



California Regulatory Notice Register

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NOVEMBER 24, 2006

PROPOSED ACTION ON REGULATIONS

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*Time-Dated
Material*

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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 3. DEPARTMENT OF FOOD
AND AGRICULTURE**

ARTICLE 30. Nectarines

ARTICLE 34. Peaches

(Notice published November 24, 2006)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Article 30, Section 1446.9 and Article 34, Section 1454.16, of the regulations in Title 3 of the California Code of Regulations pertaining to standardized fruit size, specifically nectarine and peaches.

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

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on January 8, 2007. The Department will consider only comments received at the Department offices by that time.

Comments may be mailed to:

Kevin Masuhara, Program Supervisor
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

Comments may be personally delivered to:

Kevin Masuhara, Program Supervisor
Inspection and Compliance Branch
California Department of Food and Agriculture
560 J Street, Suite 220
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407, and 42682 of the Food and Agricultural Code, and to implement, interpret, or make specific Section 42941 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Section 3 of the California Food and Agricultural Code declares that the provisions of the code are enacted for the purposes of promoting and protecting the agricultural industry of the state and for the protection of the public health, safety, and welfare. Section 407 declares that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of the Food and Agricultural Code which he is directed or authorized to administer or enforce.

Section 42682, of the Food and Agricultural Code declares that the Secretary of Food and Agriculture may modify standard container, lid, marking, sizing requirement for commodities, and packing arrangement for any fruits, nuts, or vegetables, for which specific quality standards have otherwise been provided by law or regulation.

To comply with these sections of the Food and Agricultural Code the Department is proposing to amend the following sections to the California Code of Regulations (CCR):

- Section 1446.9, addition of subsection d, to add size variation, tolerance, and size description requirements for Peento type nectarines.
- Section 1454.16, addition of subsection d, to add size variation, tolerance, and size description requirements for Peento type peaches.

**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.

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

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

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

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

Adoption of these regulations will not:

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

Significant effect on housing costs: None.

EFFECT ON SMALL BUSINESS

The Department has initially determined that these proposed changes in the regulations would result in no added costs to small businesses affected by these proposed changes and would have a positive effect on such businesses. This is based on the fact that the proposal offers a new standard container and more flexibility of an existing container for shipping of apricots, nectarines, peaches, and plums and fresh prunes. The proposed amendments meet the needs of the affected commodity groups without requiring change on the part of industry.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, 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 these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Kevin Masuhara, Program Supervisor
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

The backup contact person for these inquiries is:

Susan Shelton, Staff Services Analyst
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Shelton at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at 560 J Street, Suite 220, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, the letter of petition from the California Agricultural Commissioners & Sealers, and minutes to the Standardization Advisory Committee meeting. Copies may be obtained by contacting Ms. Shelton at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After 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 Ms. Shelton 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 FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shelton 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.cdffa.ca.gov/is/regulation.htm

**TITLE 3. DEPARTMENT OF FOOD
AND AGRICULTURE**

**ARTICLE 2.1. Administrative Civil
Penalty Guidelines**

(Notice published November 24, 2006)

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to adopt Article 2.1., Sections 1371, 1371.1 and 1371.2, of the regulations in Title 3 of the California Code of Regulations pertaining to Standardization administrative civil penalties.

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

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on January 8, 2007. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Kevin Masuhara, Program Supervisor
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 401, 407, and 42681 of the Food and Agricultural Code, and to implement, interpret, or make specific Sections 861, 862, 864, 865, 885, 42792, 42884,

42885, 42886, 42941, 42942, 42943, 42944, 42945, 42946, 42947, 42948, 42949, 42950, 42951, 43003, 43033, 43331, 43332, 43333, 44971, 44972, 44973, 44974, 44982, 44983, 44984, 44986, 45031, 45034, and 45035 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Section 3 of the California Food and Agricultural Code declares that the provisions of the code are enacted for the purposes of promoting and protecting the agricultural industry of the state and for the protection of the public health, safety, and welfare. Section 407 declares that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of the Food and Agricultural Code which he is directed or authorized to administer or enforce.

Sections 885 and 43003, of the Food and Agricultural Code declares that, in lieu of civil prosecution, the Secretary of Food and Agriculture and the County Agricultural Commissioners are authorized to levy civil penalties against any person violating Division 1, Chapter 8, State Administration, Agricultural Theft Prevention or Division 17, Fruit and Vegetable Standards. The penalties range from \$500 or \$3,000 for first violations, as specified; to penalties up to \$1,000, \$3,000, or \$5,000 for subsequent or other violations as specified. Additionally, they further set forth basic guidelines for the civil penalty and hearing processes.

To comply with these sections of the Food and Agricultural Code the Department is proposing to add the following sections to the California Code of Regulations (CCR):

For purposes of due process, the adoption of Section 1371 to the CCR outlines the requirement for the notice of proposed action (civil penalty), and further clarifies hearing guidelines.

CCR Section 1371.1 defines violation severity, specifically the meaning of a "minor", "moderate", and "serious" violation.

Section 1371.2 of the CCR specifies type of violation, associated section of the Food and Agricultural Code, states the severity, and gives a penalty range.

**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.

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

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

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

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

Adoption of these regulations will not:

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

Significant effect on housing costs: None.

EFFECT ON SMALL BUSINESS

The Department has initially determined that the proposed changes in the regulations would result in no significant added costs to small businesses affected by these proposed changes. This is based on the following: The same penalty levels for violations exist, the new legislation and regulations would permit penalties to be levied by the Secretary or the Commissioner, in lieu of civil prosecution through the judiciary system.

CONSIDERATION OF ALTERNATIVES

The Department has determined that no reasonable alternative considered by the Department, 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 these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Kevin Masuhara, Program Supervisor
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

The backup contact person for these inquiries is:

Susan Shelton, Staff Services Analyst
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Shelton at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at 560 J Street, Suite 220, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, the letter of petition from the California Agricultural Commissioners & Sealers, and minutes to the Standardization Advisory Committee meeting. Copies may be obtained by contacting Susan Shelton at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After 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 Susan Shelton 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 FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shelton 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.cdfa.ca.gov/is/regulation.htm

**TITLE 10. DEPARTMENT OF
INSURANCE**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

**NETWORK PROVIDER PROVISIONS
IN HEALTH INSURANCE POLICIES
AND AGREEMENTS**

**RH05043720
November 24, 2006**

SUBJECT OF HEARING

Notice is hereby given that a public hearing will be held regarding the adoption of changes to the California Code of Regulations Title 10, Chapter 5, Subchapter 2, Article 6, "Exclusive Provider Provisions in Group Disability Policies and Agreements" Sections 2240, 2240.1, 2240.2, 2240.3, 2240.4, as well as the addition of a new Section 2240.5. The changes will implement the provisions of Insurance Code section 10133.5, as amended by Assembly Bill 2179 by requiring that insurers demonstrate compliance with accessibility and availability standards regarding access to covered health care services including assuring continuity of care. The implementation of Insurance Code section 10133.5 also include the requirement that insurers file network access measurement documents that demonstrate compliance with the proposed standards in these regulations with the Department of Insurance along with other related documents including sample provider contracts. The proposed changes will apply to health insurers which contract with providers for alternative rates pursuant to Insurance Code section 10133. Insurance Code section 10133.5 is the authority for the proposed regulation.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to

present statements or arguments, orally or in writing, with respect to the proposed regulations as follows:

**Date and time: January 11, 2007
10:00 am***

**Location: Department of Insurance Hearing
Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105**

*The hearing will continue on the date noted until all testimony has been completed or 5:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL
COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled public hearing. Written comments should be addressed to the contact person:

Elena Asturias, Staff Counsel
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, CA 94105
Telephone: (415) 538-4497

Bruce Hinze, Staff Counsel
California Department of Insurance
45 Fremont Street, 23rd Floor
San Francisco, CA 94105
Telephone: (415) 538-5896

Questions regarding procedure, the hearing, comments, or the substance of the proposed action should be addressed to the contact persons listed above. If they are unavailable, inquiries may be addressed to the are back-up contact person:

Nancy Hom, Staff Counsel III
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4144

DEADLINE FOR WRITTEN COMMENTS

All persons are invited to submit written comments on the proposed regulations during the public comment period. **The public comment period will end at 5:00 p.m. on January 11, 2007.** All written comments, whether submitted at the hearing, or by U.S. mail, or by e-mail or facsimile, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, no later than **5:00 p.m. on January 11, 2007.** Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY
E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to either of the following e-mail addresses: asturiase@insurance.ca.gov or hinzeb@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the attention of the contact person at the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the January 11, 2007 deadline for written comments set forth above.**

ACCESS TO HEARING ROOMS

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

AUTHORITY AND REFERENCE

Authority:

The Insurance Commissioner proposes changes to Title 10, Chapter 5, Subchapter 2, Article 6 Sections 2240, 2240.1, 2240.2, 2240.3, 2240.4, as well as the addition of a new Section 2240.5, pursuant to the authority vested in him by section 10133.5 of the California Insurance Code.

