other half in Butte County (Valley District).
- Clarify where the designated salmon spawning areas are defined.

The benefits of the proposed regulations are sustainable management of sport fishing resources, protection of listed and special status species, and promotion of businesses that rely on California’s sport fisheries.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

Black Bass Sport Fishing — Slot Limit Removal
— Section 5.00

The Lake Oroville black bass sport fishery has been managed with a slot limit regulation since 1983. The current slot limit prohibits the take of black bass between 12–15 inches total length — anglers are allowed to take black bass less than 12 inches and greater than 15 inches total length. Statewide, black bass sport fisheries are managed with a 12-inch total length minimum regulation.

Slot limit regulations are used to reduce fishing mortality of black bass in a particular size range, and allow harvest of black bass in smaller or larger than protected sizes.

The slot limit regulation was enacted at Lake Oroville to promote the harvest of redeye bass, which were abundant in the reservoir but seldom reached the statewide minimum length of 12 inches total length. In addition, the slot limit allowed the harvest of the abundant black bass less than 12 inches in total length and provided for an increase in the catch rates of black bass greater than 15 inches total length.

Review of angler survey data from 2002–2010 shows that spotted bass is the dominate species in angler catches with no redeye bass reported. Anglers reported releasing 97% of all black bass caught even though 43% of the black bass caught were legal for take. With the extirpation of redeye bass and the high release rate practiced today by sport fish anglers, the current slot limit regulation is no longer warranted.

The slot limits for black bass in McClure and Miller-ton reservoirs, and Orr and Siskiyou lakes have also not

yielded the desired results as originally anticipated. This action would streamline fishing regulations which have been publicly criticized for being too complicated and eliminate the need for tournament fishing exemptions which have, in the past, resulted in conflict with Title 14, Section 1.87.

Title 14, Section 230, allows the Department to issue exemptions to the slot limit regulation for Event-type contests. While tournament anglers are allowed to possess fish within the slot limit for purposes of the tournament, in so far as possible all fish weighed-in must be returned to the lake alive and in good condition. If a bass is weighed that is within the slot but is dead, this creates a conflict with Title 14, Section 1.87 as an angler should not be in possession of a slot size bass after the fishing contest is concluded. Dead bass weighed-in during a tournament that are legal to possess by Section 7.50, are usually given to a receptive angler with a valid sport fishing license. The elimination of tournament exemptions would also reduce department processing time and costs.

It is recommended that all black bass angling regulations where slot limits exist be changed to the statewide standard — 5 bass daily bag limit, 12-inch minimum total length.

The benefits of the proposed regulations are sustainable management of sport fishing resources and promotion of businesses that rely on sport fishing.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

Take of Amphibians and Reptiles — 5.05 and 5.60

Existing regulations specify 28 amphibians and 58 reptiles that can lawfully be collected with a sportfishing license in California. The proposed regulatory change removes species designated as Species of Special Concern from authorized take with a sportfishing license, and revises special closure areas to include 11 species or subspecies. The regulation change is intended to increase conservation consideration for animals known to be at risk. The regulation change also updates scientific and common names to those currently in use to help eliminate potential confusion by licensees or Department staff. The regulation change also explicitly lists rattlesnake species allowed for sport take to eliminate existing confusion about how bag and possession limits apply to these snakes. For two amphibian species now known to be introduced to California, the regula-

tion change also revises the bag and possession limit from four to unlimited.

The Department designates Species of Special Concern to focus attention on animals at risk and achieve conservation and recovery before listing them as threatened or endangered becomes necessary. The Department currently has no information about amount or effects of sport take for these animals, so it is therefore prudent to remove species of concern from collection.

Numerous taxonomic revisions have occurred since this regulation was last amended in 2002. The proposed regulatory change updates common and scientific names to current nomenclature, delineates geographic boundaries for Special Closures as necessary to reflect taxonomic changes or other new scientific information.

Proposed Regulations

Consideration and adoption of these proposed regulations will result in the following:

Amend 5.0 and 5.60

Removal of eight amphibians and three reptiles from the list of species currently authorized for take with a sportfishing license. Twenty amphibians and 55 reptiles will remain legal for take with a sportfishing license.

Provide current taxonomic nomenclature for all species on the list.

Updated language regarding Special Closures where new scientific information indicates closures to be appropriate.

Changing the bag and possession limit for two non-native amphibians from four to unlimited.

Explicitly listing rattlesnake species authorized for sport take to eliminate existing confusion about applicable bag and possession limits for these snakes.

The benefits of the proposed regulations are to improve conservation of at-risk animals in California, sustainable management of sport fishing resources, and promotion of businesses that rely on California's sport fisheries.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

Sturgeon Sport Fishing Regulations — 5.80, 5.81, 27.90, 27.91 and 701

Green sturgeon is listed as a threatened species under the federal Endangered Species Act, take of green sturgeon is prohibited except when specifically authorized, and recovery of green sturgeon is a high priority. White sturgeon is a substantial management concern and object of an important fishery. Both sturgeon species are

long-lived, first spawn at a relatively old age, spawn infrequently thereafter, and egg-laden females are subject to take year-round and system-wide.

Data from returned Sturgeon Fishing Report Cards issued for the years 2007–2010 indicated anglers kept 6,488 white sturgeon, releasing 19,892 white sturgeon, and releasing 956 green sturgeon; anglers also failed to report the species of 165 sturgeon they released. A preliminary investigation suggests that anglers under-reported the release of green sturgeon.

The sport fishing regulations for both species are largely based on the premises that it is important to conserve older fish and sturgeon that survive catch-and-release well. The impact of catch-and-release depends in large part on angler technique. It is common practice for anglers to do the following, each of which contributes to stress of sturgeon that are released:

- use relative light gear, fighting sturgeon to exhaustion over a long period,
- use multiple, barbed hooks that require more effort to remove than would a single point, single shank, barbless hook,
- remove sturgeon, including oversized sturgeon, from the water for measurement and often use a snare (often made of wire rope) to control these fish,
- struggle to accurately measure the total length of white sturgeon, because measuring sturgeon total length requires manipulation of the long and flexible upper lobe of the caudal fin.

When released, a stressed sturgeon sometimes dies outright or sometimes abandons their spawning run and reabsorbs their eggs.

Improper use of snares can damage sturgeon tissue, including gill tissue, and use of snares likely encourages or enables some anglers to remove oversized sturgeon from the water.

Sturgeon Fishing Report Cards (Cards) are an integral part of Department and legislative efforts to reduce the illegal commercialization of sturgeon. Cards are a relatively inexpensive method of documenting patterns and levels of white sturgeon and green sturgeon catch. Data from Cards are complementary to an on-going sturgeon population study conducted by the Department. As part of the establishment of a Fishery Management and Evaluation Plan as allowed under the federal Endangered Species Act, Cards are an integral part of Department efforts to secure authorization for the incidental take of green sturgeon in fisheries. Cards have been free to anglers, being paid for by the now-defunct Bay Delta Sport Fishing Enhancement Stamp Fund. No current source of funding puts the continued use of Cards at risk.

Proposal Overview

The proposed changes would (1) increase the survival and spawning success of sturgeon caught and released by anglers in California, and would be harmonious with similar regulations in Oregon, Washington, and Idaho and (2) implement a fee for the issuance of Sturgeon Fishing Report Cards.

Each sturgeon-specific element of the proposal is designed to foster the relatively healthy release of fish by anglers in all circumstances.

Implementing a fee for the issuance of Sturgeon Fishing Report Cards will fund issuance of Sturgeon Fishing Report Cards as well as management of resulting data and reporting of that data.

Present and Proposed Regulations

- 1) Sections 5.80 and 27.90 currently define the methods and locations for white sturgeon fishing as well as the size and quantity of white sturgeon that may be harvested; and require use of “total length” measurements.

This proposal recommends amending sections 5.80 and 27.90 to require only one single point, single shank, barbless hook be used on a line when taking sturgeon, prohibit use of snares in handling sturgeon, prohibit removal of fish greater than 68 inches long (FL) from the water, and require use of “fork length” measurements.

To assure that the harvestable populations of white sturgeon 46–66 inches total length and white sturgeon 40–60 inches fork length are substantially similar, and to preserve the present 20-inch range between the minimum and maximum size limits, the Department considered data on the statistical relationship between white sturgeon total length and white sturgeon fork length ($y = 0.9036x - 1.2162$; $R^2 = 0.987$). When requiring the use of fork length measurements after decades of requiring total length measurements, the states of Oregon and Washington similarly determined that white sturgeon fork length is 90% of total length and revised the state size limits accordingly.

- 2) Sections 5.81 and 27.91 currently prohibit the take and possession of green sturgeon.

This proposal recommends amending sections 5.81 and 27.91 to also prohibit the removal of green sturgeon from the water.

- 3) Section 701 currently authorizes issuance of Sturgeon Fishing Report Cards (Cards) for no fee. The use of Bay Delta Sport Fish Enhancement Stamp revenue as the funding source for printing and processing Cards is no longer available.

This proposal includes charging a fee for issuance of each Card. The Department is proposing Section 701 be amended for public notice with a Sturgeon Fishing Report Card fee of \$7.50. The Department costs for the Sturgeon Report Card are shown in Table 1.

In Section 701 editorial changes were made to align report card fees followed by duplicate fees, and subsections renumbered accordingly for the sake of clarity.

**District and Special Regulation Changes —
7.00 and 7.50**

Table 1. Estimated Costs for the Sturgeon Fishing Report Card			
Inputs	Hrs	Rate	Total
Report Card Review, Edit and Updates (IT Staff and Programs Combined)	40	\$43	\$ 1,730
Report Card Questions Review, Edit and Updates (IT Staff and Programs Combined)	30	\$43	\$ 1,297
Report Card Data Collection (Key Entry)	7,333	\$19	\$140,883
Report Card Data Analysis	80	\$46	\$ 3,694
LRB Operations Cost (prorated for 1 item)			\$ 40,000
Law Enforcement Costs for Report Cards	8,208	\$46	\$374,440
Sub Total for Ongoing Costs			\$532,045
Admin Overhead (FY 12/13 non-Fed rate 29%)			\$162,993
Total Costs			\$725,038
<i>Total One time ALDS Cost Amortized</i>			<i>\$ 12,410</i>
Total Annual Costs			\$737,448
2010 Report Card Sales			110,000
Price per card with 10% drop in sales			\$7.45

The Department is proposing broad salmon and steelhead angling regulations for the district and special fishing areas in two general areas.

1. Hatchery trout and steelhead fishing revisions to allow harvest in most areas where only catch and release fishing is currently allowed.
2. Additional revisions are proposed to increase resource protection, correct regulatory issues, reduce public confusion, improve regulatory enforcement, and standardize regulatory structure.

Hatchery Trout and Steelhead

California’s steelhead supports a popular sport fishery throughout California’s coastal anadromous waters north of Santa Barbara and the Central Valley Basin. Since 1998, the majority of California steelhead have been Federally listed under the Endangered Species Act (ESA), and since 1999 only harvest of hatchery steelhead has been allowed in California, with the exception of the Smith River. The Steelhead Fishing Report–Restoration Card (SH Report Card) data show that hatchery steelhead stray into streams that do not have hatcheries and are caught by steelhead anglers in nearly every anadromous stream in California, with the exception of the Noyo River, where zero hatchery steelhead have been reported caught since 1999).

The Department believes harvesting surplus and stray hatchery steelhead will protect and increase wild steelhead resources. Contrary to management strategies from the last several decades, research and ensuing literature demonstrate that a key to protecting reproductive fitness of wild salmonids is to decrease/remove introgression by decreasing the number of hatchery salmonids spawning with wild salmonids. Although total prevention of introgression between surplus and stray hatchery steelhead and wild steelhead is unrealistic, proper angling regulations and angler education will be a vital factor in attaining resilient and sustainable wild steelhead populations.

With the exception of the Mokelumne River Hatchery, California hatcheries generally meet their annual steelhead production goals and “surplus” hatchery steelhead remain in the river. This “surplus” has been “substantial”, which is good for the anglers; however, unharvested hatchery steelhead that compete and spawn with wild steelhead likely harm success of wild steelhead stocks by reducing reproductive fitness of

The benefits of the proposed regulations are (1) sustainable management of the white sturgeon population and (2) concurrence with Federal regulation regarding the take of threatened green sturgeon in otherwise-lawful fisheries.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. No other state agency has the authority to promulgate sport fishing regulations.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

successive generations. Increasing allowable harvest of surplus hatchery steelhead will increase angler opportunity, harvest, and continued fishing, and will greatly benefit wild steelhead populations.

If the regulations proposed here are implemented, the Department believes the fundamental character of California's steelhead fishing will be improved, while important fishery management and wild steelhead population management will be positively affected. In addition, the proposed regulations are intended to simplify statewide steelhead regulations, and simplify and provide for effective enforcement.

Additional Revisions

Many members of the general public have expressed difficulty in understanding which inland waters in California are closed to salmon fishing. In addition, some of the rivers and streams in Klamath/Trinity and Central Valley basins are periodically opened and closed to salmon fishing. The Department is proposing to list all inland state waters as closed to salmon fishing unless otherwise noted in district or special regulations to help reduce public confusion.

The Department proposes to increase protection of redband trout, align management efforts and reduce public confusion in Davis and Pine creeks and the McCloud River tributaries of Edison, McKay, Moosehead and Swamp creeks.

The Department proposes to close the Sisquoc River and the tributaries of Silver King Creek to all fishing to increase protection for steelhead and trout, respectively, and open Wolf Creek to limited fishing due to stable populations of Lahontan cutthroat.

The Department also proposes to offer increased fishing opportunities in Chowchilla River and Eastman Lake, close a portion of the Stanislaus River, close Wolf Creek Lake, and limit fishing to non-salmonids only in San Diego Creek and San Gabriel River due to changes in local fish populations or conditions.

Proposal Overview

The Department is proposing broad salmon and steelhead angling regulations for the district and special fishing areas.

With recent Central Valley salmon closures, many anglers have expressed confusion as to which waters are actually open to salmon fishing. To help clarify this situation, the Department proposes that all district regulations (Section 7.00) specify that salmon fishing is closed in all streams unless otherwise indicated in the list of waters with special fishing regulations (Section 7.50). This will help reduce public confusion and standardize the regulatory approach.

As a continuing effort to improve steelhead management and angling opportunities, the Department proposes to liberalize regulations in most areas where only

catch and release fishing is currently allowed with the objective of meeting the following goals: 1) allow and encourage anglers to harvest "surplus" hatchery steelhead (adults in excess of number necessary to meet a hatchery's production goals) on streams with hatcheries, and 2) allow and encourage anglers to harvest hatchery steelhead that stray into streams without hatchery production. This will help increase fishing opportunities while increasing protection for naturally spawning steelhead stocks.

Additional changes are proposed to increase resource protection, correct regulatory issues, reduce public confusion, improve regulatory enforcement, and standardize regulatory structure.

The benefits of the proposed regulations are sustainable management of sport fishing resources and promotion of businesses that rely on sport fishing.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government.

Spearfishing for Striped Bass in Ocean Waters — 27.85, 28.90 and 28.95

Existing law authorizes the take of striped bass for recreational purposes with a sport fishing license subject to regulations prescribed by the Fish and Game Commission (Commission); commercial take of striped bass is prohibited. Current regulations specify size limit, bag and possession limit, and methods of take in ocean waters [Title 14, California Code of Regulations (CCR), Sections 27.85, 28.90, and 28.95].

In ocean waters, Section 27.85 provides for a bag limit of two, a minimum size limit of 18 inches total length north of Pt. Conception, no minimum size limit south of Pt. Conception, and no seasonal closures. Furthermore, striped bass may not be taken while using a sinker over four pounds and may be taken only by angling [Title 14, CCR, Section 1.05].

Section 28.90 specifies fishing provisions while diving and prohibits the take of striped bass by spearfishing. Additionally, Section 28.95 authorizes taking of finfish species by spears, harpoons, and bow and arrow fishing tackle, and identifies prohibited finfish species including striped bass.

At its April meeting, the Commission took testimony regarding the upcoming Sport Fishing Review Cycle. Following public comments, the Commission directed the Department to prepare options that would allow the take of striped bass while spearfishing, indicating its in-

tent to consider changes to the existing regulations which prohibit this method of take for this species.

Although the Department has concern with a blanket authorization to use spearfishing gear for striped bass in inland waters, considerations are different for ocean waters. Spearfishing is generally authorized as a method of take for finfish in the ocean, pursuant to Section 28.90. The Department's understanding is that the current prohibition on spearfishing striped bass came about due to a need to specially regulate anadromous species which were the target of sport fisheries, including salmon, sturgeon, and striped bass. Today, the Department believes that any additional harvest of striped bass that may result from spearfishing in the ocean would be sustainable given the present status of the striped bass resource. Also, because spearfishing is a highly selective method of take, the Department does not anticipate that increases in fishing effort on striped bass would have unintended consequences on other species.

For purposes of clarity and consistency, the Department recommends, that if the Commission decides to authorize spearfishing for striped bass, it can also take action to amend Section 28.95. The proposed change would remove striped bass from the list of species that may not be taken with bow and arrow fishing tackle.

Proposal Overview

In response to requests by individuals and various sport fishing groups, the Department has prepared the following proposal for consideration:

ALLOW HARVEST OF STRIPED BASS BY SPEARFISHING AND BOW AND ARROW FISHING TACKLE

Amend Section 27.85, Striped Bass. This Section would be amended to allow the harvest of striped bass by spearfishing and bow and arrow fishing tackle that are otherwise prohibited under existing regulations for ocean waters.

Amend Section 28.90, Diving, Spearfishing. This section would be amended to remove striped bass from the list of finfish species that may not be taken by spearfishing.

Amend Section 28.95, Spears, Harpoons and Bow and Arrow Fishing Tackle. This section would be amended to remove striped bass from the list of species that may not be taken by bow and arrow fishing tackle.

Anticipated Benefits

The benefits of the proposed regulations are increased fishing opportunities for striped bass, continuation of sustainable management of sport fishing resources, protection of listed and special status species, and promotion of businesses that rely on California's sport fisheries.

The proposed regulations are neither inconsistent nor incompatible with existing state regulations.

The Commission does not anticipate non-monetary benefits to the protection of public health and safety, worker safety, the prevention of discrimination, the promotion of fairness or social equity and the increase in openness and transparency in business and government. The Commission anticipates that this regulation will not have any effect on the overall health and welfare of California residents.

The Commission feels it is the policy of the state to encourage the conservation, maintenance, and utilization of the living resources of the inland and ocean waters under the jurisdiction and influence of the state for the benefit of all its citizens and to promote the development of local California fisheries. The objectives of this policy include, but are not limited to, the maintenance of sufficient populations of all species of aquatic organisms to ensure their continued existence and the maintenance of a sufficient resource to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits in the quantity that is sufficient to provide a satisfying sport. Adoption of scientifically-based inland sport fishing seasons, size limits, and bag and possession limits provides for the maintenance of sufficient populations of aquatic species to ensure their continued existence.

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. No other State agency has the authority to promulgate regulations establishing the procedures for inspections of wildlife facilities; however, the Department of Fish and Game, pursuant to Section 2150.2, Fish and Game Code, has the authority to set inspection fees and will proceed under a separate rulemaking.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held in the Crowne Plaza Ventura Beach, Santa Rosa Room, 450 Harbor Boulevard, Ventura, California, on Wednesday, August 8, 2012, at 10:00 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, on all options relevant to this action at a hearing to be held in the Radisson Hotel at Los Angeles Airport, Laguna Room, 6225 West Century Boulevard, Los Angeles, California, on Wednesday, November 7, 2012, at 10:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before October 24, 2012, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on November 6, 2012. All comments must be received no later than November 7, 2012, at the hearing in Los Angeles, CA.** If you

would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in strikeout–underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244–2090, phone (916) 653–4899. Please direct requests for the above–mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Jon Snellstrom at the preceding address or phone number. **Ms. Karen Mitchell, Staff Environmental Scientist, Fisheries Branch, Department of Fish and Game, telephone (916) 445–0826, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

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

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

Impact of Regulatory Action

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the

Ability of California Businessmen to Compete with Businesses in Other States.

General Sport Fishing Regulations — 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00

Spear Fishing for Striped Bass in Inland Waters — 2.30

Black Bass Sport Fishing — 5.00

District and Special Regulation Changes — 7.00 and 7.50

Spearfishing for Striped Bass in Ocean Waters — 27.85, 28.90 and 28.95

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

Take of Amphibians and Reptiles — 5.05 and 5.60

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts. The actions proposed will improve Department efforts related to conservation of at–risk animals in California.

Sturgeon Sport Fishing Regulations — 5.80, 5.81, 27.90, 27.91 and 701

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Economic impacts of fishing are attributable largely to fishing effort, fishing opportunity, and fishing success. The proposed sturgeon–specific regulations would not alter fishing effort or fishing opportunity and would not appreciably alter fishing success. Over time, the proposed regulations are expected to improve fishing success. Neighboring states with sturgeon fisheries are already operating under a suite of regulations substantially similar to the ones proposed here.

The proposed implementation of a \$7.50 fee for the issuance of each Sturgeon Fishing Report Card (1) would constitute a tiny fraction of the cost to anglers for catching sturgeon and (2) is less costly than other methods of collecting equivalent data

and thwarting illegal commercialization of sturgeon.

(b) Results of the Economic Impact Analysis.

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

General Sport Fishing Regulations — 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00

Spear Fishing for Striped Bass in Inland Waters — 2.30

Black Bass Sport Fishing — 5.00

Take of Amphibians and Reptiles — 5.05 and 5.60

Sturgeon Sport Fishing Regulations — 5.80, 5.81, 27.90, 27.91 and 701

District and Special Regulation Changes — 7.00 and 7.50

Spearfishing for Striped Bass in Ocean Waters — 27.85, 28.90 and 28.95

The Commission does not anticipate any impacts on the creation or elimination of jobs, the creation of new business, the elimination of existing businesses or the expansion of businesses in California. The potential impacts from the proposed regulations in the Sport Fishing Review Cycle may range from 0 to 16,000 jobs depending on the Commission’s final actions. The impacted businesses are generally small businesses employing few individuals and, like all small businesses, are subject to failure for a variety of causes. Additionally, the long-term intent of the proposed action is to increase sustainability in fishable stocks and, subsequently, the promotion and long-term viability of these same small businesses.

The Commission anticipates benefits to the health and welfare of California residents. Providing opportunities for the sport fisheries encourages consumption of a nutritious food.

The Commission does not anticipate any non-monetary benefits to worker safety.

The Commission anticipates benefits to the environment by the sustainable management of California’s sport fishing resources.

(c) Cost Impacts on Representative Private Person or Business

General Sport Fishing Regulations — 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00

Spear Fishing for Striped Bass in Inland Waters — 2.30

Black Bass Sport Fishing — 5.00

Take of Amphibians and Reptiles — 5.05 and 5.60

Spearfishing for Striped Bass in Ocean Waters — 27.85, 28.90 and 28.95

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

Sturgeon Sport Fishing Regulations — 5.80, 5.81, 27.90, 27.91 and 701

The agency is not aware of any cost impacts that a representative private business would necessarily incur in reasonable compliance with the proposed action. A private person interested in fishing for sturgeon would be required to purchase an annual sturgeon report card at a cost of \$7.50 yearly.

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

General Sport Fishing Regulations — 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00

Spear Fishing for Striped Bass in Inland Waters — 2.30

Black Bass Sport Fishing — 5.00

Take of Amphibians and Reptiles — 5.05 and 5.60

Sturgeon Sport Fishing Regulations — 5.80, 5.81, 27.90, 27.91 and 701

District and Special Regulation Changes — 7.00 and 7.50

Spearfishing for Striped Bass in Ocean Waters — 27.85, 28.90 and 28.95

None.

(e) Other Nondiscretionary Costs/Savings to Local Agencies.

General Sport Fishing Regulations — 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00

Spear Fishing for Striped Bass in Inland Waters — 2.30

Black Bass Sport Fishing — 5.00

Take of Amphibians and Reptiles — 5.05 and 5.60

Sturgeon Sport Fishing Regulations — 5.80, 5.81, 27.90, 27.91 and 701

District and Special Regulation Changes — 7.00 and 7.50

Spearfishing for Striped Bass in Ocean Waters — 27.85, 28.90 and 28.95

None.

(f) Programs Mandated on Local Agencies or School Districts.

General Sport Fishing Regulations — 1.45, 1.77, 2.25, 4.20, 5.10, 5.40, 5.91 and 8.00

Spear Fishing for Striped Bass in Inland Waters — 2.30

Black Bass Sport Fishing — 5.00
Take of Amphibians and Reptiles — 5.05 and 5.60
Sturgeon Sport Fishing Regulations — 5.80, 5.81,
27.90, 27.91 and 701
District and Special Regulation Changes — 7.00
and 7.50
Spearfishing for Striped Bass in Ocean Waters —
27.85, 28.90 and 28.95

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4.

General Sport Fishing Regulations — 1.45, 1.77,
2.25, 4.20, 5.10, 5.40, 5.91 and 8.00
Spear Fishing for Striped Bass in Inland Waters —
2.30
Black Bass Sport Fishing — 5.00
Take of Amphibians and Reptiles — 5.05 and 5.60
Sturgeon Sport Fishing Regulations — 5.80, 5.81,
27.90, 27.91 and 701
District and Special Regulation Changes — 7.00
and 7.50
Spearfishing for Striped Bass in Ocean Waters —
27.85, 28.90 and 28.95

None.

- (h) Effect on Housing Costs.

General Sport Fishing Regulations — 1.45, 1.77,
2.25, 4.20, 5.10, 5.40, 5.91 and 8.00
Spear Fishing for Striped Bass in Inland Waters —
2.30
Black Bass Sport Fishing — 5.00
Take of Amphibians and Reptiles — 5.05 and 5.60
Sturgeon Sport Fishing Regulations — 5.80, 5.81,
27.90, 27.91 and 701
District and Special Regulation Changes — 7.00
and 7.50
Spearfishing for Striped Bass in Ocean Waters —
27.85, 28.90 and 28.95

None.

Effect on Small Business

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

Consideration of Alternatives

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

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

**TITLE 14. NATURAL RESOURCES
 AGENCY**

**NOTICE OF PROPOSED ACTION
 AMENDING GUIDELINES IMPLEMENTING
 THE CALIFORNIA ENVIRONMENTAL
 QUALITY ACT**

NOTICE IS HEREBY GIVEN pursuant to Government Code section 11346.6 that the California Natural Resources Agency (“Resources Agency”) proposes to adopt and amend regulations implementing Division 13 of the Public Resources Code, the California Environmental Quality Act (CEQA), setting out streamlined environmental review for qualifying infill projects.

PROPOSED ACTION

The proposed action amends the Guidelines to reflect recent legislative changes to CEQA, specifically legislation adding Public Resources Code section 21094.5. The changes to the Guidelines proposed in this action are as follows:

- Add Guidelines section 15183.3;
- Add Appendix M;
- Add Appendix N.

**PUBLIC HEARING AND WRITTEN COMMENT
 PERIOD AND AGENCY CONTACT**

Written Comments: Any interested person or his or her authorized representative may submit written comments relevant to the proposed action to the Resources Agency. Comments may be submitted by mail or email. The written comment period ends at **5:00 p.m. on September 10, 2012**. The Resources Agency will consider only comments submitted and received by that time. Following the conclusion of the written comment period, the Resources Agency may adopt the proposal substantially as set forth without further notice.

Pursuant to Government Code section 11346.9(a)(3), the Resources Agency shall in a final statement of reasons respond to comments submitted during the comment period containing objections and/or recommendations specifically directed at the Resources Agency’s proposed action or to the procedures followed by the Resources Agency in proposing or adopting the proposed action.

Submit comments to:

Heather Baugh, Assistant General Counsel
 The California Natural Resources Agency
 Legal Office
 1416 Ninth Street, Suite 1311
 Sacramento CA, 95814
 CEQA.Guidelineupdate@ceres.ca.gov

Two public hearings have been scheduled.

The first will take place at 1:00 p.m. and end at 4:00 p.m., on **September 7, 2012**, at the Ronald Reagan Building, 300 South Spring St., Los Angeles, CA 90013. Once a room for the hearing is finalized, it will be indicated on the Resource Agency website www.resources.ca.gov prior to the date for the hearing.

Webcast will be made available and directions for its use will also be placed on the Resource Agency’s website prior to the hearing. Please note, those attending by webcast at this location will not be permitted to issue oral comments and will need to submit their comments in writing following the specified procedure in this notice. Oral comments will be accepted in person.

The second hearing will take place on **September 10, 2012**, at the California Energy Commission Hearing Room from 1:00–4:00 p.m. and is located at 1516 Ninth Street, Sacramento, CA 95814. Webcast is also available and directions for its use will be listed on the Natural Resource Agency’s website at www.resources.ca.gov prior to the hearing. Please note, those attending by webcast will not be permitted to issue oral comments at this location and will need to submit their comments in writing following the specified procedure in this notice. Oral comments will be accepted in person.

**INFORMATIVE DIGEST/POLICY STATEMENT
 OVERVIEW**

Existing law permits streamlining CEQA review for qualifying infill projects. (See Public Resources Code sections 21094.5 and 21094.5.5 [enacted as part of SB226, Simitian 2011; signed by Governor Brown on October 4, 2011.]). This regulatory action develops a process for documenting and applying the streamlining directed by SB 226, and clarifies or makes more specific when and to what extent environmental review is required pursuant to that process. It does this in multiple ways, including: identifying when an infill project can be approved on the basis of a checklist without requiring additional public review; clarifying what the evidentiary standard is for lead agencies making determinations pursuant to SB 226; identifying what amount of environmental impact will trigger additional review, clarifying when an additional environmental impact report (EIR) or new statement of overriding consider-

ations is or is not necessary, and identifying the scope of such documents; clarifying when and what type of uniform local development standards and policies can be used to mitigate project-specific impacts as well as the degree of mitigation required; and clarifying that streamlining is permitted if there is either a comprehensive General Plan EIR, or any supplement or addenda to that EIR which analyzes zoning or planning amendments.

Further, this proposal develops regulatory performance standards as directed by SB 226. Compliance with these proposed standards is required for a project to be eligible for streamlining. These performance standards dictate the types of characteristics various infill projects must have based on land use designations and project design, and include components like location to transit, efficiency measures, and foot-print size of intended commercial structures among other things. The goal of the performance standards is to implement the legislative directives in Public Resources Code 21904.5.5(b), thereby ensuring that eligible infill projects have attributes that advance or align with existing state policies on greenhouse gas emissions, pollution, public health, and efficient resource management.

The broad objective behind both SB 226 and these implementing regulations is to promote thoughtful infill over other potential land use patterns by making the environmental review process less burdensome through streamlining. This is necessary because, as will be more specifically discussed, infill development can lead to multiple environmental, social, health and economic benefits. Infill development is also a state policy priority, and thus this package reduces some of the obstacles associated with achieving its successful implementation.

1. Specific Benefits Anticipated by the Proposed Regulation Including Non-monetary Benefits

Infill development is important to the State and comes with a host of benefits for both the environment as well as the health and wellbeing of the population of California. Simply put, infill encourages more reliance on neighborhood-oriented businesses, walking, cycling, and public transit. These activities indirectly reduce greenhouse gas emissions and other emissions that lead to smog and air and water quality issues because they result in less vehicle miles traveled by residents who would traditionally have to drive to obtain the same services and products. Taken together, these benefits create sustainable, vibrant, and economically viable neighborhoods. Therefore, it simply makes sense to deregulate the permitting process for qualifying infill so that such projects are easier to approve and site. This package attempts to do just that by limiting and stream-

lining some of the regulatory burden associated with CEQA.

a. Promotes More Efficient Regulatory Review Pursuant to CEQA

Infill developers and public entities considering infill approval will receive the benefit of an abbreviated environmental review process pursuant to CEQA as a result of this proposal. In many cases, this will include being exempted from requirements to develop costly and time-consuming environmental impact reports (EIR). Such EIR processes can span several years and cost several hundreds of thousands of dollars. In a typical greenfield development, such costs can be spread across many units. Infill project sizes, though, tend to be much smaller and land costs tend to be much higher. The disproportional effect of review on infill then, is significant. The proposed action will make infill projects more feasible to undertake and complete by reducing the regulatory burden of the existing process, thereby reducing the associated costs.

b. Promotes Sustainable Communities and Climate Protection Act Goals

This rulemaking also promotes the implementation of the land use policies in the Sustainable Communities and Climate Protection Act (SB 375, Steinberg, 2008). SB 375 seeks to reduce greenhouse gas emissions from passenger vehicles by integrating land use and transportation planning so that newly developed emissions targets can be realistically achieved. Specifically, it requires local metropolitan organizations to develop “sustainable community strategies” that evidence the regions’ ability and plan to meet certain emissions targets imposed by the State. The proposed addition to the CEQA Guidelines promotes SB 375’s goals because it incentivizes development in low VMT areas and along transit lines — the fundamental planning paradigm being sought by SB 375. It also requires that projects be consistent with the applicable Sustainable Communities Strategy, thus motivating local and regional planners to refer to and be consistent with those strategies when siting new projects.

Similarly, the Air Resources Board’s Scoping Plan describes local policies that may assist the state in achieving its greenhouse gas reduction targets pursuant to AB 32 (Nunez, 2006). It notes, for example, that “[l]ocal governments have the ability to directly influence both the siting and design of new residential and commercial developments in a way that reduces GHG associated with energy, water, waste, and vehicle travel, which may include zoning for more compact and mixed-use residential and commercial development and adopting policies to promote infill and affordable housing.” (California Air Resources Board, Scoping Plan (2011), Appendix C, at pp. C–53.) Again, by pro-

moting infill located in low VMT corridors, this package comports with and enhances the Air Board’s policy for the statewide reduction of GHG pursuant to AB 32.

c. Promote State Planning Priorities in Government Code section 65041.1

This package promotes California’s planning priorities that are specified in California Government Code section 65041.1. Section 65041.1 indicates that California’s first planning priority is to promote “infill development and appropriate reuse and redevelopment of previously developed, underutilized land[.]” This priority was first discussed in California’s 1978 Urban Strategy. The state’s second planning priority is to “[d]evelop vacant and under-utilized land within existing urban and suburban areas.” These proposed additions to the CEQA Guidelines promotes urban infill by attempting to incentivize and redirect development to previously developed and vacant sites within existing urban environments.

d. Provides Certainty for Infill Developers and Lead Agencies

This proposal reduces the legal risk associated with CEQA for qualifying infill projects. The existing CEQA process typically includes numerous opportunities for public input because there is an extensive public process, which can often result in challenges to the proposed project. This proposal is aimed at making public review more effective during planning stages, so that conflicts may be avoided or substantially limited by the time an infill project is proposed. Thus, it promotes a result wherein the environmental review for infill is less likely to be challenged and more deferential to the lead agency.

e. Promotes Environmental Objectives

This package also promotes environmental benefits. Infill refers to development on previously developed land or vacant parcels of land surrounded by other urban uses. Infill tends to be less impactful to the environment because it reduces sprawl, which requires the conversion and development of open-space. In addition to promoting infill generally, this package includes performance standards that further mitigate or reduce potential environmental and health impacts. These standards allow a project to qualify for streamlining and are intended to ensure that infill projects that are streamlined as a result of this regulatory action are thoughtful and align with existing state policies on reduction of emissions through reduced vehicle travel, efficient use of resources such as water and energy, and more effective reliance on and improvement of existing infrastructure.

f. Promotes Energy Efficiency

This proposal promotes energy efficiency. It does so by prioritizing projects in low VMT areas. Such proj-

ects are typically more efficient and less consumptive because they include apartment complexes and other high density residential formats that result in smaller unit sizes and greater shared infrastructure.

g. Promotes Sustainable Local Economies

Being able to develop infill more feasibly will indirectly result in an economic benefit to local governments. Specifically, if compared on a per acre basis, infill tends to result in greater and more sustainable long-term revenues. Further, infill projects rely on existing improvements and services, resulting in a less costly capital outlay. The collective result is the revitalization of walkable urban neighborhoods with unique local cultures. (See, e.g., Emily Badger, “The Simple Math That Can Save Cities From Bankruptcy,” *The Atlantic Cities* (March 30, 2012), available online at <http://www.theatlanticcities.com/jobs-and-economy/2012/03/simple-math-can-save-citiesbankruptcy/1629>.) Since this package seeks to incentivize and promote the approval of infill, it will indirectly benefit local communities looking to take advantage of the financial benefits infill has to offer by making the siting and approval of infill projects easier.

h. Helps Developers and Local Agencies Plan for and Respond to Market Trends

This package also advances and promotes new trends in the housing market because it promotes expedited approval of infill housing that is located near existing businesses and services, or near transit that permits easy and affordable access to businesses and services. The demand for housing within transit station areas is much higher than available supply, whereas the supply of large lot homes presently exceeds demand. (Arthur Nelson, “The New California Dream: How Demographic and Economic Trends May Shape the Housing Market: A Land Use Scenario for 2020 and 2035,” *Urban Land Institute* (2011).) Simply put, more people are seeking walkability and easy access to services within their existing neighborhoods in California than in previous years. This package makes it easier for such housing to be permitted, thereby increasing the available supply for this growing market trend.

i. Promotes Healthy Communities

This package promotes public health in several ways. First the performance standard provided in Appendix M facilitates walking and cycling. Second, the standards are designed to ensure projects sited in high-volume roadways don’t result in disproportionate impacts to the residents who eventually live in them by requiring on-site mitigation of potential air quality issues. Third, the package itself rewards communities and neighborhoods with lower VMT which will ultimately result in reductions of emissions generally from vehicular

sources. This will in turn result in better air and water quality, thus promoting greater public health.