Reference:

The Commissioner's decision on the proposed amendments will implement, interpret, and make specific the provisions of Insurance Code section 10133.5.

INFORMATIVE DIGEST

Policy Statement Overview

The proposed changes to the regulations would require health insurers that contract with providers for alternative rates pursuant to Insurance Code section 10133 to file "access to care" documents demonstrating compliance with accessibility standards concerning the availability of primary care physicians, specialty care physicians, hospital care, and other specified health care services to ensure that covered persons have timely access to care including assuring continuity of care.

The Commissioner proposes to make changes to sections 2240, 2240.1, 2240.2, 2240.3, 2240.4, as well as add a new section 2240.5 to Title 10, Chapter 5, Sub-

chapter 2, Article 6 of the California Code of Regulations. The new section implements Insurance Code section 10133.5, which states in relevant part:

(a) The commissioner shall, on or before January 1, 2004, promulgate regulations applicable to health insurers which contract with providers for alternative rates pursuant to Section 10133 to ensure that insureds have the opportunity to access needed health care services in a timely manner.

(b) These regulations shall be designed to assure accessibility of provider services in a timely manner to individuals comprising the insured or contracted group, pursuant to benefits covered under the policy or contract. The regulations shall insure:

1. Adequacy of number and locations of institutional facilities and professional providers, and consultants in relationship to the size and location of the insured group and that the services offered are available at reasonable times.
2. Adequacy of number of professional providers, and license classifications of such providers, in relationship to the projected demands for services covered under the group policy or plan. The department shall consider the nature of the specialty in determining the adequacy of professional providers.
3. The policy or contract is not inconsistent with standards of good health care and clinically appropriate care.
4. All contracts including contracts with providers, and other persons furnishing services, or facilities shall be fair and reasonable.

(c) In developing standards under subdivision (a), the department shall also consider requirements under federal law; requirements under other state programs and law, including utilization review; and standards adopted by other states, national accrediting organizations and professional associations. The department shall further consider the accessibility to [sic] provider services in rural areas.

(d) In designing the regulations, the commissioner shall consider the regulations in Title 28, of the California Administrative Code of Regulations, commencing with Section 1300.67.2, which are applicable to Knox-Keene plans, and all other relevant guidelines in an effort to accomplish maximum accessibility within a cost efficient system of indemnification. The department shall consult with the Department of Managed Health

Care concerning regulations developed by that department pursuant to Section 1367.03 of the Health and Safety Code and shall seek public input from a wide range of interested parties.

The proposed changes to sections 2240, 2240.1, 2240.2, 2240.3, 2240.4, as well as the new section 2240.5 benefit the public as they require that insurers have plans in place to provide health care services within reasonable proximity to the business or residence of the covered person including accessible emergency health care services. The changes to the existing regulations will ensure that covered persons have accessibility criteria to rely on so that they will receive needed health care services within a reasonable timeframe, while not overburdening the plans or providers. The changes further benefit the public in that they require public disclosure of the complaints received and the resolution process for health access including that complaints may be made to the Consumer Services Division of the Department of Insurance. Providers are benefited in that insurers are to file their network provider contracts with the Department and these contracts must be fair, reasonable and nondiscriminatory as well as assure continuity of care.

Insurance Code section 510 is referenced in the proposed regulations as a disclosure framework and states: Whenever a policy of insurance specified in Section 660 or 675, a policy of life insurance as defined in Section 101, a policy of disability insurance as defined in Section 106, or a certificate of coverage as defined in Section 10270.6, is first issued to or delivered to a new insured or a new policyholder in this state, the insurer shall include a written disclosure containing the name, address, and toll-free telephone number of the unit within the Department of Insurance that deals with consumer affairs. The telephone number shall be the same as that provided to consumers under Section 12921.1. The disclosure shall be printed in large, boldface type. The disclosure shall also contain the address and customer service telephone number of the insurer, or the address and customer service telephone number of the agent or broker of record, or all of those addresses and telephone numbers. All addresses and telephone numbers for the insurer or the agent or broker of record shall be prominently displayed, in boldfaced type. The disclosure shall also contain a statement that the Department of Insurance should be contacted only after discussions with the insurer, or its agent or other representative, or both, have failed to produce a satisfactory resolution to the problem. If the policy or certificate was issued or delivered by an agent or broker, the disclosure shall specifically advise the insured to contact his or her agent or broker for assistance.

Insurance Code section 10176 is referenced in the proposed regulations and states in pertinent part: In dis-

ability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of those services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. The policy shall not prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2472, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

Insurance Code section 10133.56 is referenced in the proposed regulations as the standard for continuity of care and states:

(a) A health insurer that enters into a contract with a professional or institutional provider to provide services at alternative rates of payment pursuant to Section 10133 shall, at the request of an insured, arrange for the completion of covered services by a terminated provider, if the insured is undergoing a course of treatment for any of the following conditions:

(1) An acute condition. An acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a limited duration. Completion of covered services shall be provided for the duration of the acute condition.

(2) A serious chronic condition. A serious chronic condition is a medical condition due to a disease, illness, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over an extended period of time or requires ongoing treatment to maintain remission or prevent deterioration. Completion of covered services shall be provided for a period of time necessary to complete a course of treatment and to arrange for a safe transfer to another provider, as determined by the health insurer in consultation with the insured and the terminated provider and consistent with good professional practice. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.

- (3) A pregnancy. A pregnancy is the three trimesters of pregnancy and the immediate postpartum period. Completion of covered services shall be provided for the duration of the pregnancy.
- (4) A terminal illness. A terminal illness is an incurable or irreversible condition that has a high probability of causing death within one year or less. Completion of covered services shall be provided for the duration of a terminal illness, which may exceed 12 months from the contract termination date.
- (5) The care of a newborn child between birth and age 36 months. Completion of covered services under this paragraph shall not exceed 12 months from the contract termination date.
- (6) Performance of a surgery or other procedure that has been recommended and documented by the provider to occur within 180 days of the contract's termination date.
- (b) The insurer may require the terminated provider whose services are continued beyond the contract termination date pursuant to this section, to agree in writing to be subject to the same contractual terms and conditions that were imposed upon the provider prior to termination, including, but not limited to, credentialing, hospital privileging, utilization review, peer review, and quality assurance requirements. If the terminated provider does not agree to comply or does not comply with these contractual terms and conditions, the insurer is not required to continue the provider's services beyond the contract termination date.
- (c) Unless otherwise agreed upon between the terminated provider and the insurer or between the terminated provider and the provider group, the agreement shall be construed to require a rate and method of payment to the terminated provider, for the services rendered pursuant to this section, that are the same as the rate and method of payment for the same services while under contract with the insurer and at the time of termination. The provider shall accept the reimbursement as payment in full and shall not bill the insured for any amount in excess of the reimbursement rate, with the exception of copayments and deductibles pursuant to subdivision (e).
- (d) Notice as to the process by which an insured may request completion of covered services pursuant to this section shall be provided in any insurer evidence of coverage and disclosure form issued after March 31, 2004. An insurer shall provide a written copy of this information to its contracting providers and provider groups. An insurer shall also provide a copy to its insureds upon request.
- (e) The payment of copayments, deductibles, or other cost sharing components by the insured during the period of completion of covered services with a terminated provider shall be the same copayments, deductibles, or other cost sharing components that would be paid by the insured when receiving care from a provider currently contracting with the insurer.
- (f) If an insurer delegates the responsibility of complying with this section to its contracting entities, the insurer shall ensure that the requirements of this section are met.
- (g) For the purposes of this section:
- (1) "Provider" means a person who is a licensee as defined in Section 805 of the Business and Professions Code or a person licensed under Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code.
 - (2) "Terminated provider" means a provider whose contract to provide services to insureds is terminated or not renewed by the insurer or one of the insurer's contracting provider groups. A terminated provider is not a provider who voluntarily leaves the insurer or contracting provider group.
 - (3) "Provider group" includes a medical group, independent practice association, or any other similar organization.
- (h) This section shall not require an insurer or provider group to provide for the completion of covered services by a provider whose contract with the insurer or provider group has been terminated or not renewed for reasons relating to medical disciplinary cause or reason, as defined in paragraph (6) of subdivision (a) of Section 805 of the Business and Professions Code, or fraud or other criminal activity.
- (i) This section shall not require an insurer to cover services or provide benefits that are not otherwise covered under the terms and conditions of the insurer contract.
- (j) The provisions contained in this section are in addition to any other responsibilities of insurers to provide continuity of care pursuant to this chapter. Nothing in this section shall preclude an insurer from providing continuity of care beyond the requirements of this section.

Summary Of Existing Law, Effect Of Proposed Action

The existing regulations, implementing Insurance Code section 10133.5, (Cal. Code of Regs. Title 10 Sections 2240–2240.4.), were adopted before section 10133.5 was amended by AB 2179 and do not specifically apply to health insurers which contract with network providers for alternative rates pursuant to Insurance Code section 10133. The proposed changes to sections 2240, 2240.1, 2240.2, 2240.3, 2240.4, as well as the new section 2240.5 would comply with the requirement of section 10133.5 that the commissioner promulgate regulations as set forth in section 10133.5, and would do so in a manner consistent with the commissioner’s authority to regulate certain health insurers. The proposed regulation requires insurers subject to Insurance Code section 10133.5 to report publicly regarding complaints received, the effort undertaken to resolve those complaints and to demonstrate compliance with the access standards designed to ensure that all covered persons have timely access to care including assuring continuity of care.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

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

FISCAL IMPACT (COST OR SAVINGS TO ANY STATE OR LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING)

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

EFFECT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

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

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurance companies.

The Commissioner has not considered other proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

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

ASSESSMENT REGARDING EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State of California, and the expansion of businesses currently doing business within the State. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The Commissioner has determined that for insurance companies subject to the proposed regulations there is likely to be some cost impact, although it will most likely be minimal.

BUSINESS REPORT, FINDING OF NECESSITY

The proposed amendments to the regulations requires that insurance companies submit reports regard-

ing compliance with the Department's proposed network access standards, complaints received by insurers from enrollees regarding timely access to care and their efforts undertaken to resolve those complaints to the Department of Insurance. The Commissioner has found that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses. (Government Code sec. 11346.3(c).)

IMPACT ON SMALL BUSINESS

The proposed regulations directly affect insurers. Pursuant to Government Code section 11342.610(b)(2), insurers are not small businesses.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

AVAILABILITY OF EXPRESS TERMS (TEXT OF REGULATIONS), INITIAL STATEMENT OF REASONS, AND RULEMAKING FILE

A copy of the express terms of the proposed amendments to the regulations are available, and will be made available for inspection and copying upon request to the contact persons listed above.

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed regulations. The Initial Statement of Reasons will be made available for inspection and copying upon request to the contact persons listed above.

The rulemaking file for this proceeding, which includes a copy of the express terms of the proposed amendments to the regulation, the Initial Statement of Reasons, all the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action, is available for inspection and copying at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday by prior appointment with the contact persons listed above.

15-DAY AVAILABILITY OF CHANGED OR MODIFIED TEXT

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, the full text of the regulation changed pursuant to Government Code section 11346.8 will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact persons listed above.

FINAL STATEMENT OF REASONS

Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact persons listed above.

INTERNET ACCESS

Documents concerning this proceeding will be available on the Department's website. The documents will include the proposed regulations, the Notice of Hearing and Informative Digest, the Initial Statement of Reasons, and, when it has been prepared, the Final Statement of Reasons. To access documents concerning this proceeding, go to <http://www.insurance.ca.gov>. Find the link "QUICK LINKS" in blue on the left of the screen. Click on the arrow next to "QUICK LINKS," then click on "Legal Information" in the drop-down menu. In the "Legal Information" screen, click on the "Proposed Regulations" link in the center of the screen. A new screen will open titled "Search or Browse for Documents for Proposed Regulations." In the search field under "How to Search" enter 'RH05043720' (the Department's regulation file number for these amended regulations), and click "submit."

AUTOMATIC MAILING

A copy of the proposed regulations and this Notice (including the Informative Digest, which contains the general substance of the proposed regulations) will automatically be sent to all persons on the Insurance Commissioner's mailing list.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to Government Code Section 11346.45, the Department mailed an Invitation to Prenote Public Discussions to a number of insurer representatives.

Subsequently, on April 5, 2005 the Department held a one-day workshop in order to receive comments on the proposed regulation. Input from workshop participants was taken into account in the formulation of the proposed regulation.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

NOTICE OF PROPOSED REGULATORY ACTION

Electronic Weapons Instructor Course Requirement and Course Content Regulations 1070 and 1082

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations. This proposal is made pursuant to the authority vested by Penal Code sections 13503 (powers of the Commission on POST) and 13506 (Commission on POST authority to adopt regulations). Implementation of this proposal will interpret, implement, and make specific Penal Code section 13503(e) (Commission on POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses).

Public Comments Due by January 8, 2007

The Commission hereby requests written comments on the proposed actions. POST must receive all written comments no later than 5:00 p.m. on January 8, 2007. Please direct any written comments to Kenneth J. O'Brien, Executive Director, Commission on POST, 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, or by fax at 916.227.2801.

A public hearing is not scheduled. Pursuant to Government Code Section 11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request for a public hearing no later than 15 days prior to the close of the public comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

POST maintains an expectation that persons who instruct in certain specialized training courses should complete a POST-certified instructor development course on the related subject. Since July 1, 2002, POST has regulated a growing number of specialized subject

areas that include baton/impact weapons, chemical agents, and firearms training.

Use of force experts agree, both in conjunction with POST and independently on a national level, that electronic weapons represent a specialized subject area. Because of the controversies surrounding electronic weapons and the fact that the majority of agencies are now equipped with electronic weapons, POST staff (in conjunction with subject matter experts) developed a proposal to set minimum standards for electronic weapons operator training courses, rather than wait for legislation to be passed. The Commission on POST unanimously adopted minimum hours and curriculum requirements for electronic-weapons operator training courses at its October 27, 2005 meeting. The adopted training course appears in Regulation 1084 (a).

POST believes it is prudent to establish minimum content requirements through a specialized instructor-training requirement for electronic weapons instructor training. This will ensure focused attention, standardize instructor training, and distinguish electronic weapons from flash bangs, beanbag rounds, PepperBall® launchers, and other "less lethal" devices.

Therefore, POST proposes to adopt instructor standards for teaching the standardized electronic weapons courses. Subject matter experts (SMEs) determined the course topics and a 16-hour course duration as the minimum time needed for the course. In developing the proposed minimum content requirements, the SMEs considered relevant materials and publications. These included the PERF (Police Executive Research Forum) CED (conducted energy device) guidelines, the IACP (International Association of Chiefs of Police) Training Key #575 (Electronic Control Weapons: Update), manufacturer recommendations, and an analysis of existing electronic weapons instructor training courses (non-certified; developed/presented by vendors). Training presenters support the minimum training standards and content requirements for Electronic Weapons Course instructors, as reflected in the guidelines drafted by the POST Electronic Weapons Instructors Subject Matter Experts Committee in November 28-29, 2005.

Specifically, Regulations 1070(b) and 1082(d) are modified to specify that instructors of electronic weapons must complete the Electronic Weapons Instructor course, and to specify the course hours and minimum curriculum content. POST is also proposing non-substantive changes to Regulation 1082(d), deleting the numbering of course titles and thus simplifying the process when POST adds a new course title, and making changes to either correct or improve existing grammar and punctuation.

At its April 2006 meeting, the Commission approved proposed amendments that would require standardized instructor training prior to teaching electronic weapons

in POST courses. Electronic weapons instructor training would be mandatory for all instructors of electronic weapons in POST-certified courses. The proposed minimum content requirements will ensure that instructor training addresses all critical issues and will standardize electronic weapons instructor training via minimum hours and standardized curriculum topics.

Adoption of Proposed Regulations

Following the close of the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or the Commission may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date of adoption, it will make available the text of any modified language, clearly indicated, at least 15 days before adoption, to all persons whose comments POST received during the public comment period, and to all persons who request notification from POST of the availability of such changes. Please address requests for the modified text to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date on which the revised text becomes available.

Text of Proposal, Rulemaking File, and Internet Access

The following information regarding the proposed regulatory action is available on the POST website at <http://www.post.ca.gov/RegulationNotices/RegulationNotices.asp>:

- POST bulletin and Notice of Proposed Regulatory Action
- Text of Proposed Regulatory Action
- Initial Statement of Reasons.