Since infill development is linked to health benefits, promoting greater infill development indirectly benefits the health and welfare of California’s residents. According to the American Lung Association, “Sustainable, mixed-use communities designed around mass transit, walking and cycling have been shown to reduce greenhouse gas emissions, air pollution, and a range of adverse health outcomes including traffic injuries, cancers, lung and heart disease, obesity, diabetes, and other chronic health conditions. In addition to the benefits to lung health, individuals who live in mixed-use and walkable communities have a 35 percent lower risk of obesity.” (American Lung Association in California, “Land Use, Climate Change & Public Health Issue Brief: Improving public health and combating climate change through sustainable land use and transportation planning” (Spring 2010).)

Beyond the benefits from reductions in obesity, diabetes, heart and lung disease, cancers and other chronic illnesses associated with increased physical activity attendant to lifestyles centered around walkable communities, smart growth development patterns “could help California cut over 132,000 tons of air pollution and avoid up to 140 premature deaths, 105,000 asthma attacks and other respiratory symptoms, 16,550 work days lost and \$1.66 billion in health costs in 2035.” (American Lung Association in California, Fact Sheet, “Smart Growth will help California avoid air pollution-related illnesses, deaths and costs.”) Studies have linked positive health outcomes to policies that increase walking, bicycling and other physical activity. (Woodcock J, et al. “Public health benefits of strategies to reduce greenhouse-gas emissions: urban land transport,” *The Lancet* (2009), pp. 1930–1943.)

j. Provides Regulatory Flexibility

Finally, this package preserves a high degree of flexibility for both project applicants and local governments that was not available with existing exemptions created to spur infill. Thus, there is a benefit to regional governments seeking to make infill work within their existing planning structure. Wherever possible and consistent with the statute, this proposal provides alternative paths to regulatory streamlining so that the environmental review for infill is not prohibitive.

2. The Proposed Regulation is Not Inconsistent with or Incompatible with Existing State Law or Regulations

This proposal is not inconsistent or incompatible with any existing state regulation, but rather is intended to align with and compliment existing state policies. SB 375 (Steinberg, 2008) calls for a reduction in green-

house gas emissions by aligning land use and transportation planning. Specifically, the California Transportation Commission's Regional Transportation Plan Guidelines recognize "urban and suburban infill, clustered development, mixed land uses, New Urbanist design, transit-oriented development, and other 'smart-growth' strategies" as land use tools to reduce greenhouse gas emissions. (California Transportation Commission, Regional Transportation Plan Guidelines (2010), at pp. 230-231.) This package facilitates SB 375's goal to reduce greenhouse gas emissions by better siting of well-planned urban development, including infill.

Similarly, the Air Resources Board's Scoping Plan describes local policies that may assist the state in achieving its greenhouse gas reduction targets pursuant to AB 32 (Nunez, 2006). Since these proposed additions use VMT as a primary metric, this package attempts to advance the State's goals relative to AB 32.

NON-DUPLICATION OF FEDERAL LAW

The proposed action does not duplicate or conflict with any federal statutes or regulations. CEQA is similar in some respects to the National Environmental Policy Act ("NEPA"), 42 U.S.C. sections 4321-4343. However, only federal agencies are subject to NEPA, which requires environmental review of federal actions. State and local agencies are subject to CEQA, which requires environmental review before state and local agencies may approve or decide to undertake discretionary actions and projects in California.

Although both NEPA and CEQA require an analysis of environmental impacts, the substantive and procedural requirements of the two statutes differ. Most significantly, CEQA requirements for feasible mitigation of environmental impacts exceed NEPA's mitigation provisions. A state or local agency must complete a CEQA review even for those projects for which NEPA review is also applicable, although Guidelines sections 15220-15229 allow state, local and federal agencies to coordinate review when projects are subject to both CEQA and NEPA. Further, it would be rare for there to be federal participation at a local planning level where infill development is most often considered.

Because state and local agencies are subject to CEQA unless exemptions apply, and because CEQA and NEPA are not identical, guidelines for CEQA are necessary to interpret and make specific provisions of SB226 and do not duplicate the Code of Federal Regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Resources Agency has made the following initial findings and determinations:

- 1) Mandate on local agencies and school districts: None;
- 2) Cost or savings to any state agency: None;
- 3) Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None, and no other nondiscretionary costs or saving to local agencies or school districts;
- 4) Cost or savings in federal funding to the state: None;
- 5) Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses of other states: None;
- 6) Cost impacts on representative private person or business: None;
- 7) Significant effect on housing costs: None;
- 8) Impact or affect on small businesses: None;
- 9) Required Business Report: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The proposed regulations will not:

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

There are no specific benefits or costs that the adoption of these regulations would have pertaining to California worker safety. The Resources Agency believes the adoption of this regulation benefits the general health and welfare of California residents by promoting the feasibility of infill development, which has recognized economic, social and environmental benefits. (Government Code section 11346.3(b).)

COST IMPACTS TO REPRESENTATIVE PERSONS OR BUSINESS

The Resources Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Streamlining infill remains discretionary, and is less burdensome than the existing CEQA process. This package does not replace the existing process, but rather adds an additional option for compliance with CEQA. Since this package does not foresee directly influencing the amount, but rather the type of development taking place, the Resources Agency has determined that this rulemaking package will reduce costs to individuals and businesses seeking to develop in California.

ALTERNATIVES CONSIDERED

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

STATUTORY AUTHORITY AND REFERENCE

Public Resources Code section 21083 requires the adoption of the Guidelines to explain and implement CEQA. Section 21083, subdivision (f) requires the Resources Agency, in consultation with the Governor's Office of Planning and Research ("OPR"), to certify, adopt and amend the Guidelines at least once every two years. Similarly, PRC section 21094.5 provides that "on or before July 1, 2012, the Office of Planning and Research shall prepare, develop, and transmit to the Natural Resources Agency for certification and adoption guidelines for the implementation of Section 21094.5 and the Secretary of the Natural Resources Agency, on or before January 1, 2013, shall certify and adopt the guidelines."

Authority: Public Resources Code Sections 21083 and 21094.5.5. Reference: Public Resources Code Sections 21094.5 and 21094.5.5

INTERNET ACCESS AND AVAILABILITY OF RULEMAKING PACKAGE

A copy of any materials generated or relied upon in this rulemaking package are available upon request. Additionally, the actual proposed amendments to the CEQA Guidelines and the Initial statement of reasons are located on the Resource Agency website at www.resources.ca.gov/CEQA. When completed, the final statement of reasons will also be made available. If you have difficulty locating any material, please contact Carlie Jackson at Carlie.jackson@resources.ca.gov or at (916) 653-5656.

REASONABLE ACCOMMODATIONS

Anyone requiring reasonable accommodation to participate in either of these hearings should contact Carlie Jackson by email at Carlie.jackson@resources.ca.gov or by phone at (916) 653-5656 at least five days prior to the scheduled workshop. The meeting locations are accessible to persons with disabilities.

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations, Sections 926-3, 926-4, and 926-5

TAXABLE VALUE OF MEALS AND LODGING

The Employment Development Department (Department) proposes to amend California Code of Regulations (CCR), title 22, sections 926-3, 926-4, and 926-5, by decreasing the taxable value of meals and increasing the taxable value of lodging furnished to employees by employers for calendar year 2011. The increase is due to inflation.

The Department will adopt these regulations after considering all comments, objections, or recommendations regarding the proposed regulatory action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The purpose of this amendment is to provide a basis for wages upon which employer and worker contributions shall be computed as actually or constructively paid during a calendar quarter in subject employment by an employer subject to the California Unemployment Insurance Code (CUIC).

CCR, title 22, sections 926-3, 926-4, and 926-5, provide the taxable value of meals and lodging furnished to employees by employers. In order to establish the equivalent amount of cash wages paid by employers who pay a portion of their employee's wages in the form of meals or lodging it is necessary to compute the reasonable cash value of such meals and lodging for unemployment insurance purposes.

To address the problem of inflation, the Department makes this computation each calendar year to reflect the upward or downward trend in the cost of living during the previous calendar year. This yearly computation ensures an accurate and up-to-date calculation of the taxable values of meals and lodging for purposes of "wages" within the meaning of CUIC section 926.

According to the United States Department of Labor, Bureau of Labor Statistics [<http://data.bls.gov/cgi-bin/srgate>], the average retail food price index for fiscal year 2009-2010 was 222.1, up 531.0 percent from the average of 35.2 for the base year 1968-69. The average residential rent index for the fiscal year 2009-2010 was 286.9. This is 544.7 percent above the average residential rent index of 44.5 for the base year 1972-1973. The Department uses 1968-1969 as the base year for food and 1972-1973 as the base year for rent because these are the years used by the Bureau of Labor Statistics.

These regulations are being amended to reflect, in substantially the same ratio, the decrease in the retail food price index and the increase in the residential rent index which occurred during the fiscal year ended June 30, 2010.

Notwithstanding sections 926-3(a)(2), 926-4(a)(2), and 926-5(a)(2)(A) of CCR, title 22, which state in part: "For the calendar year 2011 and thereafter, except as modified herein . . .", the Department recognizes that the amendments made to these sections will not become effective until the regulations are approved by the Office of Administrative Law.

Section 926-3.

This regulatory action will amend section 926-3, relating to the taxable value of board and lodging. In 2011 and thereafter until modified, the taxable value of three meals per day is decreased from \$10.35 to \$10.30. The taxable value of breakfast remains the same at \$2.25. The taxable value of lunch remains the same at \$3.15. The taxable value of dinner is decreased from \$4.95 to \$4.90. The taxable value of lodging is raised from \$1,190.00 to \$1,193.00 monthly maximum, and from \$38.60 to \$38.70 weekly minimum.

Section 926-4.

This regulatory action will amend section 926-4, relating to the taxable value of meals and quarters furnished to officers and crewmen aboard vessels. In 2011 and thereafter until modified, the taxable value of daily meals is decreased from \$10.35 to \$10.30. The taxable value of quarters is increased from \$5.45 to \$5.50 daily for unlicensed personnel. The taxable value of quarters is increased from \$8.05 to \$8.10 daily for licensed personnel.

Section 926-5.

This regulatory action will amend section 926-5, relating to the taxable value of meals and quarters received by fishermen aboard fishing vessels. In 2011 and thereafter until modified, the taxable value of quarters is increased from \$38.60 to \$38.70 a week, or from \$5.45 to \$5.50 a day for periods of less than a week under specified conditions.

ANTICIPATED BENEFITS FROM THE PROPOSED REGULATION

This proposed regulation is designed to benefit California employees by ensuring that:

1. Subject entities report data and pay taxes consistent with the law;
2. Tax and wage data are processed timely and accurately;
3. Workers receive the benefit coverage they are entitled to under the law;

4. These values give all impacted employers the convenience of using readily available values without having to take the time to compute their own;

5. Benefits paid to workers are accounted for timely and accurately; and

6. Essentially, the proposed amendments will accelerate the point an employee reaches the maximum taxable wage limit for the calendar year.

An evaluation of whether this proposed regulation is inconsistent or incompatible with existing state regulations was performed, and the Department has determined that there is no such inconsistency or incompatibility, because these are the only regulations on this subject. The regulation currently exists and has existed for many years. The proposed amendment to the regulation only seeks to update the annual values of meals and lodging provided by employers. These proposed amendments will not have a significant impact on small businesses since the changes reflect a small inflationary decrease in the taxable value of meals and a small inflationary increase in the taxable value of lodging for purposes of wages within the meaning of section 926 of the CUIIC.

AUTHORITY AND REFERENCE

Authority: Sections 305, 306 and 310, Unemployment Insurance Code. Reference: Section 926, Unemployment Insurance Code.

FISCAL IMPACT

Anticipated costs or savings in federal funding to the State: None.

Anticipated costs or savings to any State Agency: None.

Anticipated costs or savings to any local agency or school district: None.

Significant statewide adverse economic impact: Approximately 378,726 businesses and small businesses will be affected statewide by these regulations. The types of businesses affected include fisheries, apartment complexes, residential care facilities, restaurants and eating establishments, and private households. The total statewide cost to businesses and small businesses is anticipated to be \$1.108 million; however, the cost to individual businesses is minimal. The regulation does not impose any new reporting requirements on businesses.

The Department has made an initial determination that the proposed amendments 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 costs impact on representative persons or businesses: These proposed amendments will affect only those businesses who furnish meals or lodging to their employees. The Department anticipates that the fiscal impact to the businesses will be negligible.

Anticipated impact on housing costs: These proposed amendments will have no effect on housing costs.

Anticipated nondiscretionary costs or savings imposed upon local agencies: None.

SMALL BUSINESS IMPACT

These proposed amendments will not have a significant impact on small businesses since the changes reflect a small inflationary decrease in the taxable value of meals and a small inflationary increase in the taxable value of lodging for purposes of wages within the meaning of section 926 of the CUIC. Essentially, the proposed amendments will only accelerate the point at which an employee reaches the maximum taxable wage limit for the calendar year.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT PURSUANT TO GOVERNMENT CODE SECTION 11346.3(b)

The Department has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

This proposed regulation is designed to benefit California employees by ensuring that:

1. Subject entities report data and pay taxes consistent with the law;
2. Tax and wage data are processed timely and accurately;
3. Workers receive the benefit coverage they are entitled to under the law;
4. These values give all impacted employers the convenience of using readily available values without having to take the time to compute their own;
5. Benefits paid to workers are accounted for timely and accurately; and
6. Essentially, the proposed amendments will accelerate the point an employee reaches the maximum taxable wage limit for the calendar year.

LOCAL MANDATE DETERMINATION

The Department has determined that these proposed amendments will not impose any new mandates on school districts or other local governmental agencies or

any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with section 17500), Division 4 of the Government Code.

CONSIDERATION OF ALTERNATIVES

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

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Deanna Asuncion via U.S. mail, e-mail, or fax (see U.S. mail and e-mail addresses and fax number indicated below). **E-mail comments should include true name and mailing address of the commenter. Written comments submitted via U.S. mail, e-mail, or fax, must be received by the Department no later than September 10, 2012, at 5 p.m.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

CONTACT PERSONS

Inquiries or comments should be directed to:

(Mailing address) Deanna Asuncion,
Senior Staff Counsel
Employment Development
Department
P.O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280-0001

(Hand delivery) Deanna Asuncion,
Senior Staff Counsel
Employment Development
Department
800 Capitol Mall, Room 5040
Legal Office, MIC 53
Sacramento, CA 95814

Telephone No.: (916) 654-8410
Fax No.: (916) 654-9069
E-Mail Address: eddlegal@edd.ca.gov

Note: In the event Deanna is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Name: Debbie Kunitake,
Legal Analyst
Telephone No.: (916) 654-8410

Questions regarding the substance of the proposed regulatory action should be directed at this time to:

Name: Deanna Asuncion,
Senior Staff Counsel
Telephone No.: (916) 654-8410

INTERNET WEBSITE ACCESS

The Department has posted on its internet website <http://www.edd.ca.gov> materials regarding the proposed regulatory action. Select "Proposed Regulations."

PUBLIC HEARING

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on September 10, 2012.** A request for hearing can be made by contacting the persons noted above.

MODIFICATION OF PROPOSED ACTION

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

FINAL STATEMENT OF REASONS

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

FURTHER INFORMATION

The Department has prepared and has available for review, upon request, the text of the proposed regula-

tions discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the proposed regulations; and the information upon which the Department relied in proposing the regulations. (If you received this notice by mail, a copy of the text of the proposed regulations and the statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at <http://www.edd.ca.gov>.

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.

TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

SAFER CONSUMER PRODUCT ALTERNATIVES

Department Reference Number: R-2011-02

Office of Administrative Law Notice File Number:
Z-2012-0717-04

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to add chapter 55 to division 4.5 of Title 22, California Code of Regulations, and to amend the Table of Contents. These proposed additions pertain to identification and prioritization of chemicals of concern in consumer products, evaluation of their alternatives, and regulatory responses for selected alternatives.

PUBLIC HEARING

DTSC will hold a public hearing on the proposed regulations on September 10, 2012 in the Byron Sher Room, Cal/EPA Building, 2nd Floor, 1001 "I" Street, Sacramento, at which time any person may present statements or arguments orally or in writing relevant to this proposal. The public hearing will convene at 10:00 a.m. and will remain open as long as attendees are presenting testimony. Please submit written comments to the contact person listed at the end of this notice. For written comments to be considered they must be submitted no later than 5:00 p.m. on September 11, 2012.

Representatives of DTSC will preside at the hearing. DTSC requests persons who wish to speak to register before the hearing. Pre-hearing registration is conducted at the location of the hearing from 9:30 a.m. to 12:30 p.m. Registered persons will be heard in the order of their registration. Anyone else wishing to speak at the hearing will have an opportunity after all registered persons have been heard.

All visitors are required to sign in prior to attending any meeting at the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Please allow adequate time to sign in and receive a visitor badge before the public hearing begins.