Anyone who does not have Internet access may request a copy of the above documents by calling 916.227.4847 or by submitting a written request to the contact person listed below. Please refer to POST Bulletin 2006-19. The rulemaking file, which contains the above-mentioned documents and all information upon which POST is basing this proposal, will be available for inspection during the Commission’s normal business hours (Monday through Friday, 8: a.m. to 5 p.m.).

The Final Statement of Reasons will be prepared after the close of the public comment period. To request a copy, contact POST at the above telephone number, write to the address under Contact Persons at the end of this notice, or view the document on the POST Internet website at the address cited above.

Estimate of Economic Impact

- Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- Non-Discretionary Costs/Savings to Local Agencies: None
- Local Mandate: None
- Costs to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None
- Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will have no effect on California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.
- Cost Impacts on Representative Private Persons or Businesses: The Commission on Peace Officer Standards and Training is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulation would have no effect on housing costs.

Assessment

The adoption of the proposed regulation amendments will neither create nor eliminate jobs in the state of California, and will not result in the elimination of existing businesses or create or expand businesses in the State of California.

Consideration of Alternatives

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to effected private persons than the proposed action.

Contact Persons

Please direct any inquiries or comments pertaining to the proposed action by mail to Patricia Cassidy, Com-

mission on POST, 1601 Alhambra Boulevard, Sacramento, CA, 95816-7083, by telephone at 916.227.4847, by FAX at 916.227.5271, or by email at Pat.Cassidy@post.ca.gov. The back-up contact person is Senior Consultant Bryon Gustafson. He is available by telephone at 916.227.3902 or by email at Bryon.Gustafson@post.ca.gov.

TITLE 15. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE IS HEREBY GIVEN that the California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (DJJ) adopted Sections 4034.0, 4034.1, 4034.2, 4034.3, and 4034.4 and repealed Sections 4036.0 and 4040.0 of Title 15, Division 4, Article 3, of the California Code of Regulations (CCR) pertaining to force used by Correctional Peace Officers as an emergency action that became effective on August 11, 2006. The DJJ proposes to continue the adopted regulations and to complete the regulatory process by submission of a Certificate of Compliance no later than January 17, 2007.

Notice is also given that any interested person may present statements or arguments in writing relevant to the proposed action at a hearing to be held at 12:00 p.m. on Monday, January 8, 2007 at the Division of Juvenile Justice, 4241 Williamsborough Drive, Suite 216, Sacramento, California, 95823. Written statements will be accepted until 5:00 p.m. January 8, 2007.

After considering all timely and relevant comments received, the DJJ, upon its own motion, may adopt the proposal substantially as set forth above without further notice.

If the regulation text is modified by the DJJ and the changes are sufficiently related to the originally proposed action, the DJJ will make the modified text available (with the changes clearly indicated) to the public for at least 15 days prior to adopting the amended regulations. The DJJ will accept written comments pertaining to only the modified text during the 15-day period prior to adoption of the revised text. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice.

AUTHORITY

Welfare and Institutions (W & I) Code Section 1712 assigns responsibility to the CDCR, DJJ to make and enforce all rules appropriate to the proper accomplishment of the functions of the DJJ. Authority cited: Sec-

tions 1712 and 1752, W & I Code; Section 830.5, California Penal Code.

REFERENCE

This action is proposed to implement, interpret, and/or make specific Section 1752 of the W & I Code; Sections 147, 149, 830.5, 835, and 843 of the California Penal Code; Article I, Section 17, of the California Constitution; and Bill of Rights, Amendment VIII, United States Constitution.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1004 of the W & I Code establishes that the DJJ shall have charge of the persons committed to or confined in DJJ institutions and shall provide for their care, supervision, education, training, employment, discipline, and government. The DJJ shall exercise its powers toward the correction of their faults, the development of their characters, and the promotion of their welfare.

Section 1712(b) of the W & I Code states that commencing July 1, 2005, the Secretary is authorized to make and enforce all rules appropriate to the proper accomplishment of the functions of the DJJ, Division of Juvenile Programs, and Division of Juvenile Parole Operations.

In November 2004, the Superior Court of California in *Farrell v. Allen* (now Tilton), county of Alameda, Case No. RG 03079344, issued orders in a Consent Decree under which the DJJ agreed to develop and implement a comprehensive remedial plan that would reduce violence and the need for the use of force within the DJJ. In addition to this provision, the Consent Decree required the DJJ to implement, by December 15, 2004, new policies and procedures to eliminate use of room extractions and chemical agents.

The DJJ issued a Temporary Departmental Order (TDO # 05-36) effective December 1, 2005 that generally incorporated the elements the parties had agreed would be included in written policy.

Current DJJ regulations pertaining to the use of force do not sufficiently provide employees with clear guidelines and are not consistent with policies the DJJ has implemented in an effort to comply with the court order specified in the *Farrell vs. Allen* Consent Decree.

Existing Section 4040.0, Article 3, Title 15 of the California Code of Regulations (CCR) pertains to the use of restraining devices on wards for security purposes in parole and institutional operations. Subsection (b) states that only reasonable and necessary force shall be used but does not define what is meant by "reasonable" or "necessary". Therefore, the DJJ believes Sec-

tion 4040.0 should be repealed and proposes to adopt new regulations that are consistent with the orders issued by the court.

Section 298.1(c)(1)(A) of the Penal Code defines the term “use of reasonable force” as the force that an objective, trained and competent correctional employee, faced with similar facts and circumstances, would consider necessary and reasonable to gain compliance. Although Section 298.1 pertains to the refusal or failure to give a blood specimen, saliva sample, or thumb or palm print impression which are mandated by law, the DJJ believes this is a standard definition used throughout law enforcement as well as the Commission on Peace Officer Standards and Training and proposes to adopt the definition as a standard definition that shall apply to the use of force under all circumstances.

The proposed regulations are intended to specify and identify the circumstances as well as the amount of force that an objective, trained, and competent Correctional Peace Officer, faced with similar facts and circumstances, would consider necessary and reasonable, as prescribed by the Commission on Peace Officer Standards and Training, to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order. The proposed regulations are also intended to establish supervision, monitoring, and evaluation of force deployment.

The specific purpose of adopting Section 4034.0 is to establish a Use of Force Policy under which the DJJ shall operate. The proposed regulations specify force shall be used only when reasonably necessary to subdue an attacker, overcome resistance, effect custody, or to gain compliance with a lawful order. At no time shall any DJJ staff use force against a ward for punishment, retaliation, or discipline.

The specific purpose of adopting Section 4034.1 is to define the terms “reasonable force”, “unnecessary force”, “excessive force”, “non–deadly force”, “great bodily injury” and “deadly force” as they apply to force used by DJJ staff to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.

The specific purpose of adopting Section 4034.2 is to establish “use of force options”, and the proper use there of, available to DJJ staff. The proposed regulations define use of force options as the choices available to an employee when selecting a reasonable force option. The choices include but are not limited to: dialogue or verbal persuasion, chemical agents, physical strengths and holds, mechanical restraints, less–lethal weapons, and firearms. Employees may use reasonable force as required in the performance of their duties, but unnecessary or excessive force shall not be used. If staff, at any point, determines the situation can be resolved without any further use of force, staff shall ter-

minate the use of force. Section 1700 of the W & I Code establishes that community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses. It shall be the policy of the DJJ to accomplish the educational, treatment and supervision functions with minimal reliance on the use of force.

The specific purpose of adopting Section 4034.3 is to establish a reporting and monitoring process pertaining to any force used by Correctional Peace Officers or witnessed by staff employed by the DJJ. The proposed regulations require an employee who uses or observes force greater than verbal persuasion to document the incident by preparing and submitting the appropriate forms to his or her on–duty supervisor. The proposed regulation also establishes an Institutional Force Review Committee and a Regional Parole Force Review Committee that shall be tasked with evaluating and monitoring all use–of–force incidents to determine their appropriateness.

The purpose of adopting Section 4034.4 is to establish the use of mechanical restraints, and under what circumstances and how they shall or shall not be used. The proposed regulations permit the use of divisionally approved mechanical restraints under certain circumstances when used in a manner consistent with the manufacturer’s instructions and DJJ policies and procedures.

The DJJ is also proposing to repeal existing Section 4036 pertaining to training requirements prior to the use of non–lethal chemical agents. Training of Correctional Peace Officers is accomplished through the Commission on Peace Officer Standards and Training. Use of chemical agents will be addressed through the regular rule making process at a later time.