Notice to Hearing Impaired — Accessibility. If you have special accommodation or language needs, please contact Reasonable Accommodation Coordinator Adrian Recio, at (916) 324-3095 or by e-mail at ARecio@dtsc.ca.gov as soon as you read this document. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

AUTHORITY AND REFERENCE

Authority

These regulations are being adopted under the following authorities:

Health and Safety Code section 25252: This section authorizes and requires the Department of Toxic Substances Control (DTSC) to adopt regulations to establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern. This section directs DTSC, in adopting these regulations, to develop criteria by which chemicals and their alternatives may be evaluated. This section also directs DTSC to reference and use available information from various sources, but does not limit DTSC to referencing and using only this information.

Health and Safety Code section 25253: This section authorizes and requires DTSC to adopt regulations that establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern. This section requires that these regulations establish a process that includes: (i) an evaluation of the availability of potential alternatives and potential hazards posed by those alternatives; (ii) an evaluation of critical exposure pathways; and (iii) life cycle assessment tools that take into consideration, at a minimum, thirteen (13) specified factors. This section also requires that the regulations specify the range of regulatory responses that DTSC may make following the completion of an alternatives analysis, including, but not limited to, eight (8) specified responses and “any other outcome the department [DTSC] determines accomplishes the purposes of [article 14 of the statutes]”.

Health and Safety Code section 58012 (added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991.) This section grants DTSC authority to adopt regulations to execute its duties.

Reference

These regulations implement, interpret, or make specific the following statutes:

Health and Safety Code sections 25251, 25252, 25253, 25257, and 25257.1.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Policy Statement Overview

Background

There are currently more than 80,000 chemicals approved under federal law for use in the United States (U.S.). Each day, a total of 42 billion pounds of chemical substances are produced or imported in the U.S. for commercial and industrial uses. An additional 1,000 new chemicals are introduced into commerce each year. Approximately one new chemical comes to market every 2.6 seconds, and global chemical production is projected to double every 25 years. The average U.S. consumer today comes into contact with 100 chemicals per day. In 2009, the U.S. Centers for Disease Control and Prevention released the Fourth National Report on Human Exposure to Environmental Chemicals, which measured 212 chemicals in the blood and urine of a representative population of the United States. The 2009 Report was updated in February, 2012 to include updated tables for 66 chemicals and tables for 34 new chemicals. California consumers and businesses are becoming increasingly aware and concerned about the abundance of chemicals that they are exposed to in the products that they use on a day-to-day basis in their homes and in the workplace.

For more than a decade, the California Legislature has considered nearly a hundred bills proposing chemical bans and broader chemical policies for California, heard testimony from “battling scientists” and was interested in developing a broader, more comprehensive approach to chemicals policy.

In 2003, the Senate Environmental Quality Committee and the Assembly Committee on Environmental Safety and Toxic Materials commissioned a report from the University of California (U.C.) to investigate the current legal and regulatory structure for chemical substances and to report on how a California chemicals policy could address environmental and health concerns about chemical toxicity, build a long-term capacity to improve the design and use of chemicals, and understand the implications of European policy on the California chemical market.

In 2006, authors from U.C. Berkeley presented the commissioned report, *Green Chemistry in California: A Framework for Leadership in Chemicals Policy and Innovation* and made a connection between weaknesses in federal policy, namely the Toxic Substances Control Act (TSCA), and the health and environmental damage happening in California. The report broadly summarized their findings into what they called the “three gaps”:

- *Data Gap*: There is a lack of information on which chemicals are safe and which are toxic, and what chemicals are in products. The lack of access to chemical data creates an unequal marketplace. California businesses cannot choose and make safer products and respond to consumer demand without ingredient disclosure and safety testing.
- *Safety Gap*: Government agencies do not have the legal tools or information to prioritize chemical hazards. Under TSCA, only 5 chemicals out of 83,000 have been banned since 1976. The California Legislature has frequently addressed this problem by approving individual chemical bans. Chemical bans come before the Legislature because there are very few other mechanisms in place at the federal or State level that can remove harmful chemicals from the marketplace.
- *Technology Gap*: There is an absence of regulatory incentive and market motivation which stems from the data gap, and a lack of educational emphasis on green chemistry methodologies and technologies. In order to build a substantial green chemistry infrastructure, a coincident investment and commitment must be made to strengthen industrial and academic research and development.

In 2007, the California Environmental Protection Agency launched *California’s Green Chemistry Initiative* within DTSC. The *California Green Chemistry Initiative Final Report* released in December 2008 included the following six policy recommendations for implementing this comprehensive program in order to foster a new era in the design of a new consumer products economy, which includes inventing, manufacturing and using toxic-free, sustainable products.

1. Expand Pollution Prevention and product stewardship programs to more business sectors to focus on prevention rather than simple source reduction or waste controls.
2. Develop Green Chemistry Workforce Education and Training, Research and Development and Technology Transfer through new and existing educational program and public/private partnerships.

3. Create an Online Product Ingredient Network to disclose chemical ingredients for products sold in California, while protecting trade secrets.
4. Create an Online Toxics Clearinghouse, an online database providing data on chemical, toxicity and hazard traits to the market place and public.
5. Accelerate the Quest for Safer Products, creating a systematic, science-based process to evaluate chemicals of concern and identify safer alternatives to ensure product safety.
6. Move Toward a Cradle-to-Cradle Economy to leverage market forces to produce products that are “benign-by-design”, in part, by establishing a California Green Products Registry to develop green metrics and tools for a range of consumer products and encourage their use by businesses.

In 2008, Assembly Bill 1879 (Chapter 559, Feuer) and Senate Bill 509 (Chapter 560, Simitian), were signed into law by Governor Schwarzenegger to implement two key recommendations of the *California Green Chemistry Initiative Final Report*: acceleration of the quest for safer products, and creation of an online toxics clearinghouse — recommendations #4 and #5 above.

Broad Objectives

The proposed regulations that are the subject of this notice, and the authorizing statutes (Health and Safety Code sections 25252 and 25253), are intended to implement recommendation #5 of the *California Green Chemistry Initiative Final Report* — Accelerate the Quest for Safer Products, and, thus, create a systematic, science-based process to evaluate chemicals of concern, and identify safer alternatives to ensure product safety.

Specific Objectives

The specific objectives of the proposed regulations are to:

- Establish a process to identify and prioritize those chemicals or chemical ingredients in consumer products that may be considered as being a chemical of concern.
- Establish a process for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by chemicals of concern.
- Specify the range of regulatory responses that DTSC may take following the completion of the alternatives analysis.

Proposed Regulations

The proposed regulations would add a new chapter 55, Safer Consumer Products, to division 4.5 of Title 22, California Code of Regulations. These regulations

are necessary to satisfy the mandates of Health and Safety Code sections 25252 and 25253, which require DTSC to adopt regulations to establish a process to identify and evaluate chemicals of concern in consumer products and identify safer alternatives, and to specify regulatory responses that may be imposed upon completion of the alternatives analysis process.

Benefits

The proposed regulations are among the first comprehensive, state-level efforts to find safer alternatives to hazardous chemicals and are viewed as a potential national model for chemicals policy reform. The rulemaking is a preemptive strategy that reduces the use of toxic substances in the design of products and industrial processes with the aim of creating safer and sustainable products that do not threaten human health or persist in the environment. The use of fewer hazardous substances means healthier air quality, cleaner drinking water and a safer workplace. The rulemaking also promotes transparency by compelling chemical manufacturers to provide sufficient information for businesses, consumers and public agencies to choose viable safer alternatives to hazardous chemicals used in consumer products.

Relation to Existing State Regulations

The proposed regulation is not inconsistent or incompatible with any existing state regulations. An automated search of Titles 19 and 22 using the following keywords: “consumer products”, “chemicals in consumer products”, and “chemicals in commerce”, was conducted via Westlaw and yielded no conflicting state regulations. In addition, DTSC worked with the Office of Environmental Health Hazard Assessment (OEHH), the California Department of Public Health (CDPH), the California State Water Resources Control Board (SWRCB), and the California Air Resources Board (ARB), among other agencies, to ensure that the proposed regulations do not interfere with or conflict with any regulatory program administered by any of these agencies.

I. Summary of Regulations

A. Four-Step Process [Section 69501(a)]

The regulations provide for a four-step continuous, science-based, iterative process to identify safer consumer product alternatives:

- DTSC — The regulations establish an immediate list of Chemicals of Concern (~1,200) based on the work already done by other authoritative organizations, and specify a process for DTSC to identify additional chemicals as Chemicals of

Concern (COCs).* [Article 2, see section II for further details.]

- DTSC — The regulations require DTSC to evaluate and prioritize product/COC combinations to develop a list of “Priority Products” for which an alternatives analysis must be conducted. [Article 3, see section II for further details.]
- Product Manufacturers — The regulations require responsible entities (manufacturers, importers, and retailers) to notify DTSC when their product is listed as a Priority Product. DTSC will post this information on its website. Manufacturers (or other responsible entities) for a product listed as a Priority Product must perform an alternatives analysis (AA) for the product and the Chemicals of Concern in the product to determine how best to limit exposures to, or the level of adverse public health and environmental impacts posed by, the Chemicals of Concern in the product. [Article 5, see section III for further details.]
- DTSC — The regulations require DTSC to identify and impose regulatory responses to effectively prevent or limit adverse public health and/or environmental impacts, if any, posed by the Priority Product/Chemical of Concern (if the manufacturer decides to retain the Priority Product), or the adverse impacts posed by the alternative chemical/product selected to replace the Priority Product. [Article 6, see section IV for further details.]

B. Applicability [Section 69501(b)]

Except as noted below, the regulations apply to all consumer products that contain a Chemical of Concern, and are sold, offered for sale, distributed, supplied, or manufactured in California. The regulations do not apply to the following products:

- (1) Products exempted by law (Health and Safety Code section 25251): dangerous prescription drugs and devices; dental restorative materials; medical devices; packaging associated with dangerous prescription drugs and devices, dental restorative materials, and medical devices; food; and pesticides. The regulations also do not apply to products used solely to manufacture a product exempted by law.

*The regulations provide a process for any individual or organization (including federal and other California State agencies) to petition DTSC to add/remove a chemical to/from the Chemicals of Concern list or a product/chemical combination to/from the Priority Products list. Petitions may also be submitted to DTSC requesting that an entire existing list of chemicals be added to the list of Chemicals of Concern. [Article 4]

- (2) Products manufactured or stored in, or transported through, California solely for use out-of-state.

C. Responsibility for Compliance

- (1) The regulations [Section 69501.1(a)(54)] define “responsible entity” to include:
- (i) The manufacturer (i.e., the person that makes the product or the person who controls the specifications and design of, or use of materials in, the product).
 - (ii) The US importer of the product.
 - (iii) Retailers who sell the product in California.

However, the principal duty to comply with the requirements of the regulations that apply to responsible entities lies with the manufacturer. If the manufacturer does not comply, the importer, if any, then has a duty to comply. A retailer is required to comply with the regulations only if the manufacturer and importer(s) (if any) fail to comply, and only after this information is posted on the Failure to Comply List on DTSC’s website. [Section 69501.2(a)(1)]

- (2) The regulations [Section 69501.2(a)] require a responsible entity for a product to ensure compliance with the requirements pertaining to:
- (i) Notifying DTSC that its product is a Priority Product [Section 69503.7], or alternatively submitting an Alternatives Analysis Threshold Exemption Notification [Sections 69503.5 and 69503.6] or a Chemical of Concern Removal Notification [Section 69505.1(g)];
 - (ii) Performing an AA, and submitting AA Reports to DTSC, for its product; and
 - (iii) Complying with regulatory responses applicable to its product.
- (3) A manufacturer or importer may opt out of complying with the above requirements by demonstrating to DTSC that the product is no longer being sold, offered for sale, distributed, supplied, or manufactured in California. [Section 69501.2(b)]

A retailer who becomes responsible for complying with the above requirements, due to non-compliance by the manufacturer/importer, may opt out by ceasing to order the product and providing a notification to DTSC. [Section 69501.2(c)]

If the manufacturer or importer subsequently introduces into the California marketplace a product that replaces (in terms of use and customer bases) the removed Priority Product, and that

replacement product contains a Chemical of Concern, the manufacturer or importer must provide a notice to DTSC. [Section 69501.2(b)]

- (4) The regulatory requirements applicable to responsible entities may be fulfilled by a consortium, trade association, public-private partnership, or other entity acting on behalf of, or in lieu of, one or more responsible entity(ies). (This does not apply to the Priority Product Notification or Alternatives Analysis Threshold Exemption Notification requirements.) [Section 69501.2(a)(2)]

D. Consequences of Non-Compliance

- (1) When DTSC determines a requirement has not been fulfilled for a product, DTSC will issue a notice of non-compliance to the manufacturer and importer(s). [Section 69501.2(d)]
- (2) If the non-compliance is not remedied, the product and information concerning the product will be placed on a Failure to Comply List maintained on DTSC’s website. The regulations specify the conditions under which a product will be removed from the Failure to Comply List. [Section 69501.2(d)]
- (3) DTSC may conduct audits to determine compliance with the requirements of the regulations pertaining to alternatives analyses, regulatory responses, and various notifications and information submittals. [Article 9, Section 69509]
- (4) In accordance with article 8 of chapter 6.5 of division 20 of the Health and Safety Code, DTSC may also initiate enforcement actions, including imposition of fines and penalties, against responsible entities for failure to comply with the regulations.

E. Chemical and Product Information [Section 69501.4]

DTSC’s implementation of the regulations will be informed by a wealth of information that DTSC will obtain from the public domain. In addition, DTSC will request information from responsible entities for products and chemical manufacturers/importers. DTSC will maintain on its website a Response Status List that provides information as to how a responsible entity or a chemical manufacturer/importer has or has not responded to a request for information from DTSC. DTSC will also maintain on its website a Safer Consumer Products Partner Recognition List that identifies persons that have voluntarily provided DTSC with information that advances the quest for safer consumer products.

F. Information on DTSC’s Website [Section 69501.5]

The regulations require DTSC to post on its website a comprehensive list of information pertaining to implementation of the regulations. In some cases, a notice of the availability of the information will be provided to persons on DTSC’s electronic mailing list for these regulations. This will be DTSC’s main avenue of communication with responsible entities and the public.

G. Disputes [Article 7, commencing with Section 69507]

The regulations provide a process for a responsible entity to dispute an action taken by DTSC. A requirement imposed on the responsible entity by DTSC, and posting of information in the Failure to Comply list concerning the non-compliance with that requirement, will be stayed while a dispute is pending. (The dispute process does not apply to: actions taken by DTSC with regard to the listing of Chemicals of Concern, petitions concerning the chemicals and products lists, and trade secret protection claims.)

H. Certified Assessors [Article 8, commencing with Section 69508]

Beginning two years after the regulations become effective, an AA must be conducted by or under the responsible charge of one or more persons certified as an assessor by a DTSC-designated accreditation body, as well as meeting specified education and experience requirements. The regulations spell out the requirements for certified assessors and accreditation bodies.

I. Trade Secret Protection [Article 10, commencing with Section 69510]

The regulations set out provisions for: submitting trade secret claims and the treatment of information submitted under the regulations for which a claim of trade secret protection is asserted by the submitter. The regulations are based on the authorities for handling trade secrets found in Health and Safety Code section 25257, the Uniform Trade Secrets Act (See Civil Code Section 3426.1), and the Public Records Act (See Government Code Section 6254.7).

II. Chemical and Product Prioritization

A. Chemicals of Concern (COC) Identification

- (1) Initial List of COCs — As of the effective date of the regulations, ~1,200 chemicals are identified as COCs because they exhibit a hazard trait or an environmental or toxicological endpoint (listed in OEHHA’s regulations), and are listed or identified by one or more authoritative bodies specified in the regulations. [Section 69502.2(a)] NOTE: ~500 additional chemicals currently used only in

pesticides and drugs (and, thus, excluded from these regulations under Health and Safety Code section 25251) could be added to the list in the future if they are used in products that are not excluded under Health and Safety Code section 25251.

- (2) Additions to the Initial List of COCs — DTSC may identify additional chemicals (that exhibit a hazard trait or an environmental or toxicological endpoint) as COCs based on consideration of the following factors [Section 69502.2(b)]:

- Chemical adverse public health and environmental impacts
- Adverse impacts of special consideration — Adverse impact(s) for:
 - (i) Sensitive subpopulations;
 - (ii) Environmentally sensitive habitats;
 - (iii) Endangered and threatened species;
 - (iv) Environments in California designated as impaired; and
 - (v) Adverse impacts associated with the ability of the chemical to contribute to or cause widespread adverse public health and/or environmental impacts.
- Exposures to the chemical
- Availability of substantiating reliable information
- Availability of safer, functionally acceptable, alternative chemicals

Refer to the definitions in the regulations [Section 69501.1] for the list of adverse public health and environmental impacts, physicochemical properties, and environmental fate properties that will be considered during the identification of COCs and the prioritization of COCs/products.

- (3) Listing Process — An informational list of those chemicals identified as COCs as of the effective date of the regulations will be posted on DTSC’s website within 30 days after the regulations become effective. Any subsequent revisions to the list will be made in accordance with the listing process described in II.D. below. [Section 69502.3]

B. Chemicals of Concern and Product Prioritization

- (1) Product Prioritization Criteria [Section 69503.2(a)]: DTSC will evaluate products to determine the adverse impacts for, and exposures associated with the product, to the COCs in each product based on consideration of the factors listed below. Based on this evaluation, DTSC may list as Priority Products those products that are determined to be of high priority.