These regulatory amendments are necessary in order for the DJJ to comply with the courts’ order. Providing clear guidelines to DJJ staff in the use of force is critical. Failure by the DJJ to make specific “use of force” regulations increases the risk of violence and will continue to result in serious injuries and/or even the death of wards, parolees, and/or staff.

LOCAL MANDATES

The DJJ has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- No cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630.

- No cost or savings to any state agency.
- No other non-discretionary cost or savings imposed on local agencies.
- No cost or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

The DJJ has made an initial determination that the proposed actions will have no significant affect on housing costs.

EFFECT ON BUSINESS

The DJJ has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

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

ASSESSMENT

The DJJ has made an assessment that the proposed amendments to the regulations would 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.

ALTERNATIVES CONSIDERED

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

EFFECT ON SMALL BUSINESS

The DJJ has determined that the proposed amendments will not affect small businesses. This is due to the fact that the proposed amendments apply only to Correctional Peace Officers employed by the DJJ and youth under the jurisdiction of the DJJ.

CONTACT

Written comments and inquiries about the initial statement of reasons, proposed actions, or location of the rulemaking file should be directed to Sonja Dame, Division of Juvenile Justice, 4241 Williamsborough Drive, Sacramento, California, 95823, (916) 262-3178, FAX (916) 262-2608, E-mail: sdame@cya.ca.gov. Questions regarding the substance of the proposed regulations should be directed to Jeff Plunkett at (916) 262-1542.

In the event the contact persons are not available, inquiries may be directed to the following backup contact at the same address as noted above: Asami Dunahoo, (916) 262-1550.

INTERNET ACCESS

Materials regarding this proposed regulatory action can be accessed from the DJJ's website at http://www.coor.ca.gov/BudgetRegs/reg_action.html.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DJJ has prepared and will make available the initial statement of reasons and the proposed text of the regulations. All documents pertaining to this regulatory action, including the express terms of this proposed action and all information on which the proposal is based, are available to the public upon request from the agency contact person indicated within this notice.

In addition, once completed, the final Statement of Reasons will be available upon request from the agency contact person indicated within this notice and posted at the above DJJ website.

TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

ALTERNATIVE MANAGEMENT STANDARDS FOR TREATED WOOD WASTE

Department Reference Number: R-2005-04

**Office of Administrative Law Notice
File Number: Z-06-1113-01**

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend California Code of Regulations, title 22, divi-

sion 4.5, chapter 11, article 5, Appendix XII, and to add title 22, California Code of Regulations, sections 66261.9.5, and 67386.1 through 67386.11.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

A written comment period has been established, commencing on November 24, 2006, and closing on January 8, 2007. DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on January 8, 2007 in the Byron Sher Auditorium, 2nd Floor, 1001 "I" Street, Sacramento, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on January 8, 2007 will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

Due to enhanced security precautions at the Cal/EPA Headquarters Building located at 1001 I Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building's public entrance. Depending on their destination and the building security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

If you have special accommodation or language needs, please contact Ms. Nicole Sotak, Chief, Environmental Analysis and Regulations Section, at (916) 327-4508 or by e-mail at regs@dtsc.ca.gov by January 4, 2007. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

In accordance with the California Government Code and Americans with Disabilities Act requirements, this publication can be made available in Braille, large print, computer disk, or tape cassette as a disability-related reasonable accommodation for an individual with a disability. To discuss how to receive a copy of this publica-

tion in an alternative format, please contact Mr. Adrian Recio at (916) 324-3095 or by e-mail at arecio@dtsc.ca.gov.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Health and Safety Code section 25150. This section grants DTSC authority to adopt standards dealing with the management of hazardous waste.

Health and Safety Code section 25150.7. This section directs DTSC to adopt regulations establishing management standards for treated wood waste as an alternative to the requirements specified in chapter 6.5 of the California Health and Safety Code and title 22, division 4.5 of the California Code of Regulations (general hazardous waste regulations).

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.

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

Health and Safety Code section 25150.7 and 25150.8 and Section 13173 of the California Water Code.

There are no comparable federal regulations for the types of treated wood waste addressed by these proposed regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law

Current State law establishes streamlined interim management standards for managing treated wood waste (TWW) that is also a hazardous waste. The interim management standards found in Health and Safety Code section 25150.7(e) remain in effect until January 1, 2007. To allow expeditious management of TWW after that date, the legislature directed DTSC to adopt in regulations, by January 1, 2007, permanent alternative management standards to replace the interim statutory standards to allow for the continued management of treated wood waste under streamlined standards.

Generally, the Health and Safety Code section 25150.7:

- Defines treated wood waste
- Limits the alternative management standards to treated wood waste that is hazardous only due to the wood treatment chemicals. That is, the wood cannot be identified as hazardous waste for other constituents that were applied to the wood such as lead from paint.
- Limits the alternative management standards to treated wood waste that is not regulated under the

federal hazardous waste control law, Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 U.S.C. Sec. 6901 et seq.). Thus, these regulations must be limited to “non-RCRA hazardous waste.”

- Excludes waste utility generated treated wood waste that is subject to Health and Safety Code section 25143.1.5 from the requirements of 25150.7 and these proposed regulations.
- Allows treated wood waste to be disposed at a hazardous waste landfill or non-hazardous waste landfills that meet modern liner and leachate collection system requirements and that have waste discharge requirements (permits issued by the Regional Water Quality Control Boards) that allow acceptance of treated wood waste or designated waste. Note that the statute requires that these proposed regulations continue to allow disposal at these facilities.
- Prohibits disposal outside of the landfills referred to above, burning of treated wood waste, scavenging of treated wood waste, and reclamation and reuse that is not consistent with the State’s hazardous waste recycling laws.
- Establishes labeling requirements for labels that must be provided to treated wood retailers and wholesalers.
- Requires the treated wood industry to make proper handling and disposal information available to specified persons using treated wood.
- Directs DTSC, in consultation with the California Integrated Waste Management Board, the State Water Resources Control Board, and the Office of Environmental Health Hazard Assessment, to adopt permanent regulatory alternative management standards as necessary for safe management of treated wood waste. It also specifies certain provisions for the management standards.
- Cancels any pre-existing variances for treated wood waste.
- Allows the regulated community to choose to comply with either the general hazardous waste control law or the alternative management standards for managing their treated wood waste.

Health and Safety Code section 25150.8, states that treated wood waste is no longer a hazardous waste when it is accepted by a non-hazardous landfill qualified to dispose of treated wood waste.

Existing treated wood waste alternative management standards (Health & Safe. Code § 25150.7(d) – (e)):

- The landfill that accepts treated wood waste must comply with the following standards:

- Prevent scavenging of treated wood waste.
- Ensure that management of the treated wood waste at the landfill complies with Chapter 6.5 of the Health and Safety Code as modified by these regulations.
- Ceases to accept treated wood waste if monitoring reveals a release in the treated wood waste disposal portion of the landfill. The landfill may re-commence accepting treated wood waste if corrective action eliminates the release.
- Generators, transporters, and intermediate handling facilities must comply with the following standards:
 - Prevent scavenging of treated wood waste.
 - Not store for more than 90 days.
 - Store in a manner that is protected from run-on and run-off, on a surface that is sufficiently impervious to prevent contact with the ground and leaching of treated wood waste constituents to the soil or water.
 - Not mix with other wood waste prior to disposal.
 - Comply with the California Occupational Safety and Health Administration (Cal/OSHA) statutes and regulations relating to hazardous waste.

Required provisions in the treated wood waste regulations (Health & Safe. Code § 25150.7(g)(2) et seq.):

- The regulations must ensure that treated wood waste is properly stored, treated, transported, tracked, disposed of, and otherwise managed so as to prevent, to the extent practical, releases of hazardous constituents to the environment, prevent scavenging, and prevent harmful exposure of people, including workers and children, aquatic life, and animals to hazardous chemical constituents of the treated wood waste.
- Treated wood waste is reused only for purposes for which the treatment chemical is contemporaneously registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).
- Treated wood waste is managed in compliance with all applicable laws.
- Any size reduction (cutting, splitting, etc.) is conducted in a manner that prevents release of hazardous constituents to the environment and complies with Cal/OSHA rules. All sawdust and fragments of treated wood waste generated during size reduction must be captured and managed as treated wood waste.

- Training requirements must ensure that all employees involved in the acceptance, storage, transport, and other management of treated wood waste are trained in the safe and legal management of treated wood waste, including, but not limited to, procedures for identifying and segregating treated wood waste.