- (a) Adverse Impacts and Exposures [Section 69503.2(a)(1)]: The adverse public health and environmental impacts posed by the COC(s) in the product due to exposures during the manufacture, useful life, and end-of-life disposal or management of the product, considering:
- Adverse Impacts from the COCs — The ability of the COC(s) in the product to contribute to or cause adverse public health and/or environmental impacts, considering specified factors. This includes consideration of adverse impact(s) for:
 - (i) Sensitive subpopulations;
 - (ii) Environmentally sensitive habitats;
 - (iii) Endangered and threatened species;
 - (iv) Environments in California designated as impaired; and
 - (v) Adverse impacts associated with the ability of the chemical to contribute to or cause widespread adverse public health and/or environmental impacts.
 - Exposures — Public health and/or environmental exposures to the COC(s) in the product, considering:
 - (i) Market presence information for the product;
 - (ii) Reliable information regarding public and/or aquatic, avian, or terrestrial animal or plant organism exposures to the COC(s) in the product, and reliable information demonstrating the occurrence of exposures to the COC(s) in the product;
 - (iii) Information concerning the household presence and use of the product, and other products containing the same COC(s);
 - (iv) Public and/or aquatic, avian, or terrestrial animal or plant organism exposures to the COC(s) in the product during the product's life cycle; and
 - (v) Product uses, or discharges or disposals, in any manner that would contribute to or cause adverse waste and end-of-life impacts.
- (b) Availability of Information [Section 69503.2(a)(2)]: The availability of information to substantiate the adverse impacts and exposures.
- (c) Other Regulatory Programs [Section 69503.2(a)(3)]: The scope of federal and/or other California State laws, and any applicable international trade agreements, under which the product or the COC(s) is/are regulated, and the extent to which these other regulatory requirements address, and provide protections with respect to, the same adverse public health and environmental impacts and exposure pathways that are being considered as a basis for the product being listed as a Priority Product.
- (2) Key Prioritization Factors [Section 69503.2(b)]: DTSC will give priority to products meeting both of the following criteria:
- The COCs in the product have a significant ability to contribute to or cause adverse public health and environmental impacts.
 - There is a significant ability for the public and/or aquatic, avian, or terrestrial animal or plant organisms to be exposed to the COCs in the product in quantities that would contribute to or cause adverse public health or environmental impacts, which may include consideration of how widely the product is distributed in commerce and how widely the product is used by consumers.
- C. Process to Evaluate Products [Section 69503.3]**
- (1) Adverse Impacts and Exposures and Availability of Information — DTSC will begin the product evaluation and identification process by using available information to evaluate the product's adverse impact and exposure factors, along with the extent of available information.
- (2) Other Regulatory Programs — DTSC will then assess whether, and to what extent, any of these adverse impacts and/or exposures pathways are adequately addressed by other California and federal laws, and international agreements. DTSC will adjust the prioritization of the product based on whether listing the product as a Priority Product would meaningfully enhance protection of public health and/or the environment in light of any protections already provided under other laws.
- (3) Priority Products — DTSC may list as a Priority Product one or more products determined to be of high priority after completion of the steps (1) and (2) described above.
- (4) Safer Alternatives — DTSC may consider whether there is a readily available safer alternative, that is functionally acceptable and technically and economically feasible, to further adjust the prioritization prior to listing a product as a Priority Product.

- (5) Key Prioritization Factors — Prior to issuing the proposed and final Priority Products lists, DTSC will evaluate the list for consistency with the key prioritization factors described in B.(2) above, and make adjustments as needed.
- (6) Priority Product Work Plan — No later than January 1, 2014, DTSC will issue a Priority Product Work Plan that identifies the product categories that will be evaluated to identify products to be added in the future to the Priority Products list during the next three years. The regulations specify conditions under which DTSC may revise the work plan subsequent to its issuance. Subsequent work plans will be issued no later than one year before the three-year expiration date of the current work plan.
- (7) Initial Priority Products List — Prior to January 1, 2016, DTSC will list a product as a Priority Product only if the product is being listed on the basis of one or more COCs in the product meeting specified criteria.

D. Listing Process [Sections 69502.4 and 69503.7]

- (1) Prior to finalizing each augmentation to the initial COCs list, and the initial and revised Priority Products list, DTSC will make the proposed list available for public review and comment for a minimum 45-day period.
- (2) After consideration of public comments on a proposed list, DTSC will finalize and post the final list on its website.
- (3) DTSC will review, and revise as appropriate, the Priority Products list at least once every 3 years.
- (4) The initial proposed list of Priority Products, which will include no more than five products, will be made available for public review and comment no later than 180 days after the effective date of the regulations.
- (5) For some products, DTSC will specify in the Priority Products list the product component, or the homogenous material within a component, that is the required minimum focus of the alternatives analysis for the product.
- (6) Each responsible entity for a product listed on the Priority Products list must provide to DTSC a Priority Product Notification, an Alternatives Analysis Threshold Exemption Notification, Priority Product Removal Notification, or a COC Removal Notification within 60 days after the product is listed as a Priority Product.

E. Petition Process [Sections 69504 and 69504.1]

Subject to one specified exception, any person may petition DTSC to add or remove a chemical to/from the

Chemicals of Concern list or a product/chemical combination to/from the Priority Products list. Petitions may also be submitted to DTSC requesting that an entire existing list of chemicals be added to the list of Chemicals of Concern. High priority will be given to petitions by federal and other California State agencies that relate to the petitioning agency's legislative and/or regulatory authorities. After granting a petition, DTSC will evaluate and, if applicable, prioritize the chemical and/or the product in accordance with the prioritization processes described above.

F. Alternatives Analysis Threshold Exemption

- (1) A product that is listed as a Priority Product and that meets the criteria for an alternatives analysis exemption will be exempt from the requirement to perform an alternatives analysis, if the responsible entity submits an Alternatives Analysis Threshold Exemption Notification. [Section 69503.5(a)]
- (2) An alternatives analysis exemption applies only to products in which the concentration of the COC(s), that are the basis for the product being listed as a Priority Product, does not exceed the applicable alternatives analysis threshold specified by DTSC. [Section 69503.5(b)]
- (3) The regulations specify criteria to be used by DTSC when setting the alternatives analysis threshold for each COC in a Priority Product. This includes: (i) the ease or difficulty of removing the COC from the product if the COC is a contaminant rather than an ingredient; (ii) the detection limit for the COC; and (iii) various public health and environmental protection considerations. In no case may DTSC specify an alternatives analysis threshold that is lower than the detection limit for the COC. [Section 69503.5(c)]
- (4) If multiple COCs that exhibit the same hazard trait and/or environmental or toxicological endpoint(s) are identified as the basis for the product being listed as a Priority Product, DTSC may specify a single alternatives analysis threshold that applies to the total concentration in the Priority Product of all such COCs. [Section 69503.5(d)]
- (5) The regulations specify the information that must be included in an Alternatives Analysis Threshold Exemption Notification [Section 69503.6(a)]. The responsible entity is required to notify DTSC if the information in the Alternatives Analysis Threshold Exemption Notification significantly changes, or the product no longer meets the criteria for an alternatives analysis exemption [Section 69503.6(c) and (d)].

III. Alternatives Analyses (AAs)

A. Guidance Materials

The regulations require DTSC to prepare, and make available on its website, guidance materials to assist persons in performing AAs, and to post on its website AAs that are available in the public domain and are supported by reliable information. [Section 69505]

B Alternatives Analyses — General Requirements

- (1) A responsible entity for a Priority Product must conduct an AA for the Priority Product, and submit a Preliminary AA Report and a Final AA Report to DTSC within specified timeframes. [Section 69505.1(c)]
 - The Preliminary AA Report must be submitted no later than 180 days after the date the product is listed on the final Priority Products list, unless DTSC specifies a different due date for the product in the Priority Products list.
 - The Final AA Report must be submitted no later than 12 months after the date DTSC issues a notice of compliance for the Preliminary AA Report, unless the responsible entity requests, and DTSC approves, a longer period of time not to exceed 24 months (or up to 36 months if regulatory safety and/or performance testing is required for the alternatives being considered).
- (2) The regulations allow for a responsible entity to request a one-time extension, not to exceed 90 days, for submitting the Preliminary and/or Final AA Report, if the extension request is based on circumstances that could not reasonably be anticipated or controlled by the responsible entity. [Section 69505.1(d)]
- (3) Each AA completed two years or later after the effective date of the regulations must be performed, and each Preliminary and Final AA Report submitted two years or later after the effective date of the regulations must be prepared, by or under the responsible charge of an assessor certified by an accreditation body designated by DTSC. [Section 69505.1(e)] (See Article 8, commencing with Section 69508, of the regulations for further details concerning assessor requirements and accreditation bodies.)
- (4) The regulations allow a responsible entity to fulfill the AA requirements by submitting a report for a previously completed AA for the Priority Product — if DTSC determines that the report is substantially equivalent to the AA Report requirements specified in the regulations, and that

the report contains sufficient information to identify regulatory response(s). [Section 69505.1(f)]

- (5) If a responsible entity reformulates the Priority Product to remove the COC(s), that is/are the basis for the Priority Product listing, without adding a substitute chemical, the responsible entity may submit a Chemical of Concern Removal Notification to the Department in lieu of conducting an AA and submitting an AA Report. [Section 69505.1(g)]

C. Analysis of Priority Products and Alternatives

- (1) The regulations require that each AA be conducted in two stages. The Preliminary AA Report is submitted to DTSC after completion of the first AA stage, and the Final AA Report is submitted after completion of the second AA stage. [Section 69505.2(a)]
- (2) *The first stage of the AA includes:*
 - (a) Step 1, Identification of Product Requirements and Function of COCs [Section 69505.3(b)(1)]:
 - The function, performance, and legal requirements associated with the Priority Product that must be met by alternatives being considered.
 - The function of the COC(s) in meeting the Priority Product's function, performance, and legal requirements.
 - A determination as to whether the COC(s) or substitute chemical(s) is/are necessary to meet the Priority Product's function, performance, and legal requirements.
 - If it is determined that neither the COC(s) or substitute chemical(s) is/are necessary to meet the Priority Product requirements, the removal of the COC(s) from the Priority Product without the addition of substitute chemical(s) must be evaluated in the AA as one of the alternatives to the Priority Product.
 - (b) Step 2, Identification of Alternatives [Section 69505.3(b)(2)]:
 Identification of alternatives for consideration that meet the requirements for the Priority Product, and eliminate or reduce the concentration of the COC(s) in the Priority Product and/or reduce or restrict for public health and/or environmental exposures to the COC(s) in the Priority Product. The responsible entity is required to

include in the AA consideration of any identified existing viable alternatives.

(c) Step 3, Initial Screening of Alternative Chemicals [Section 69505.3(b)(3)]:

- The responsible entity is required to collect and use available relevant information to identify the adverse public health and environmental impacts associated with each chemical being considered as an alternative to the COC(s) in the Priority Product.
- Using this information, the responsible entity must compare each of the identified alternative chemicals with the COC(s) in the Priority Product.
- The responsible entity must eliminate from further consideration in the AA any alternative chemical that it determines poses equal or greater adverse public health and/or environmental impacts than the COC(s).

(d) Step 4, Consideration of Additional Information [Section 69505.3(b)(4)]:

As part of the first stage of the AA, the responsible entity may also consider other relevant information and data not specifically identified above.

(e) Step 5, Identification of Next Steps [Section 69505.3(b)(5)]:

The responsible entity is required to prepare a work plan and proposed implementation schedule for completion of the second AA stage, as described in (3) below, and preparation and submittal of the Final AA Report.

Abridged AA Report [Section 69505.2(b)]:

A responsible entity, that determines (after completion of steps 1 through 4 above) that a functionally acceptable alternative is not available or feasible, may prepare and submit an Abridged AA Report, in lieu of Preliminary and Final AA Reports, if the responsible entity meets specified requirements.

(3) *The second stage of the AA includes:*

(a) Step 1, Identification of Factors Relevant for Comparison of Alternatives [Section 69505.4(a)]:

- A factor, in conjunction with an associated exposure pathway and life cycle segment, is relevant if:
 - (i) It makes a demonstrable contribution to the adverse impacts of the Priority

Product and/or one or more alternatives under consideration, and

(ii) There is a demonstrable difference in the factor's contribution to such impacts between two or more of the alternatives being considered.

- The responsible entity must use available quantitative information and analysis tools, supplemented by available qualitative information and analysis tools, to identify the factors listed below, and the associated exposure pathways and life cycle segments, that are relevant for the comparison of the Priority Product and the alternatives under consideration:

(i) Multimedia life cycle impacts and Chemical hazards:

- ✓ Adverse environmental impacts
- ✓ Adverse public health impacts
- ✓ Adverse waste and end-of-life impacts
- ✓ Environmental fate properties
- ✓ Materials and resource consumption impacts
- ✓ Physical chemical hazards
- ✓ Physicochemical properties

(ii) Product function and performance

(iii) Economic impacts

- The identification of relevant exposure pathways must consider:
 - (i) Chemical quantity information
 - (ii) Exposure factors

(b) Step 2, Comparison of the Priority Product and Alternatives [Section 69505.4(b)]:

The responsible entity must use available quantitative information and analyses, supplemented by available qualitative information and analyses, to evaluate and compare the Priority Product and each alternative with respect to each relevant factor and associated exposure pathways and life cycle segments.

(c) Step 3, Alternative Selection Decision [Section 69505.4(c)]:

The responsible entity selects the alternative that will replace or modify the Priority Product, or decides to retain the Priority Product.

(d) Step 4, Consideration of Additional Information [Section 69505.4(d)]:

As part of the second stage of the AA, the responsible entity may also consider other relevant information and data not specifically identified above, including reconsideration of factors evaluated in the first stage of the AA.

- (e) Step 5, Identification of Next Steps [Section 69505.4(e)]:

The responsible entity is required to prepare a Final AA Report that includes an implementation schedule for implementing the selected alternative, if any, and/or any proposed regulatory responses.

- (4) A responsible entity may use an AA process that differs from the process described above if certain requirements are met, including [Section 69505.2(c)]:

- The alternate process will provide the information needed to prepare an AA Report that substantially meets the AA Report requirements specified in the regulations.
- The alternate process will compare the Priority Product and the alternatives using the same factors and associated exposure pathways and life cycle segments that would be used if the process specified in the regulations was followed.
- The responsible entity submits a work plan to DTSC for the alternate process no later than 60 days after the product is included on the Priority Products list.

D. Alternatives Analysis Reports

- (1) The Preliminary and Final AA Reports must include the information listed below. All differences in the information and analyses presented in the Preliminary AA Report and the Final AA Report must be identified and explained in the Final AA Report. [Section 69505.5(a)]

- An **executive summary** [Section 69505.5(b)]. The executive summary cannot include any information for which trade secret protection is claimed — this will enable the executive summary to be posted on DTSC’s website in its entirety.
- Information regarding the **preparer** of the AA Report [Section 69505.5(c)]
- Information regarding the **responsible entity** and the **supply chain** for the product [Section 69505.5(d)]
- Information describing the **Priority Product** and the **COCs** [Section 69505.5(e)]

- A description of the **alternatives** chosen to be evaluated and compared, and an explanation of the rationales for selecting and screening out specific alternatives at each stage of the alternatives comparison process. [Section 69505.5(f)]
 - Detailed information on the **evaluation and comparison of the Priority Product and its alternatives** for all of the relevant comparison factors, and associated exposure pathways and life cycle segments. [Section 69505.5(f)]
 - Identification of **comparison factors**. The AA Reports must identify which factors, and associated exposure pathways and life cycle segments, were determined to be relevant for evaluation and comparison of the Priority Product and its alternatives. The AA Report must explain the rationales for each factor, exposure pathway, and life cycle segment determined not be relevant. [Section 69505.5(g)]
 - A description of the **methodology** used to conduct the AA [Section 69505.5(h)]
 - Identification of all information used as **supporting information** in performance of the AA and preparation of the AA Reports. This information must be made available to DTSC, upon request. The Final AA Report must also identify any **information gaps**. [Section 69505.5(i)]
 - Identification and description of the **alternative selected** to replace or modify the Priority Product (or a decision to retain the Priority Product); the **implementation plan** for the selected alternative, if any; and any **proposed regulatory responses**. [Section 69505.5(j) and (k)]
- (2) The information in the Final AA Report concerning the alternative selection decision must include:
- A description of the alternative, if any, selected, and the rationales for the selection decision. This includes an analysis that evaluates and compares the selected alternative against the Priority Product, and an explanation of the reasons for the selection decision, or, alternatively, for the decision not to select and implement an alternative to the Priority Product, whichever is applicable. [Section 69505.5(j)(2)]
 - A discussion of the functional and performance acceptability of the selected alternative as compared to the Priority

Product. If no alternative is selected, this information must be provided for each alternative considered. [Section 69505.5(j)(2)(A)]

- The rationales for selecting an alternative that retains one or more COC(s) or uses substitute chemicals, if it is determined during the AA that neither the COC(s) nor substitute chemicals are necessary to satisfy the requirements for the Priority Product (i.e., functional, performance, and legal requirements). [Section 69505.5(j)(2)(B)]
 - A list of all chemicals known, based on available information, to be in the selected alternative that differ in type, or are present at a higher concentration, relative to the chemicals contained in the Priority Product; available environmental fate information for the chemicals; available hazard trait and environmental and toxicological endpoint information for those chemicals; and available chemical identification and description information for those chemicals. [Section 69505.5(j)(2)(C)]
- (3) After the Final AA Report is submitted, if the alternative selection decision specified in the Final AA Report changes prior to introduction of the new product into the California marketplace, the responsible entity is required to submit a revised Final AA Report with an explanation of the change. A revised Final AA Report is also required if the original alternative selection decision was to retain the Priority Product, and the responsible entity later decides to replace the Priority Product with an alternative product. [Section 69505.2(d)]

E. DTSC Review and Determinations for AA Reports [Section 69505.6]

- (1) Within 60 days of receiving an AA Report, DTSC will review the AA Report for compliance with the regulations, and issue a notice of compliance, a notice of deficiency, or a notice of ongoing review. Notices of deficiency will generally give the responsible entity 60 days to remedy the deficiency. If the submitter of the AA Report fails to adequately and timely respond to 2 notices of deficiency for the Final AA Report (or 1 notice of deficiency for the Preliminary AA Report), the product will be placed on the Failure to Comply List.
- (2) Notices of compliance for Preliminary AA Reports will specify the due date for submitting

the Final AA Report, which will range from 12 to 24 months (or up to 36 months if regulatory safety and/or performance testing is required for alternatives being considered) after DTSC issues the notice of compliance. In the notice of compliance for the Final AA Report, or in a separate notice, DTSC will provide notice of its proposed determination as to whether one or more of the regulatory responses that are triggered by a DTSC determination or other action (as described below) are required. The regulatory response determination does not become final until completion of the regulatory response public notice and comment process described below.