Required provisions to be excluded in these the treated wood waste regulations (Health and Safe. Code § 25150.7(g)(2) et seq.):

DTSC is prohibited from adopting regulations that:

- Impose a requirement as an addition to, rather than as an alternative to, one or more of the requirements of Health and Safety Code, division 20, chapter 6.5.
- Would supersede the statutes allowance to dispose of treated wood waste in qualified non-hazardous waste landfills.
- Would supersede any other provision of this chapter that provides a conditional or unconditional exclusion, exemption, or exception to a requirement of this chapter or the regulations adopted pursuant to this chapter, except the department may adopt a regulation pursuant to this subdivision that provides an alternative condition for a requirement specified in this chapter for an exclusion, exemption, or exception and that allows an affected person to choose between complying with the requirements specified in this chapter or complying with the alternative conditions set forth in the regulation.

Current federal law addresses only treated wood waste that is regulated as a “RCRA hazardous waste” as defined in Health and Safety Code section 25120.2. It requires management of treated wood waste that is a RCRA hazardous waste to comply with the general management standards for hazardous waste. The universe of treated wood waste that is addressed by these regulations is classified as “non-RCRA hazardous wastes” and is not subject to regulation as a hazardous waste under federal law.

Policy Statement Overview

Broad Objectives: Satisfy the mandate of Health and Safety Code section 25150.7(g) to adopt regulations specifying alternative management standards for non-RCRA treated wood waste.

Specific Objectives: DTSC recognizes the following secondary objectives for adopting these regulations:

- Conform the regulatory requirements for managing treated wood waste to the temporary statutory requirements to the extent that experience with implementation of those standards shows them to be both necessary and

sufficient for protection of human health and the environment.

- Apply the least amount of regulatory burden to managing treated wood waste that is consistent with the provisions of Health and Safety Code section 25150.7 and protection of human health and the environment.
- Apply performance standards in lieu of detailed prescriptive standards to the maximum extent possible.

Proposed Regulations

The proposed regulations would establish permanent streamlined management standards for treated wood waste with which the regulated community may comply in place of the general hazardous waste control laws. They apply only to treated wood waste that is identified as a hazardous waste under State law but is not regulated as a hazardous waste under federal law; thus, these standards have no federal counterpart. These streamlined management standards generally mirror the interim statutory alternative management standards in Health and Safety Code section 25150.7(e). The proposed regulatory standards:

- Add new language to existing regulations that redirects treated wood waste handlers to Chapter 34 Alternative Management Standard for Treated Wood Waste.
- Add a new waste code for treated wood waste to the list of State waste codes.
- Exclude from the scope of these proposed regulations treated wood waste that is:
 - Addressed by Health and Safety Code section 25143.1.5.
 - Hazardous for reasons other than or in addition to the wood treatment chemicals (for instance, lead-based paint).
 - Burned, recycled, reused, or reclaimed unless those activities are in compliance with the general standards of the hazardous waste control law.
 - Reused for a use that is not within the registered use for the treatment chemical under the FIFRA and its implementing regulations.
 - Intended to be burned.
- Prohibit specified activities such as burning, scavenging, mixing with other wastes prior to disposal, storage on the ground, and disposal to land outside of a qualified landfill, and removal, destruction, obliteration, or defacing of any identifying mark or label that identified the material as treated wood waste.

- Define terms necessary for implementation to these regulations.
- Establish labeling requirements and exemptions from labeling requirements.
- Establish requirements for storing treated wood waste including:
 - Access control.
 - Storage under tarps.
 - Storage in containers.
 - Storage in buildings.
 - Storage on a containment pad.
 - A performance standard for other types of storage.
 - Accumulation time limits.
 - Training requirements for employees handling treated wood waste.
 - Exemptions for household generated treated wood waste and short term accumulation at the site of generation.
- Establish requirements for off site shipments of treated wood waste including:
 - The consignee must agree to accept the shipment.
 - Authority to ship to an off site temporary accumulation area if the treated wood waste is transported by the generator, the generator's employees, or the generator's agent and the shipment uses a shipping paper containing specified information and the treated wood waste handler retains that document for three years.
 - A prohibition on transportation in a manner that fails to prevent unauthorized access; loss, dispersion, and leaching of TWW; protect the TWW from precipitation; and, under conditions normally incidental to transportation, prevent release of TWW to the environment.
- Establish standards for tracking treated wood waste from the generation or accumulation site, receipt of treated wood waste, and reporting of receipt of shipments. Additionally, the regulations direct DTSC to make the reports publicly available and require treated wood waste handlers to retain records. Households are exempted from recordkeeping requirements.
- Require significant (>10,000 lbs/year) generators of treated wood waste to obtain a hazardous waste identification number and to notify DTSC of exceeding that quantity limit.
- Establish authority and standards for specified treatment of treated wood waste including:
 - Allowing resizing for transportation under specified conditions.
 - Requiring protective handling of resized treated wood waste and sawdust.
 - Training of employees involved in resizing treated wood waste.
- Establish standards for disposing of treated wood waste. These standards conform to the statutory requirement that disposal in non-hazardous waste landfills continue under the same conditions under these regulations.

CALIFORNIA ENVIRONMENTAL QUALITY
ACT (CEQA) COMPLIANCE

DTSC has prepared an Initial Study and a draft Negative Declaration which indicates no significant effect from the project on the environment. These documents are being noticed and circulated for comment pursuant to the requirements of the CEQA Guidelines. The CEQA Notice and draft CEQA documents are posted on the DTSC Internet site at <http://www.dtsc.ca.gov/LawsRegsPolicies/Regs/TWW.cfm> or may be obtained from Ms. Nicole Sotak, of DTSC's Environmental Analysis and Regulations Section as specified below. Comments regarding the CEQA notice will be accepted until December 4, 2006.

PEER REVIEW

Under the provisions of Health and Safety Code section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard or other requirement subject to scientific peer review.

BUSINESS REPORT

Proposed section 67386.8 would require certain solid waste facilities that accept treated wood waste to submit semi-annual reports of treated wood waste accepted at the facility to DTSC. It is a discretionary decision for a solid waste facility to decide if they will accept treated wood waste. If a solid waste facility chooses to accept this waste, in lieu of a hazardous waste facility permit, a semi-annual report pursuant to section 67386.8 is required. The additional business resulting from volume of this additional waste stream should offset the cost of reporting. Information needed is specified and the facility is directed to report electronically, a simpler and more efficient medium for reporting. Furthermore, this reporting requirement will provide data needed to complete the report Health and Safety Code section 25150.7(k) requires DTSC to prepare, by June 2011, regarding the successful compliance and implementation of this regulation. DTSC finds that reporting treated

wood waste received is necessary for the health, safety, or welfare of the people of California.

Proposed section 67386.9 would require the largest generators of treated wood waste to obtain an identification number and to notify DTSC that their generation of treated wood waste has exceeded 10,000 lbs in the calendar year. DTSC will use the EPA Identification Numbers and generator notifications to track large TWW shipments that represent the greatest risk to human health and the environment. DTSC finds that requiring ID numbers and notification from the largest treated wood waste generators is necessary for the health, safety, or welfare of the people of California.

FISCAL IMPACT ESTIMATES

Mandates on Local Agencies and School Districts: DTSC has made a preliminary determination that adoption of these regulations will create no new local mandates.

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: DTSC has made a preliminary determination that adoption of these regulations 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 to local agencies. There is a potential savings to the local agencies of about \$1,300,000.

Cost or Savings to Any State Agency: There is a potential savings to State agencies of \$910,000 per year, some of which will be offset by resources necessary to train staff on new regulations.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on Federal revenue or costs.

Effect on Housing Costs: DTSC has made an initial determination that there will be no impact on housing costs.

Cost Impacts on Representative Private Persons or Businesses:

DTSC has made an initial determination that the adoption of this regulation will save California businesses significant amounts of money when compared with the regulatory requirements that would come back into effect on January 1, 2007. This regulation offers alternative management standards for TWW that are less onerous and less expensive than existing hazardous waste requirements. DTSC estimates that savings would average about \$200 for households and about \$800 for businesses due to reduced transportation and disposal costs. DTSC has considered proposed alternatives that would lessen any adverse economic impact on

business and invites interested persons to submit proposals. Submissions may include the following considerations:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
2. Consolidation or simplification of compliance and reporting requirements for businesses.
3. The use of performance standards rather than prescriptive standards.
4. Exemption or partial exemption from the regulatory requirements for businesses.

Significant Statewide Adverse Economic Impact on Businesses:

DTSC has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

- (A) **Creation or elimination of jobs within California** — DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations.
- (B) **Creation of new businesses or the elimination of existing businesses within California** — DTSC has made a preliminary determination that no businesses will be created or eliminated in California as a result of the proposed regulations.
- (C) **Expansion of businesses currently doing business in California** — DTSC has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

Effect on Small Businesses:

DTSC has determined that provisions of this rule-making may have an effect on small businesses. Adoption of these regulations will save California small businesses that generate treated wood waste significant amounts of money when compared with the regulatory requirements that would otherwise come back into effect on January 1, 2007.

CONSIDERATION OF ALTERNATIVES

Alternatives available for consideration were severely limited by the prescriptive directives provided in the statutory language. Health and Safety Code section 25150.7(g)(2) directed DTSC to incorporate a list of specific controls.

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective.

tive in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

**AVAILABILITY OF TEXT OF REGULATIONS
AND STATEMENT OF REASONS**

Copies of the Notice, Initial Statement of Reasons and the text of the proposed regulations are posted to DTSC's Internet site at <http://www.dtsc.ca.gov> or may be obtained from Ms. Nicole Sotak of DTSC's Environmental Analysis and Regulations Section as specified below. The information upon which DTSC relied is also available at the address listed below.

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified 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 these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once 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 Ms. Nicole Sotak 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>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Mr. William Beckman of DTSC at (916) 324-8293 or, if unavailable, Ms. Evelia Rodriguez of DTSC at (916) 322-3810. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding the rulemaking and/or supporting documents 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. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please visit <http://www.calepa.ca.gov/Listservs/dtsc/>

and subscribe to the applicable Listserv. You may also leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

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

Ms. Nicole Sotak, Chief
Environmental Analysis and
Regulations Section
Department of Toxic Substances
Control

Mailing Address: P.O. Box 806
Sacramento, CA 95812-0806

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

Fax Number: (916) 323-3215

Ms. Sotak's phone number is (916) 327-4508. If Ms. Sotak is unavailable, please call Mr. James McRitchie at (916) 327-8642.

**TITLE 22. CALIFORNIA HEALTH AND
HUMAN SERVICES AGENCY**

**NOTICE OF INTENTION TO AMEND THE
CONFLICT OF INTEREST CODE OF THE
CALIFORNIA HEALTH AND HUMAN SERVICES
AGENCY (INCLUDING THE CALIFORNIA
OFFICE OF HIPAA IMPLEMENTATION AND
THE OFFICE OF SYSTEMS INTEGRATION)**

Amendment of Conflict of Interest Code
Section 10100, Title 22, California Code
of Regulations

NOTICE IS HEREBY GIVEN that the California Health and Human Services Agency (including the California Office Of HIPAA Implementation and the Office of Systems Integration), hereinafter referred to collectively as the "Agency", pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its Conflict of Interest Code. The purpose of these amendments is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

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

This Agency's amendment to the 10100 Introduction and 10101 Appendix of the Conflict of Interest Code for the Health and Human Services Agency defines Con-

flict of Interest Code terms and designates employee positions as to their respective disclosure category and makes other technical changes to reflect the current organizational structure of the Agency. Copies of the amended Conflict of Interest Code are available and may be requested from Stephen Stuart (contact information below).

Any interested person may submit written statements, arguments, or comments relating to the proposed amendments by submitting them in writing no later than December 18, 2006 (the last day of 45-day review period), or at the conclusion of the public hearing, if requested, whichever comes later, to Stephen Stuart.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than December 1, 2006, 15 days before close of the written comment period, by contacting Stephen Stuart.

The Agency has prepared a written explanation of the reasons for the proposed amendments and has available the information on which the amendments are based. Copies of the proposed amendments, the written explanation of the reasons, and the information on which the amendments are based may be obtained by contacting Stephen Stuart at (916) 651-8062 or write to him at the address shown below.

The Agency has determined that the proposed amendments:

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

In making these proposed amendments, the Agency must determine that no alternative considered by the agency would be more effective in carrying out the purposes for which the amendments are proposed or would be as effective and less burdensome to affected persons than the proposed amendments.

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

Stephen Stuart
Sen. Staff Counsel
Office of HIPAA Implementation
1600 Ninth Street, Rm. 460
(916) 651-8062
sstuart@ohi.ca.gov

**TITLE 24. CALIFORNIA STATE
BUILDING STANDARDS COMMISSION**

**NOTICE OF PROPOSED CHANGES
TO
BUILDING STANDARDS
OF THE
CALIFORNIA BUILDING STANDARDS
COMMISSION**

**REGARDING THE CALIFORNIA BUILDING
STANDARDS CODE
CALIFORNIA CODE OF REGULATIONS,
TITLE 24**

Notice is hereby given that the California Building Standards Commission proposes to adopt, amend, repeal, approve, codify, and publish building standards proposed and submitted for the 2006 Annual Code Adoption Cycle of the California Building Standards Code (California Code of Regulations [CCR], Title 24). The California Building Standards Code is comprised of Part 1 (California Building Standards Administrative Code), Part 2 (California Building Code), Part 3 (California Electrical Code), Part 4 (California Mechanical Code), Part 5 (California Plumbing Code), Part 6 (California Energy Code), Part 7 (California Elevator Safety Construction Code), Part 8 (California Historical Building Code), Part 9 (California Fire Code), Part 10 (California Code for Building Conservation), and Part 12 (California Referenced Standards Code).

The building standards being proposed by the California Building Standards Commission, Department of Housing and Community Development, Division of the State Architect, Office of Statewide Health Planning and Development, and the Office of the State Fire Marshal are for incorporation into CCR, Title 24, Parts 1, 2, 3, 4, 5, 9, 10 and 12.

This notice concerns Part 5 of CCR, Title 24 as proposed by the agencies listed below. Summaries of the proposed actions and their impacts are listed by proposing agency in the appendix portion of this notice, as follows:

- | | |
|------------|---|
| Appendix A | California Building Standards Commission (CBSC) |
| Appendix B | Department of Housing and |

Appendix C Community Development (HCD)
Division of the State Architect,
Structural Safety Division (DSA SS)

WRITTEN COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from November 24, 2006 until 5:00 p.m. on January 8, 2007. Comments may be made using the form on CBSC's web site at www.bsc.ca.gov/ and either mailed or faxed to:

California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Attention: Thomas L. Morrison, Deputy Executive Director

Written comments may be faxed to (916) 263-0959 or emailed to [CBSC@dgs.ca.gov/](mailto:CBSC@dgs.ca.gov).

Public Hearing Request

Pursuant to Government Code (GC) Section 11346.5(a)17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

Post-Hearing Modifications to the Text of the Regulations

Following the written comment period, CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available for at least 15 days prior to the date on which CBSC adopts, amends, or repeals the resulting standards. **NOTE:** To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

California Building Standards Commission

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Sections (H&SC) 18928 and 18934.5. The purpose of these building standards is to implement, interpret, and make specific the provisions of H&SC Section 18928 and 18928.1. The California Building Standards Commission is proposing this regulatory action based on Health and Safety Code Section (H&SC) 18928.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regu-

lations: The California Building Standards Commission has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations

Department of Housing and Community Development

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5. HCD is proposing this regulatory action based on Health and Safety Code Sections 17040, 17921, 17922, 18300, 18865, 18865.3 and 19990; and Government Code Section 12955.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code Sections 17000-17060, 17910-17990, 18000-18700, 18860-18874, and 19960-19998; and Government Code Section 12955.1.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: None.

Division of the State Architect, Structural Safety Division

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18930 and 18949.1. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health & Safety Code Sections 16000-16023, 16600-16604, and Education Code Sections 17280-17317 and 81130-81147. The Division of the State Architect is proposing this regulatory action based on Health & Safety Code Section 16022, 16600, and Education Code Sections 17310 and 81142.

Other Matters Prescribed by Statute Applicable to the Agency or to Any Specific Regulation or Class of Regulations: There are no other matters prescribed by statute applicable to the Division of the State Architect, or to any specific regulation or class of regulations.

INFORMATIVE DIGEST

Summary of existing laws and regulations

State Building Standards Law, H&SC Sections 18929 and 18930 require that building standards, including regulations that apply directly to the implementation or enforcement of building standards, be forwarded to CBSC for adoption and/or approval. H&SC Section 18929.1 requires CBSC to receive the building standards from state agencies for consideration in an annual code adoption cycle.

Each regulation shall be adopted in compliance with the procedures specified in H&SC Section 18930 and in GC, Title 2, Division 3, Part 1, Chapter 3.5, Article 5 (commencing with Section 11346). H&SC Sections

18949.1, 18949.2, 18949.3 and 18949.5 transfer the responsibilities to CBSC for adopting regulations relating to building standards proposed by DSA/AC, DSA/SS, HCD, OSHPD and SFM. Under the authority granted by these provisions of law, CBSC proposes this rulemaking.