IV. Regulatory Responses

A. Regulatory Response Selection Principles [Section 69506]

- (1) DTSC will require implementation of regulatory responses designed to protect public health and the environment, and maximize the use of alternatives of least concern, where such alternatives are technically and economically feasible.
- (2) DTSC will give preference to regulatory responses providing the greatest level of inherent protection (i.e., avoidance or reduction of adverse impact or exposure achieved through product or process redesign, rather than through administrative or engineering controls designed to limit exposure to a COC in a product.
- (3) In selecting regulatory responses, DTSC may consider any or all of the following factors:
- The likely actual effectiveness of the regulatory response, including the capacity of responsible entities to comply, and the ability of end-users to understand and act upon any information and directions provided with respect to the product;
 - The relative cost-effectiveness of the regulatory response as compared to other possible responses;
 - The administrative and other burdens that would be placed upon DTSC, the responsible entities, the product end-users, and the public;
 - Any unique or additional burdens that would be imposed by the regulatory response upon sensitive subpopulations; and
 - The ease and efficacy of enforcement of the regulatory response.

B. Applicability

- (1) The regulations specify regulatory responses that will, under specified conditions, apply to [Section 69506.1(a)]:
 - Products manufactured as a selected alternative following completion of an AA;
 - Priority Products for which an alternative is not selected; and
 - Priority Products that will remain in commerce pending development and distribution of the selected alternative.
- (2) No regulatory response (other than providing supplemental AA Report information if requested by DTSC) will be required for a selected alternative, if DTSC determines that no regulatory response is necessary to protect, prevent or limit adverse public health or environmental impacts [Section 69506.3]

C. Regulatory Response Process [Sections 69506.1(b)–(d) and 69506.12]

- (1) For regulatory responses triggered by a DTSC determination or other action (including use restrictions, sales prohibitions, engineering or administrative controls, and research and development projects), DTSC will notify affected responsible entities of its proposed regulatory response determination.
- (2) The proposed regulatory response determination will also be made available for public review and comment for a minimum 45–day period.
- (3) After consideration of public comments, DTSC will send a final determination notice to the responsible entity(ies) and post the final notice on its website.
- (4) The responsible entity must notify DTSC, and California retailers of affected consumer products, of the applicability of regulatory responses to the responsible entity’s product within 30 days.
- (5) The responsible entity must notify DTSC upon completion of the implementation of the required regulatory response, and (if applicable) upon completion of the implementation of the selected alternative.
- (6) DTSC will post on its website a Regulatory Response Summary that identifies the regulatory response(s) for each selected alternative for a Priority Product (and each Priority Product, as applicable), and the implementation dates for the alternative product, if any, and the regulatory response(s).

D. Supplemental AA Report Information [Section 69506.2]

- (1) If required by DTSC, a responsible entity must provide any information DTSC determines is necessary to select and ensure implementation of regulatory responses.
- (2) If required by DTSC, a responsible entity must obtain/develop and provide to DTSC information to fill one or more information gaps identified during the AA, if DTSC determines this information is needed to re–evaluate the initial regulatory response(s) imposed for the product.

E. Self–Implementing Regulatory Responses

The regulations set forth specific circumstances under which the following regulatory responses will always be required, along with implementation due dates:

- (1) Product Information for Consumers. Product information must be provided to consumers (within 12 months) if the alternative product contains a COC in exceedance of the applicable alternatives analysis threshold, or if the manufacturer chooses to retain the Priority Product (indefinitely or for more than 12 months pending development and distribution of the alternative product). The regulations specify the types of information that must be provided to consumers, and the mechanisms that must be used to provide the information. [Section 69506.4]
- (2) End–of–Life Product Management Program. A responsible entity must establish, maintain, and fund (within 1 year) an end–of–life product stewardship program, and provide product information to consumers, if the alternative product (or the Priority Product, if the manufacturer chooses to retain the Priority Product) is required to be managed as a hazardous waste in California at end–of–life. The requirements for the product stewardship plan and program are specified in the regulations. [Section 69506.8]

F. Regulatory Responses Triggered by a DTSC Determination or Other Action

- (1) Use Restrictions. DTSC may impose specified restrictions on the use of COCs in a product, or restrictions on the use of the product itself, to reduce the amount of a COC in the product, or reduce the ability of the product to contribute to or cause an exposure to the COC in the product. [Section 69506.5]
- (2) Product Sales Prohibition. If the selected alternative contains a COC above the applicable alternatives analysis threshold (or if an alternative is not selected), and DTSC determines there is a safer alternative that does not contain a COC and

that is functionally acceptable and technologically and economically feasible, the responsible entity must do one of the following within 1 year (or sooner if required by DTSC) [Section 69506.6]:

- Ensure that the Priority Product is no longer sold in California; or
- Submit to DTSC an AA Report that selects an alternative that does not contain a COC.

DTSC may also impose a product sales prohibition in the absence of a determination that there is a safer, functionally acceptable, and technologically and economically feasible alternative, unless the responsible entity demonstrates to DTSC's satisfaction that: (i) the overall beneficial public health and environmental impacts of the product significantly outweigh the overall adverse public health and environmental impacts of the product; and (ii) administrative and/or engineering restrictions on the nature and use of the product will adequately protect public health and the environment.

- (3) Engineering or Administrative Controls. Under specified conditions, DTSC may impose requirements that control access to or limit exposure to COCs in a product to reduce the likelihood of adverse public health and/or environmental impacts. This may include controls that integrally contain a COC within the structure of a product. [Section 69506.7]
- (4) Advancement of Green Chemistry and Green Engineering. DTSC may require a manufacturer to initiate a research and development project or fund a challenge grant that uses green chemistry and/or green engineering principles to: (i) design a safer alternative; (ii) improve the performance of a safer alternative; (iii) decrease the cost of a safer alternative; and/or (iv) increase the market penetration of a safer alternative. [Section 69506.9]
- (5) Other Regulatory Responses. DTSC may impose one or more regulatory responses described above to situations that may differ from the specific situations described above. DTSC may periodically re-evaluate any regulatory response imposed under this provision. DTSC may also require a new AA to be performed, and new Preliminary and Final AA Reports to be submitted. [Section 69506.10]

G. Regulatory Response Exemptions [Section 69506.11]

The regulations provide a process for a responsible entity to request an exemption from an otherwise applicable regulatory response (other than the requirement to

provide to DTSC information supplemental to an AA Report) based on either or both of the following:

- (1) The required regulatory response would conflict with a requirement of another California or federal regulatory program or an international trade agreement, in such a way that the responsible entity could not reasonably be expected to comply with both requirements. In this situation, DTSC may require implementation of a modified regulatory response that resolves the conflict.
- (2) The required regulatory response substantially duplicates a requirement of another California or federal regulatory program or an international trade agreement without conferring additional public health or environmental protection benefits.

Existing Laws and Regulations

State Law

Existing law establishes the Department of Toxic Substances Control, in the California Environmental Protection Agency, with powers and duties regarding, among other things, hazardous waste disposal, underground storage of hazardous substances and waste, and the handling and release of hazardous materials.

Health and Safety Code section 25252 requires DTSC to adopt regulations to establish a process by which chemicals or chemical ingredients in consumer products may be identified and prioritized for consideration as being chemicals of concern. This process is required to include, at a minimum, consideration of: (i) the volume of a chemical in commerce in California, (ii) the potential for exposure to a chemical in a consumer product, and (iii) potential effects on sensitive sub-populations, including infants and children.

Health and Safety Code section 25252 directs DTSC, in adopting these regulations, to develop criteria by which chemicals and their alternatives may be evaluated. These criteria must include, at a minimum, the hazard traits and environmental and toxicological endpoints that the Office of Environmental Health Hazard Assessment (OEHHA) is required to specify. The requirement imposed on OEHHA is set out in Health and Safety Code section 25256.1. The endpoints developed by OEHHA will also be included in the Toxics Information Clearinghouse that DTSC is required to establish pursuant to Health and Safety Code section 25256.

Health and Safety Code section 25252 also directs DTSC, in adopting these regulations, to reference and use, to the maximum extent feasible, available information from other nations, governments, and authoritative bodies. However, the statute provides that DTSC is not limited to referencing and using only this information.

Health and Safety Code section 25253 requires DTSC to adopt regulations that establish a process for

evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern. This section requires that these regulations establish a process that includes: (i) an evaluation of the availability of potential alternatives and potential hazards posed by those alternatives; (ii) an evaluation of critical exposure pathways; and (iii) life cycle assessment tools that, at a minimum, take into consideration: product function or performance; useful life; materials and resource consumption; water conservation; water quality impacts; air emissions; production, in-use, and transportation energy inputs; energy efficiency; greenhouse gas emissions; waste and end-of-life disposal; public health impacts, including potential impacts to sensitive subpopulations, including infants and children; environmental impacts; and economic impacts.

Health and Safety Code section 25253 also requires that the regulations specify the range of regulatory responses that DTSC may take following the completion of an alternatives analysis, including, but not limited to, requiring: no regulatory response; additional information to be provided to DTSC needed to assess a chemical of concern and its potential alternatives; labeling or other types of product information; a restriction on, or prohibition of, the use of a chemical of concern in a consumer product; controlling access to or limiting exposure to the chemical of concern in a consumer product; managing the product at the end of its useful life; funding green chemistry challenge grants; and any other outcome DTSC determines accomplishes the requirements of the authorizing statute.

Health and Safety Code section 25251 defines “consumer product”, for purposes of the regulations required by Health and Safety Code sections 25252 and 25253, to mean a product or part of a product that is used, bought, or leased for use by a person for any purpose. However, “consumer product” does not include: dangerous prescription drugs and devices; dental restorative materials; medical devices; packaging associated with dangerous prescription drugs and devices, dental restorative materials and medical devices; food; or pesticides. (Mercury-containing lights were exempted through December 31, 2011.)

Health and Safety Code section 25257 establishes a procedure for the protection of information submitted to DTSC, for purposes of Health and Safety Code sections 25252 and 25253, that is claimed to be a trade secret.

Health and Safety Code section 25257.1 states that DTSC is not authorized to supersede the regulatory authority of any other department or agency, and that DTSC shall not adopt duplicative or conflicting regulations for product categories already regulated, or sub-

ject to pending regulation, consistent with the purposes of Health and Safety Code sections 25252 and 25253.

Article 8 of chapter 6.5 of division 20 of the Health and Safety Code sets forth DTSC’s authority and mechanisms for enforcing the provisions of chapter 6.5 (which includes the above-listed statutes) and the regulations adopted pursuant thereto.

Health and Safety Code section 58012 (added by Gov. Reorg. Plan No. 1, §146, eff. July 17, 1991) grants DTSC authority to adopt and enforce regulations for execution of its duties.

Federal Law

The federal Toxic Substances Control Act of 1976 (TSCA) (Title 15, United States Code, commencing with Section 2601) authorizes the United States Environmental Protection Agency (USEPA) to require reporting, record-keeping and testing requirements, and to set restrictions relating to chemical substances and/or mixtures. Certain substances are generally excluded from TSCA, including, among others, food, drugs, cosmetics and pesticides. TSCA addresses the production, importation, use, and disposal of specific chemicals. Among its provisions, TSCA requires USEPA to maintain the TSCA inventory, which currently contains more than 83,000 chemicals. As new chemicals are commercially manufactured or imported, they are placed on the TSCA inventory.

TSCA requires the submission of health and safety studies that are known or available to those who manufacture, process, or distribute in commerce specified chemicals, and allows USEPA to gather information from manufacturers and processors about production/import volumes, chemical uses and methods of disposal, and the extent to which people and the environment are exposed. However, there were 62,000 chemicals in use in 1976 when TSCA was adopted into federal law. TSCA provides a “grandfather” clause for those 62,000 chemicals. Therefore, these 62,000 chemicals are not subject to the information-gathering requirements in TSCA.

TSCA places the responsibility for conducting health and environmental impact testing on USEPA, not the producer of the chemical substance or mixture. To date, USEPA has conducted testing and published data on only 200 chemicals in the inventory of 83,000 chemicals.

In 2009, the United States Government Accountability Office, an investigative arm of the United States Congress, found USEPA’s implementation of TSCA to be “high-risk” because “EPA has failed to develop sufficient chemical assessment information on the toxicity of many chemicals that may be found in the environment as well as tens of thousands of chemicals used commercially in the United States”.

Relation to Existing Federal Law

The proposed regulations by DTSC do not duplicate or conflict with existing federal law. The initiative for safer consumer products was developed, to a great extent, to address structural weaknesses in the federal Toxic Substances Control Act of 1976 (“TSCA”, Title 15, United States Code, section 2601 et seq.). TSCA places the cost of obtaining data about chemical safety on the United States Environmental Protection Agency (US EPA) rather than requiring the chemical companies to develop and submit such information. Consequently, information about the 80,000 chemicals in U.S. commerce is severely limited and there is little to no information on the health or environmental effects of many of these chemicals.

Relation to Existing Federal and State Regulations

Some of the chemicals and products that potentially may become subject to these regulations are also regulated to some degree by other existing federal or State regulatory programs. However, consistent with Health and Safety Code section 25257.1(c), these regulations contain provisions (for example, sections 69503.2(a)(3) and 69506.11) that expressly work to ensure that there is no duplication or conflict with other federal or State regulations. More specifically, the regulations require DTSC to take into consideration the nature and extent of existing or pending State or federal regulations of the same entities for the same chemicals and/or products so as to avoid duplicative or conflicting regulation under this program.

In addition, DTSC has worked closely with several sister agencies whose regulatory purview is closest to that of DTSC under these regulations. In particular, DTSC worked with OEHHA, the California Department of Public Health (CDPH), the California State Water Resources Control Board (SWRCB), and the California Air Resources Board (ARB), among other agencies, to ensure that the proposed regulations do not interfere with or conflict with any regulatory program administered by any of these agencies. Finally, DTSC has conducted extensive public outreach, including public workshops, public hearings, and public comment periods. DTSC has not received any comments during any of these opportunities for comment indicating that its regulations conflict with other State or federal regulations.

CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which these regulations are proposed or would be as effective

and less burdensome to affected private persons or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this notice.

DTSC considered and rejected the following alternatives.

1. Do Nothing. DTSC rejected this option because Health and Safety Code sections 25252 and 25253 require DTSC to adopt regulations that address chemicals of concern in consumer products. So, this is not a lawful option.
2. Products and Chemical Hazard Categories Prioritization Process to Develop Safer Consumer Products. Again, after much consideration and input, DTSC determined that this approach may not fully comport with the authorizing statute. DTSC also became concerned that there was a lack of DTSC oversight during various stages of the proposed process. Many stakeholders were also very skeptical of this approach. For all these reasons, this alternative was rejected.
3. Other Options Considered in Earlier Proposed Drafts of the Regulations. DTSC released two other drafts of these regulations in 2010. During the public comment periods for the two prior formal regulatory proposals, DTSC received thousands of specific comments from hundreds of commenters suggesting other approaches to various provisions in the regulations. DTSC has again considered those comments, as well as input during meetings of the Green Ribbon Science Panel and in other informal meetings. All of this input has led DTSC to revise various provisions that were in prior versions of both formally and informally proposed iterations of the regulations.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DTSC has made a determination that adoption of this regulation will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES, OR SCHOOL DISTRICTS SUBJECT TO REIMBURSEMENT

DTSC has made a determination that adoption of these regulations will not: (i) impose a local mandate, (ii) result in costs subject to reimbursement pursuant to

part 7 of division 4, commencing with section 17500, of the Government Code, (iii) impose any other non-discretionary costs or savings on local agencies, or (iv) result in any decrease in federal funds to California as a result of these regulations.

These regulations address chemicals in products and any fiscal impact from the regulation on local agencies would likely be in the operating expense and possibly equipment line items. However, generally, DTSC does not expect the regulations to result in cost increases, given the wide variety of competitive safer products readily available at competitive prices. (Please see a more detailed explanation immediately below in the Fiscal Impact section.)

Any costs incurred by local government agencies would not likely be state-reimbursable because any increase in costs would not be unique to local government and would apply generally to all entities purchasing the same products.

COST OR SAVINGS TO ANY STATE AGENCY

Cost of Goods

These regulations address chemicals in products and any fiscal impact from the regulation on State agencies would likely be in the operating expense and possibly equipment line items.

However, generally, DTSC does not expect the regulations to result in cost increases, given the wide variety of comparable safer products readily available at competitive prices. This will provide the incentive for companies that redesign their products to keep prices for the redesigned products competitive. It will also ensure that agencies, and other consumers, have a wide variety of products to choose from at competitive prices (even if the particular brand they are using is replaced with a higher price product).

It is important to note that nothing in the regulations would force an agency to buy a particular product or to replace in-use items (e.g., carpet, furniture, paint). However, these regulations will have the benefit of making more information available for state and local agencies to assist them in making their own discretionary purchasing decisions for their environmentally preferable purchasing programs.

Even if DTSC ends up banning a product, cost impacts are not expected because of the wide variety of comparable safer products readily available at competitive prices.

DTSC State Operations Expenditures

The implementation activities during the first three years will include: preparing Chemicals of Concern and Priority Product lists; developing guidance for businesses and other interested parties; determining data

needs; and performing legal review of: trade secret claims, chemical and product lists, various notifications and guidance and information requests.

In future years, as the program is fully implemented through all phases (chemical and product prioritization, alternatives analyses, and regulatory responses), operational and programmatic needs will increase, and DTSC will need additional resources. In these out years, businesses will begin submitting alternatives analyses and the scope of chemicals listed as Chemicals of Concern and products listed as Priority Products will expand. Thus, DTSC's resource needs will grow over time based on the need to research and evaluate additional chemicals and products, review alternatives analysis work plan and reports (including review of trade secret protection claims), develop and monitor regulatory responses, and enforce compliance with the alternatives analysis and regulatory response requirements.

DETERMINATION OF ADVERSE STATEWIDE ECONOMIC IMPACT

DTSC has made a determination that this regulation may have a significant statewide economic impact directly affecting businesses, but that it is not expected to affect the ability of California businesses to compete with businesses in other states. It is important to note that the regulations apply with equal force to businesses in California and those outside of California. This is because the regulations apply to those businesses placing consumer products into the stream of commerce in California — regardless of the place of manufacture of those products. DTSC is unable to quantify the economic impact on businesses but has outlined factors that will increase or decrease the economic impact to businesses. Until DTSC prepares the Priority Products list, there is no way to know which or how many products will be on the list or how many businesses will be required to perform an alternatives analysis. Likewise, it is not possible to estimate how many businesses will be subject to regulatory responses.

Types of Businesses Affected

Businesses impacted will primarily be those that directly or indirectly make a Priority Product available in California's stream of commerce. Businesses involved in the supply chain of Chemicals of Concern contained in Priority Products will also be impacted. To a lesser degree, businesses in the supply chain for a broader range of products (and chemicals contained those products) placed into California's stream of commerce will be impacted, but only with respect to voluntarily providing chemical and product information to DTSC upon request. The regulation impacts both out-of-state and in-state businesses. This includes: chemical and product producers, brand name manufacturers, import-

ers and retailers in the supply chain for a Priority Product.

Projected Compliance Requirements

Compliance requirements will vary from business to business depending on the products they produce, sell or import, and the arrangements that are made between the various responsible entities in the supply chain for each product. Some businesses will have no compliance requirements. Others will be required to comply with one or more of the following types of requirements: performance of alternatives analyses and submission of alternatives analyses work plans and reports for Priority Products (or submission of various notifications to DTSC in lieu of complying with alternatives analysis requirements); and compliance with regulatory responses imposed on selected products by DTSC after completion of an alternatives analysis. California retailers, in particular, for a product subject to these compliance requirements can “opt out” by ceasing to sell a Priority Product. Manufacturers and importers also have various options for less rigorous compliance than the general compliance rules depending on what actions they take regarding a Chemical of Concern present in a Priority Product.

In developing these regulations, DTSC has sought to minimize the impact on businesses by:

- Making responses to DTSC requests for information on chemicals and products optional instead of mandatory.
- Providing options to extend compliance deadlines.
- Allowing businesses to meet the requirements of the regulations through consortiums, partnerships and similar arrangements.
- Providing guidance documents and sample alternatives analyses.
- Providing exemptions for products containing only threshold amounts of chemicals of concern.
- Providing flexibility in the alternatives analysis process.
- Allowing businesses to submit alternatives analyses that do not have all the required data. Businesses would only be required to fill data gaps if DTSC requires the additional data as a component of a regulatory response.
- Allowing businesses to avoid the alternatives analysis requirement by notifying DTSC that the chemical of concern has been removed from the product.

These regulations do not require all businesses to prepare reports. The regulations also do not impose any annual or other on-going reporting requirements on any businesses.

The regulations do allow DTSC to request businesses to provide information to DTSC (using existing information or by developing new information). There is no mandate for businesses to provide such information requested by DTSC (except as part of the Alternatives Analysis process or as a regulatory response requirement). Also, responsible entities that have a Priority Product would have to conduct an Alternatives Analysis and submit work plans and preliminary and final Alternative Analysis Reports. For the reasons described under A.2 and B.1 /B.2 of this attachment, DTSC cannot estimate the costs to businesses of providing requested information or completing the Alternatives Analysis Reports until implementation is under way.

DTSC finds that it is necessary for the health, safety, or welfare of the people of California that the reporting requirements that are compulsory apply to businesses subject to these regulations.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

These regulations do not impose new responsibilities for private persons. These regulations do impact products made available for sale in California and may have the effect of increasing the costs of products identified as Priority Products or their alternatives. The impacts on consumers will be proportionate to the amount of their budget spent on Priority Products. If the Priority Products represent a small proportion of consumer expenditures, then the impacts to individual consumers should not be significant. It is anticipated that competition will protect consumers from facing higher prices for consumer products. Additionally, it is anticipated that at least some consumers will realize cost savings from the use of safer products that do not present the health threats associated with Priority Products.

As discussed above, DTSC has made a determination that this regulation will have an economic impact on businesses. However, DTSC is unable to quantify the economic impact on businesses. In particular, DTSC is unable to quantify the cost impacts on a “representative” business, as the compliance requirements will vary from business to business depending on: (i) which products are listed as Priority Products, (ii) which products each business produces, sells, distributes or imports, and (iii) the arrangements that are made between the various responsible entities in the supply chain for each Priority Product.

RESULTS OF REGULATORY ECONOMIC IMPACT ANALYSIS

DTSC has made the determination that the regulation may have a possible short-term minimal impact on the

reduction of jobs, with a much larger potential for creation of new jobs as new materials and processes are developed. DTSC cannot estimate the number of jobs created or eliminated by the regulations.

DTSC has made the determination that the regulation may result in the creation of new businesses as new materials and processes are created, with the potential for expanded export markets for California-made products. Furthermore, current firms have time to adapt prioritized consumer products to meet regulatory requirements. Since DTSC does not know which products will become subject to the requirement to perform an alternatives analysis, it cannot predict the number of businesses that may be created or eliminated.

DTSC has made the determination that the regulation provides opportunities for growth as California businesses have access to a wider range of safer consumer products and can provide services and products for an expanding number of consumers demanding safer and greener products. It is thought that California businesses working to study, develop and promote safer and greener consumer products will benefit from these regulations.

The rulemaking may have a significant statewide economic impact directly affecting some businesses. However, the benefits of this rulemaking outweigh any adverse economic impacts. Not only does the rulemaking aim to protect public health and the environment from harmful toxic substances, it also presents the potential for the creation of new businesses and jobs and for the market expansion of safer and greener products.

EFFECT ON HOUSING COSTS

DTSC has made a determination that there will be no impact on housing costs.

EFFECT ON SMALL BUSINESSES (1 CCR 4)

DTSC has determined that these regulations will have an effect on small businesses. However, DTSC is unable to quantify the economic impact on small businesses for the reasons discussed above. DTSC has considered alternatives for small businesses to ameliorate the impacts of compliance with the regulations for such businesses (e.g., allowing small businesses longer time frames than other businesses to meet the requirements of the regulations). However, based upon prior public comments received on the proposed regulations, and a re-evaluation of alternatives considered, DTSC has determined that the statutes authorizing and mandating these regulations do not provide the authority to apply these regulations in a differential manner based upon

the size of a business. Nonetheless, DTSC has determined that the Alternatives Analysis Guidance, that is required to be prepared by DTSC, will disproportionately work to the benefit of small businesses. This is because larger businesses may already possess, or have ready access to, expertise to assist them in complying with the regulations.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking to be exempt under the California Environmental Quality Act (Public Resources Code section 21000, et seq.). This rulemaking meets the statutory exemption available under subdivision (b)(8) of Public Resources Code section 21080. A draft Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

DTSC is having the scientific basis of these regulations peer reviewed pursuant to Health and Safety Code section 57004.

CALIFORNIA ENVIRONMENTAL POLICY COUNCIL REVIEW

As required by Health and Safety Code section 25252.5, DTSC will be submitting the proposed regulations to the California Environmental Policy Council (CEPC) for review after the close of the public comment period and a determination as to whether the proposed regulations require revisions.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Odette Madriago of DTSC at (916) 323-4927 or, if unavailable, Corey Yep of DTSC at 916-445-3601. However, such oral inquiries are not part of the rulemaking record.

A public comment period has been established commencing on July 27, 2012, and closing on **September 11, 2012** for statements, arguments, or contentions regarding the rulemaking and/or supporting documents that must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends, or repeals these regulations.

AVAILABILITY OF TEXT OF REGULATIONS
AND STATEMENT OF REASONS

Copies of the Notice, Initial Statement of Reasons, the text of the proposed regulations, all the information upon which its proposal is based, and the express terms of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm> or may be obtained from **Kryisia Von Burg** of DTSC's Regulations Section as specified below.

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified full text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on this specific regulation will be sent a copy of the modified text if substantive changes are made.

Once the regulations have been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from **Kryisia Von Burg** at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/index.cfm>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

To be included in this regulation package's mailing list and to receive updates of this rulemaking, please visit <http://www.dtsc.ca.gov/ContactDTSC/ELists.cfm> and subscribe to the applicable electronic mailing list or e-mail: gcregs@dtsc.ca.gov.

Please direct all written comments, procedural inquiries, and requests for documents by mail, e-mail, or fax to:

Kryisia Von Burg, Regulations Coordinator
Regulations Section
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

E-mail Address: gcregs@dtsc.ca.gov

Fax Number: (916) 324-1808

Ms. Von Burg's phone number is (916) 324-2810. If Ms. Von Burg is unavailable, please call Mr. Cordova at (916) 324-7193.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF HEALTH CARE
SERVICES**

**PROPOSED RATE METHODOLOGY CHANGES
FOR FREESTANDING SKILLED NURSING
FACILITIES AND FREESTANDING ADULT
SUBACUTE FACILITIES**

This notice is to provide information of public interest with respect to rate methodology changes that are proposed for freestanding skilled nursing facilities (SNFs) and freestanding adult subacute facilities. The California Legislature is considering several proposals pursuant to the Medi-Cal Long-Term Care Reimbursement Act enacted under Article 3.8 (commencing with Section 14126) of Chapter 7, Part 3 of Division 9 of the Welfare and Institutions Code, and Article 7.6 (commencing with Section 1324.20) of Chapter 2, of Division 2 (added by Assembly Bill 1629 of 2004). The proposed changes are as follows:

2012-13:

- Provide a rate freeze for the 2012-13 rate year.
- Keep the savings associated with limiting the Professional Liability Cost category at the 75th percentile, within the General Fund.
- Extend the sunset date by two additional years to July 31, 2015, for the AB 1629 Quality Assurance Fee (QAF) and the rate-setting methodology.

2013-14:

- Provide a 3 percent rate increase in the weighted average Medi-Cal reimbursement rate for the 2013/14 rate year.
- Set aside 1 percent of the weighted average Medi-Cal reimbursement rate into the Quality and Accountability Special Fund.
- Pay a supplemental payment to participating SNFs within the Quality and Accountability Supplemental Payment System, for meeting specified performance measurement goals.

2014-15:

- Provide a 3 percent rate increase in the weighted average Medi-Cal reimbursement rate for the 2014/15 rate year.
- Set aside 1 percent of the weighted average Medi-Cal reimbursement rate into the Quality and Accountability Special Fund.

- Pay a supplemental payment to participating SNFs within the Quality and Accountability Supplemental Payment System, for meeting specified performance measurement goals.

SUMMARY OF REGULATORY ACTIONS

PUBLIC REVIEW AND COMMENTS

A detailed description of the proposed California legislation that will amend the Welfare and Institutions Code and Health and Safety Code to make the changes described in this notice will be made available for public review at local county welfare offices throughout the State.

A copy of the description may also be requested, in writing, from:

Ms. Connie Florez, Chief
 Long Term Care System Development Unit
 Department of Health Care Services
 Fee-For-Service Rates Development Division
 Department of Health Care Services, MS 4612,
 P.O. Box 997413
 Sacramento, CA 95899-7413

Any written comments concerning the proposal may also be mailed to Ms. Connie Florez at the above address.

DECISION NOT TO PROCEED

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Concerning Alternative Custody Program

Pursuant to Government Code Section 11347, the California Department of Corrections and Rehabilitation hereby gives notice that it has decided not to proceed with the rulemaking action published in the California Regulatory Notice Register, October 14, 2011 (Register 2011, No. 41-Z). The proposed rulemaking was regarding the Alternative Custody Program.

Any interested person with questions concerning this rulemaking should contact C. Flores at (916) 324-6688.

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# 2012-0706-01
 CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY
 ABX1 14 Clean Energy Upgrade Financing Program

This emergency regulatory action amends Article 3 beginning with Section 10050 of Division 13 of Title 4 of the California Code of Regulations. Article 3 contains regulations for the loan loss reserve program under the Clean Energy Upgrade Financing Program provided for in Assembly Bill 14, CH 9, Statutes of 2011. These regulations establish the rules, process and procedures for the Clean Energy Upgrade Financing Program including the eligibility and evaluative criteria loans must meet in order for participating financial institutions to qualify and receive a loan loss reserve contribution.

Title 4
 California Code of Regulations
 AMEND: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057
 Filed 07/16/2012
 Effective 07/16/2012
 Agency Contact: Jennifer Gill (916) 653-3033

File# 2012-0614-03
 DEPARTMENT OF MOTOR VEHICLES
 Schools for Traffic Violators; New TVS Office Practices

This rulemaking action amends, adopts, and repeals sections of Title 13 of the California Code of Regulations concerning traffic violator school practices in the areas of record keeping, advertising, and office operations, among others, so as to improve the effectiveness of traffic violator schools in the prevention of future traffic accidents and violations by graduates.

Title 13
 California Code of Regulations
 ADOPT: 345.58, 345.73 AMEND: 345.50, 345.52,
 345.56, 345.74, 345.78, 345.86, 345.88, 345.90 RE-
 PEAL: 345.54, 345.58, 345.60
 Filed 07/12/2012
 Effective 08/11/2012
 Agency Contact: Ally Grayson (916) 657-6469

File# 2012-0530-01
 DEPARTMENT OF TOXIC SUBSTANCES
 CONTROL
 Revise LDR Treatment Standards for Carbamate
 Wastes

This change without regulatory effect by the Department of Toxic Substances Control amends sections 66268.40 and 66268.48 of title 22 of the California Code of Regulations by revising various Land Disposal Restrictions (LDR) treatment standards for carbamate wastes in accordance with regulatory changes made by the U.S. EPA. These are non-substantive amendments made pursuant to Health and Safety Code sections 25159 and 25159.1.

Title 22
 California Code of Regulations
 AMEND: 66268.40, 66268.48
 Filed 07/12/2012
 Agency Contact: Krysia Von Burg (916) 324-2810

File# 2012-0530-02
 DEPARTMENT OF TOXIC SUBSTANCES
 CONTROL
 Regulatory Text Revisions

This change without regulatory effect by the Department of Toxic Substances Control amends five sections of title 22 of the California Code of Regulations to conform to recent statutory revisions. These amendments update statutory references, correct typographical errors, and replace general terms with specific, precise terms. These non-substantive amendments are made pursuant to Health and Safety Code sections 25159 and 25159.1.

Title 22
 California Code of Regulations
 AMEND: 66263.18, 66263.41, 66263.43,
 66263.44, 66263.45, 66263.46
 Filed 07/12/2012
 Agency Contact: Krysia Von Burg (916) 324-2810

File# 2012-0531-01
 DEPARTMENT OF WATER RESOURCES
 Agricultural Water Measurement

The Department of Water Resources adopted five sections and created a new article in title 23 of the California Code of Regulations for agricultural water measurement. The purpose of the regulatory action is to provide a range of options that agricultural water suppliers may use or implement to comply with the water measurement requirements in Water Code 10608.48(b)(1). These regulations implement amendments to the Water Code made in S.B. 7 (Stats. 2009, 7th Ex. Sess., ch. 4).

Title 23
 California Code of Regulations
 ADOPT: 597, 597.1, 597.2, 597.3, 597.4
 Filed 07/11/2012
 Effective 07/11/2012
 Agency Contact: Kent Frame (916) 651-7030

File# 2012-0703-01
 FAIR POLITICAL PRACTICES COMMISSION
 Behested Payments Reporting

FPPC requested a change in Title 2, Section 18215.3 “Behested Payments” Reporting subsections (b) and (c) without regulatory effect. The change in subsections (b) and (c) was a simple strikeout and replacement in an internal citation. The regulation text reads: Section 82015(b)(2)(b)(B)(iii).

Title 2
 California Code of Regulations
 AMEND: 18215.3
 Filed 07/16/2012
 Effective 07/16/2012
 Agency Contact:
 Virginia Latteri-Lopez (916) 322-5660

File# 2012-0530-03
 OFFICE OF ENVIRONMENTAL HEALTH HAZ-
 ARD ASSESSMENT
 Prop 65 Amendment — Peer Review

This rulemaking by the Office of Environmental Health Hazard Assessment (OEHHA) amends sections 25305, 25701, 25705, and 25801 of title 27 of the California Code of Regulations. These amendments clarify that, for certain regulations proposed by OEHHA, the scientific peer review required pursuant to Health and Safety Code section 57004 is provided by two Science Advisory Board Committees: the Carcinogen Identification Committee (CIC) and the Developmental and Reproductive Toxicant Identification Committee (DARTIC). CIC reviews proposed No Significant Risk Levels (NSRLs) for carcinogens and other regulations under article 7, and DARTIC reviews proposed Maximum Allowable Dose Levels (MADLs) for reproductive toxicants and other regulations under article 8 of title 27.

Title 27
 California Code of Regulations
 AMEND: 25305, 25701, 25705, 25801
 Filed 07/12/2012
 Effective 08/11/2012
 Agency Contact: Monet Vela (916) 323-2517

File# 2012-0613-07
 OFFICE OF SPILL PREVENTION AND RESPONSE
 Tank Vessel Escort Program for LA/Long Beach

The Office of Spill Prevention and Response amended regulations that establish requirements for tank vessel escorts for the Los Angeles and Long Beach harbors. The amendments include the replacement of a matrix that provides criteria for matching escort tugs to tank vessels with an updated matrix that will accommodate larger tank vessels, due to recently completed channel deepening projects in both harbors, and tug escort criteria, due to increased efficiency and power in tractor tugs and improved equipment and methodologies. Amendments to the regulations affect requirements for escort tugs, clarify weight in terms of metric tons, where applicable, make amendments to definitions, and make other clarifying amendments.

Title 14
 California Code of Regulations
 AMEND: 790, 851.20, 851.21, 851.22, 851.25, 851.26, 851.27, 851.27.1, 851.28, 851.29, 851.30, 851.31, 851.32
 Filed 07/12/2012
 Effective 08/11/2012
 Agency Contact:
 Joy D. Lavin-Jones (916) 327-0910

File# 2012-0607-01
 PHYSICAL THERAPY BOARD OF CALIFORNIA
 Administrative & Discipline

This regulatory action delegates to the Assistant Executive Officer, in the absence of the Executive Officer, the same authority to perform specified functions to carry out the business of the Board. It also provides for required actions against licensees who are registered sex offenders and adds five items to the statutory list of what is considered to be unprofessional conduct.

Title 16
 California Code of Regulations
 ADOPT: 1399.23, 1399.24
 AMEND: 1398.4
 Filed 07/17/2012
 Effective 08/16/2012
 Agency Contact: Elsa Ybarra (916) 561-8262

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN February 22, 2012 TO
 July 18, 2012**

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

- 07/16/12 AMEND: 18215.3
- 07/09/12 ADOPT: 22620.1, 22620.2, 22620.3, 22620.4, 22620.5, 22620.6, 22620.7, 22620.8
- 06/28/12 AMEND: 649.32
- 06/19/12 AMEND: 56800
- 06/04/12 ADOPT: 18313.6
- 05/29/12 AMEND: 20811(c)
- 05/15/12 AMEND: 1859.2
- 05/10/12 AMEND: 1859.2, 1859.82
- 05/08/12 ADOPT: 559.1
- 04/30/12 ADOPT: 565.5 AMEND: 565.1, 565.2, 565.3
- 04/26/12 AMEND: 554.4
- 04/23/12 AMEND: 18705.5
- 04/23/12 AMEND: 554.3
- 04/19/12 ADOPT: 18412 AMEND: 18215, 18413
- 04/10/12 ADOPT: 18215.3
- 04/09/12 ADOPT: 59710
- 03/26/12 AMEND: 1859.2, 1859.71.4, 1859.78.1, 1859.79.2, 1859.82, 1859.83, 1859.106, 1859.125, 1859.125.1, 1859.145, 1859.163.1, 1859.163.5, 1859.193
- 03/13/12 AMEND: 1859.2, 1859.82
- 03/06/12 ADOPT: 589.11
- 03/06/12 AMEND: 1189.10
- 03/02/12 AMEND: 560

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- 06/19/12 ADOPT: 6970, 6972 AMEND: 6000
- 05/17/12 AMEND: 4603(i)
- 05/01/12 AMEND: 3423(b)
- 04/16/12 AMEND: 3591.19
- 04/16/12 AMEND: 3439
- 04/12/12 AMEND: 3591.21(b)
- 04/12/12 ADOPT: 3435(c)
- 04/12/12 AMEND: 3434(b)&(c)
- 04/03/12 ADOPT: 3639
- 04/03/12 ADOPT: 3439
- 04/02/12 AMEND: 480.9, 498, 499, 499.5, 500, 501, 576.1, 623, 755.2, 756.2, 760.2, 790,

	790.2, 791, 791.1, 796.2, 797, 799, 820.1, 821.2, 900, 900.1, 900.2, 901.3, 901.8, 901.9, 901.11, 902, 902.15, 907.3, 909.3, 910.4, 910.7, 913, 913.1, 1180, 1180.11, 1200, 1204, 1205, 1210, 1235, 1242, 1246, 1246.14, 1247, 1256, 1266, 1268, 1269, 1271, 1300.1, 1310.1	03/29/12	AMEND: 12008, 12335, 12342, 12345, 12357, 12359
03/20/12	AMEND: 1430.5, 1430.6, 1430.35, 1430.36, 1430.37, 1430.38	03/21/12	AMEND: 12200, 12200.9, 12200.10A, 12200.11, 12200.13, 12220, 12220.13, 12342, 12464
03/09/12	AMEND: 3436(b)	03/08/12	AMEND: 10032, 10033, 10034, 10035
03/08/12	AMEND: 3437(b)	03/08/12	AMEND: 60, 60.5
03/07/12	ADOPT: 1180, 1180.20, 1180.22, 1180.23, 1180.24, 1180.25, 1180.27, 1180.28, 1180.29, 1180.30, 1180.31, 1180.32, 1180.33, 1180.34, 1180.35, 1180.36, 1180.37, 1180.38, 1180.39 AMEND: 1180.1, 1180.2, 1180.3, 1180.3.1, 1180.3.2, 1180.13, 1180.14, 1180.15, 1180.16, 1180.17, 1180.18, 1180.19, 1180.31, 1180.32, 1180.33, 1180.34, 1180.35, 1180.36, 1180.37, 1180.38, 1180.39, 1180.40, 1180.41 REPEAL: 1180, 1180.21, 1180.22, 1180.23, 1180.24, 1180.25, 1180.26, 1180.27, 1180.28, 1180.29, 1180.30	03/06/12	ADOPT: 4075
02/28/12	ADOPT: 2320.1, 2320.2, 2322, 2322.1, 2322.2, 2322.3, 2323 AMEND: 2300, 2300.1, 2302, 2303, 2320, 2321	03/05/12	AMEND: 10152, 10153, 10154, 10155, 10157, 10159, 10160, 10161, 10162 REPEAL: 10156, 10158, 10164
02/23/12	AMEND: 3700(c)	03/02/12	AMEND: 8070
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07/16/12	AMEND: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057	02/22/12	AMEND: 10176, 10177, 10178, 10182, 10188
06/25/12	AMEND: 8070, 8071, 8072, 8078, 8078.2	Title 5	
06/25/12	AMEND: 1663	06/12/12	ADOPT: 18004 AMEND: 18000, 18001, 18002, 18003
06/06/12	AMEND: 1843.3	05/29/12	AMEND: 42600
06/01/12	ADOPT: 5205 AMEND: 5000, 5054, 5144, 5170, 5190, 5200, 5230, 5350, 5370 REPEAL: 5133	04/25/12	AMEND: 80028, 80301, 80442
05/15/12	REPEAL: 61.3	04/20/12	AMEND: 18013, 18054, 18111 REPEAL: 18006, 18200, 18201, 18202, 18203, 18205, 18206, 18207
05/04/12	ADOPT: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060	04/11/12	AMEND: 19816, 19816.1, 19845.2
04/30/12	ADOPT: 511 AMEND: 399	04/02/12	ADOPT: 27000, 27001, 27002, 27003, 27004, 27005, 27006, 27007, 27008, 27009
04/26/12	AMEND: 2066	04/02/12	ADOPT: 1039.2, 1039.3
04/19/12	ADOPT: 10192, 10193, 10194, 10195, 10196, 10197, 10198, 10199	03/26/12	AMEND: 1216.1
04/17/12	AMEND: 53	03/26/12	ADOPT: 620, 621, 622, 623, 624, 625, 626, 627
04/12/12	AMEND: 10317, 10325	03/12/12	AMEND: 41000
04/11/12	AMEND: 10302, 10310, 10315, 10317, 10322, 10325, 10327, 10328	03/06/12	AMEND: 18600
04/04/12	AMEND: 5000, 5170, 5200, 5230, 5370, 5500, 5540	03/01/12	ADOPT: 30001.5
		02/27/12	AMEND: 42397.2, 42397.6
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		07/03/12	AMEND: 219
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		05/21/12	ADOPT: 10582.5, 10770.1 AMEND: 10770
		05/07/12	AMEND: 477
		05/07/12	AMEND: 2340.22
		05/02/12	AMEND: 20363, 20365, 20393, 20400, 20402
		05/01/12	AMEND: 1533, 1541, 8403
		03/14/12	AMEND: 32602, 32603, 32620, 32621, 32625, 32630, 32635, 32640, 32644, 32647, 32648, 32649, 32650, 32661, 32680, 32690, 61360(a)
		02/23/12	AMEND: 1905

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03/22/12 AMEND: 9795, 9800, 9801.5, 9801.6, 9804, 9812, 9816, 9820, 9822, 9829, 9836, 9838, 9846, 9848, 9849, 9851, 9852, 9854, 9858, 9862, 9866, 9867, 9868, 9874, 9876, 9876.5, 9878, 9879, 9884, 9886

07/09/12 ADOPT: 1665.1, 1665.2, 1665.3, 1665.4, 1665.5, 1665.6, 1665.7, 1665.8

07/02/12 ADOPT: 602

06/28/12 ADOPT: 17944.1, 17945.1, 17945.4, 17946, 17946.5, 17948.1, 17948.2
AMEND: 17943, 17944, 17946(a)-(h) renumber as 17945.2, 17946(i) renumber as 17945.3, 17946.5 renumber as 17945.5, 17947, 17948, 17948.5, 17949
REPEAL: 17942, 17944.2, 17944.5, 17945

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05/31/12 AMEND: 2318.6, 2353.1, 2354

05/09/12 AMEND: 2698.208

04/23/12 AMEND: 2355.1, 2355.2

04/10/12 AMEND: 260.204.9

04/09/12 ADOPT: 6400

03/15/12 AMEND: 2690

06/25/12 AMEND: 791.7

06/06/12 ADOPT: 18950, 18951, 18952, 18953, 18954, 18955, 18955.1, 18955.2, 18955.3, 18956, 18957, 18958

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06/26/12 AMEND: 1005, 1007, 1008

06/21/12 AMEND: 1005, 1007

05/09/12 ADOPT: 1019 REPEAL: 9020

05/07/12 ADOPT: 999.24, 999.25, 999.26, 999.27, 999.28, 999.29 AMEND: 999.10, 999.11, 999.14, 999.16, 999.17, 999.19, 999.20, 999.21, 999.22

04/03/12 AMEND: 1001, 1005, 1007, 1008, 1052, 1055

03/14/12 AMEND: 1005, 1007, 1008

06/01/12 REPEAL: 660

05/30/12 AMEND: 11960

05/29/12 AMEND: 360, 361, 362, 363, 364, 365, 708.12

05/21/12 AMEND: 703

05/21/12 AMEND: 7.50

05/21/12 AMEND: 705

05/17/12 AMEND: 7.50

05/07/12 ADOPT: 18835, 18836, 18837, 18838, 18839

05/01/12 AMEND: 27.80

05/01/12 ADOPT: 4870, 4871, 4872, 4873, 4874, 4875, 4876, 4877

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06/04/12 AMEND: 506

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07/12/12 ADOPT: 345.58, 345.73 AMEND: 345.50, 345.52, 345.56, 345.74, 345.78, 345.86, 345.88, 345.90 REPEAL: 345.54, 345.58, 345.60

06/29/12 AMEND: 225.00, 225.03, 225.09, 225.12, 225.15, 225.18, 225.21, 225.24, 225.35, 225.36, 225.38, 225.42, 225.45, 225.54, 225.60, 225.63, 225.66, 225.69, 225.72 REPEAL: 225.06

04/19/12 ADOPT: 345.31, 345.32, 345.42 AMEND: 345.02, 345.04, 345.05, 345.06, 345.07, 345.11, 345.13, 345.15, 345.16, 345.18, 345.20, 345.22, 345.23, 345.24, 345.27, 345.28, 345.29, 345.30, 345.34, 345.36 (renumbered to 345.33), 345.38 (renumbered to 345.35), 345.39 (renumbered to 345.36), 345.40, 345.41 REPEAL: 345.17, 345.21, 345.25, 345.26

04/10/12 ADOPT: 553.30 AMEND: 553, 553.10, 553.20, 553.50, 553.70, 553.72

02/29/12 AMEND: 553

05/01/12 AMEND: 791.7, 870.17

04/30/12 AMEND: 632

04/27/12 AMEND: 228, 228.5

04/05/12 AMEND: 28.29, 52.10, 150.16

04/03/12 ADOPT: 791.6 AMEND: 791.7, 795, 796

03/28/12 AMEND: 11900, 11945

03/26/12 AMEND: 11960

03/22/12 AMEND: 27.80

02/24/12 AMEND: 29.15

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07/02/12 ADOPT: 3999.12

06/26/12 ADOPT: 1712.1, 1714.1, 1730.1, 1740.1, 1748.5 AMEND: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.1, 1747.5, 1748, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788 REPEAL: 1757

06/26/12 ADOPT: 3079, 3079.1 AMEND: 3000, 3075.2, 3075.3

06/26/12 AMEND: 3000, 3076.1, 3076.3, 3375, 3375.1, 3375.2, 3375.3, 3375.4, 3375.5, 3377.2, 3521.2

06/06/12 AMEND: 3000, 3006, 3170.1, 3172.1, 3173.2, 3315, 3323

05/10/12 ADOPT: 3375.6 AMEND: 3000, 3375

04/11/12 AMEND: 3187, 3188

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07/12/12 AMEND: 790, 851.20, 851.21, 851.22, 851.25, 851.26, 851.27, 851.27.1, 851.28, 851.29, 851.30, 851.31, 851.32

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04/09/12 AMEND: 3172.2
 04/05/12 AMEND: 3341.5, 3375.2, 3377.1
 04/02/12 ADOPT: 3571, 3582, 3590, 3590.1, 3590.2, 3590.3 AMEND: 3000
 03/28/12 ADOPT: 3352.3 AMEND: 3350.1, 3352, 3352.1, 3352.2, 3354, 3354.2, 3355.1, 3358
 03/19/12 ADOPT: 3078, 3078.1, 3078.2, 3078.3, 3078.4, 3078.5, 3078.6 AMEND: 3000, 3043, 3075.2, 3097, 3195, 3320, 3323
 03/12/12 ADOPT: 3999.11
 03/08/12 ADOPT: 8006
 03/08/12 AMEND: 3315, 3323
 02/22/12 AMEND: 173
 02/22/12 ADOPT: 4845, 4849, 4853, 4854, 4939.5, 4961.1, 4977.5, 4977.6, 4977.7, 4983.5 AMEND: 4846, 4847, 4848, 4848.5, 4850, 4852, 4900, 4925, 4926, 4927, 4928, 4929, 4935, 4936, 4937, 4938, 4939, 4940, 4977, 4978, 4979, 4980, 4981, 4982, 4983

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07/17/12 ADOPT: 1399.23, 1399.24 AMEND: 1398.4
 07/10/12 ADOPT: 3394.25, 3394.26, 3394.27
 06/18/12 ADOPT: 1727.2 AMEND: 1728
 06/18/12 AMEND: 443
 06/14/12 ADOPT: 302.5
 05/25/12 ADOPT: 1399.364, 1399.375, 1399.377, 1399.381, 1399.384 AMEND: 1399.301, 1399.302, 1399.303, 1399.320, 1399.330, 1399.352.7, 1399.353, 1399.360, 1399.370, 1399.374, 1399.376 (renumbered to 1399.382), 1399.380, 1399.382 (renumbered to 1399.383), 1399.383 (renumbered to 1399.385), 1399.384 (renumbered to 1399.378), 1399.385 (renumbered to 1399.379), 1399.395 REPEAL: 1399.340, 1399.381, 1399.387, 1399.388, 1399.389, 1399.390, 1399.391
 05/17/12 ADOPT: 4544, 4600, 4602, 4604, 4606, 4608, 4610, 4620, 4622 AMEND: 4422, 4440, 4446, 4470
 05/14/12 AMEND: 932
 05/04/12 ADOPT: 2509, 2518.8, 2524.1, 2568, 2576.8, 2579.11 AMEND: 2503, 2524.1 (renumber to 2524.5), 2563, 2579.11 (renumber to 2579.20)
 04/27/12 AMEND: 407, 428
 04/26/12 AMEND: 3605
 04/23/12 AMEND: 3005
 04/16/12 ADOPT: 2295, 2295.1, 2295.2, 2295.3 AMEND: 2252, 2275, 2284

03/30/12 AMEND: 3340.43, 3394.3, 3394.4, 3394.5, 3394.6, 3394.7
 03/29/12 AMEND: 109, 116, 117, 121
 03/19/12 AMEND: 4155
 03/08/12 AMEND: 318
 03/07/12 AMEND: 2615, 2620
 03/07/12 AMEND: 1889.2 REPEAL: 1832.5
 03/07/12 AMEND: 2615, 2620
 03/07/12 AMEND: 1889.2 REPEAL: 1832.5
 02/27/12 AMEND: 2, 8.2, 9.1, 26, 49, 58, 59, 62, 65, 75.4, 87, 87.5, 88, 88.1, 88.2, 89, 90, 94 REPEAL: 5.1, 7, 7.2

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06/15/12 AMEND: 6508
 04/18/12 AMEND: 100607, 100608
 03/28/12 AMEND: 100080
 03/15/12 ADOPT: 58883
 03/15/12 AMEND: 6020, 6035, 6051, 6065, 6070, 6075
 03/12/12 AMEND: 95307

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07/10/12 AMEND: 1205, 1212, 1271
 07/10/12 AMEND: 1105, 1120, 1132, 1161
 07/10/12 AMEND: 1435, 1436
 07/10/12 AMEND: 25128.5
 07/03/12 AMEND: 3301
 07/03/12 AMEND: 263
 05/01/12 AMEND: 1685.5
 03/26/12 ADOPT: 25137-8.2 AMEND: 25137-8 (re-numbered to 25137-8.1)
 02/27/12 ADOPT: 25136-2

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07/12/12 AMEND: 66263.18, 66263.41, 66263.43, 66263.44, 66263.45, 66263.46
 07/12/12 AMEND: 66268.40, 66268.48
 07/09/12 AMEND: 4416
 07/03/12 AMEND: 51516.1
 06/28/12 AMEND: 91477
 06/21/12 AMEND: 50195, 50197, 50256, 50258, 50258.1, 50262, 50268, 50815, 51000.53
 06/12/12 AMEND: 66261.32
 05/24/12 AMEND: 90417
 05/22/12 ADOPT: 60098, 64400.05, 64400.29, 64400.36, 64400.41, 64400.66, 64400.90, 64402.30, 64400.46 AMEND: 60001, 60003, 63790, 63835, 64001, 64211, 64212, 64213, 64252, 64254, 64256, 64257, 64258, 64259, 64400.45, 64415, 64463.1, 64463.4, 64470, 64481, 64530, 64531, 64533, 64534, 64534.2, 64534.4, 64534.6, 64534.8, 64535, 64535.2, 64535.4, 64536.6, 64537,

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05/17/12	AMEND: 51240, 51305, 51476	Title 25	
05/04/12	AMEND: 123000	06/07/12	ADOPT: 4326, 4328 AMEND: 4004, 4200, 4204, 4208
04/11/12	AMEND: 97174	03/13/12	ADOPT: 6932 REPEAL: 6932
03/15/12	ADOPT: 123000 and Appendices REPEAL: 123000 and Appendices	Title 27	
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07/11/12	ADOPT: 597, 597.1, 597.2, 597.3, 597.4	06/18/12	AMEND: 25705
07/05/12	AMEND: 570, 571, 572, 573, 574, 575, 576	03/26/12	AMEND: 25705
04/23/12	ADOPT: 3979.4	03/15/12	AMEND: 25705
04/10/12	AMEND: 2631	Title MPP	
04/09/12	ADOPT: 3969.1	06/25/12	AMEND: 40-105.4(g)(1), 44-111.23, 44-113.2, 44-133.54(QR), 44-315.39(QR), 89-201.513
04/05/12	AMEND: 645	06/25/12	AMEND: 41-440, 42-716, 42-717, 44-207
03/21/12	ADOPT: 3969	06/25/12	AMEND: 40-107, 42-301, 42-302, 42-431, 42-712, 42-713, 42-716, 42-717, 42-721, 44-133, 44-307, 44-316, 82-833
03/21/12	ADOPT: 3939.41	04/11/12	AMEND: 47-230, 47-240, 47-401
03/21/12	ADOPT: 3939.44	03/15/12	AMEND: 25705
03/15/12	ADOPT: 3939.43		
03/12/12	AMEND: 2922		
03/09/12	ADOPT: 3919.11		
02/29/12	ADOPT: 3939.42		