CBSC is charged with the responsibility to adopt regulations that ensure adequate public participation in the development of building standards prior to submittal to the Commission for adoption and/or approval. In addition, the law requires that the regulations ensure adequate technical review of the proposed building standards by advisory bodies appointed by CBSC. The proposed building standards being noticed were reviewed by advisory bodies of the Commission on June 30 and August 16, 2006 in Sacramento, California. The recommendations made by these committees are incorporated into the express terms. (**Note:** See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)

Effect of this rulemaking

This rulemaking proposes to:

Adopt by reference the 2006 Uniform Plumbing Code and amend, repeal, approve, codify and publish building regulations contained in CCR, Title 24, Part 5 for CBSC, HCD, and DSA SS. (**Note:** See the informative digests for each state agency in the appendices for specific details on the effect of the proposals.)

FISCAL IMPACT

Estimate of Cost or Savings

See appendices.

Cost Impact on Representative Private Persons or Businesses

See appendices.

Initial Determination of Significant Effect on Housing Costs

See appendices.

Mandate on Local Agencies or School Districts

See appendices.

ECONOMIC IMPACT

Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

See appendices.

Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

See appendices.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The state agencies have made an assessment of the proposal regarding the economic impact of recordkeeping and reporting requirements and have determined that a report pursuant to Government Code Section 11346.3(c) is not required.

ALTERNATIVES CONSIDERED

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

AVAILABILITY OF RULEMAKING DOCUMENTS

Each agency has prepared, and CBSC has available for public review, Initial Statements of Reasons (ISOR) for the proposed actions, information upon which the proposals are based, and the regulation text. The ISOR and the regulation text can be accessed from CBSC's website at www.bsc.ca.gov/. Hard copies may be requested by contacting CBSC or the state agency proposing the regulations.

Interested parties may obtain a copy of the Final Statement of Reasons, which summarizes objections or recommendations made regarding the regulatory actions and explains how the proposed actions have been changed to accommodate the objections or recommendations, when available, from either CBSC or CBSC's website.

CONTACT INFORMATION FOR QUESTIONS

CBSC Contact Person for Procedural and Administrative Questions

Specific questions regarding the regulations should be addressed to the following department contact person:

Thomas L. Morrison, Deputy Director
Tom.Morrison@dgs.ca.gov (916) 263-0916
(916) 263-0959 FAX

Dave Walls, Executive Director
Dave.Walls@dgs.ca.gov (916) 263-0916
(916) 263-0959 FAX

Contact Persons for Substantive and/or Technical Questions on the Proposed Changes to Building Standards

Specific questions regarding the standards should be addressed to the following department contact persons:

CBSC	Michael Nearman Jane Taylor	(916) 263-5888 (916) 263-0807 (916) 263-0959 FAX Michael.Nearman@dgs.ca.gov Jane.Taylor@dgs.ca.gov
HCD	Doug Hensel Jim McGowan	(916) 445-9471 (916) 445-9471 (916) 327-4712 FAX dhensel@hcd.ca.gov jmcgowan@hcd.ca.gov
DSA SS	Richard Conrad Howard "Chip" Smith	(916) 324-7180 (916) 323-1687 (916) 327-3371 FAX Richard.Conrad@dgs.ca.gov Howard.Smith@dgs.ca.gov

APPENDIX A

**CODE CHANGE SUBMITTAL
PROPOSED BY THE
CALIFORNIA BUILDINGS STANDARDS
COMMISSION**

BSC 05/06 Part 5

INFORMATIVE DIGEST

Summary of Existing Laws

Health & Safety Code Section 18928. Model code, national standard, or specification; adoption of and reference to the most recent addition; date of publication; committee

Authorizes the commission to adopt the most recent edition of the Uniform Plumbing Code.

Health & Safety Code Section 18928(b). Model code, national standard, or specification; adoption of and reference to the most recent addition; date of publication; committee

Sets forth that each state agency adopting or proposing adoption of a model code, national standard, or

specification shall adopt or propose adoption of the most recent edition of the model code, as amended or proposed to be amended by the adopting agency, within one (1) year after the date of publication of the model code, national standard, or specification.

Health & Safety Code Section 18934.5. Standards or administrative regulations for state buildings; adoption, approval, codification and publication

Sets forth that where no state agency has the authority to adopt building standards applicable to state buildings, the commission shall adopt, approve, codify, and publish building standards providing the minimum standards for the design and construction of state buildings.

Summary of Existing Regulations

The existing 2001 California Plumbing Code is a part of the California Code of Regulations, Title 24, also referred to as the California Building Standards Code and incorporates, by adoption, by the California Building Standards Commission, the 2000 Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials with amendments for state owned buildings & buildings constructed by the University of California and California State Universities.

Summary of Effect

This proposed action will make effective the 2006 UPC of IAPMO with necessary amendments to state owned buildings and to all occupancies identified pursuant to Health and Safety Code 18938, 180 days after the publication of the next triennial edition of the California Plumbing Code (CPC). This proposed action by the California Building Standards Commission will also make the 2001 CPC, inoperative for state owned buildings, and for persons applying for a building permit upon the effective date of the next triennial edition of the CPC.

FISCAL IMPACT

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **None**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **None**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**
- D. Other nondiscretionary cost or savings imposed on local agencies: **None**
- E. Cost or savings in federal funding to the state: **None**
Estimate: **None**

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

CBSC has made an initial determination that this proposal would not have a significant effect on housing costs.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The California Building Standards Commission has determined that the proposed regulatory action would impose a mandate on local agencies or school districts. However, the mandate does not require reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4, Government Code. H&SC section 18928 requires the CBSC to adopt the most current edition of the model codes. H&SC 18938(b) makes applicable the most current edition of the model plumbing code to all occupancies throughout the State of California as prescribed.

ECONOMIC IMPACT

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

CBSC has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

CBSC has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.**
This regulation 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.**
This regulation will not affect the creation or elimination of existing businesses within the State of California.
- The expansion of businesses currently doing business with the State of California.**

This regulation will not affect the expansion of businesses currently doing business within the State of California.

APPENDIX B

**CODE CHANGE SUBMITTAL
PROPOSED BY THE
DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT**

HCD 03/06 Part 5

INFORMATIVE DIGEST

Summary of Existing Laws

Section 17921 of the Health and Safety Code and Section 12955.1 of the Government Code require HCD to propose the adoption, amendment, or repeal of building standards by the CBSC.

Section 17922 of the Health and Safety Code requires that the building standards be essentially the same as the most recent editions of the uniform industry codes. The CBSC is authorized to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5.

Health and Safety Code Section 17922 states that the most recent editions of the uniform codes referred to in the section shall be considered to be adopted one year after the date of publication of the uniform codes.

Health and Safety Code Section 17040 requires HCD to adopt building standards for employee housing for “. . . the protection of the public health, safety, and general welfare of employees and the public, governing the erection, construction, enlargement, conversion, alteration, repair, occupancy, use, sanitation, ventilation, and maintenance of all employee housing.”

Health and Safety Code Sections 18300, 18620, 18690, 18865, 18865.3, 18873 and 18873.4 require HCD to adopt building standards for mobilehome parks and special occupancy parks.

Health and Safety Code Sections 18300, 18620, 18630, 18640, 18865, 18865.3, 18873, 18873.1 and 18873.2 require HCD to adopt building standards for plumbing, including toilets, showers, and laundry facilities, in mobilehome parks and special occupancy parks which HCD determines are reasonably necessary for the protection of life and property and to carry out the purposes of the Mobilehome Parks Act and the Special Occupancy Parks Act.

Health and Safety Code Section 19990 requires HCD to adopt building standards for factory-built housing.

Summary of Existing Regulations

The California Plumbing Code, Part 5 of Title 24 of the California Code of Regulations (CCR), also known

as the California Building Standards Code, adopted by reference the 2000 Uniform Plumbing Code with California amendments, effective on November 1, 2002. The purpose of this code is to establish the minimum requirements necessary to safeguard the public health, safety and general welfare.

Summary of Effect

HCD proposes to adopt by reference the 2006 edition of the Uniform Plumbing Code (UPC), with California amendments, as indicated on the proposed matrix table, into Part 5, Title 24, CCR for the following programs:

(a) State Housing Law: relative to residential occupancies, buildings or structures accessory thereto and as provided for through the Federal Fair Housing Amendment Act's and state law accessibility requirements, except where the application is for public use only.

(b) Employee Housing Act: relative to the use of plumbing equipment and systems in or on any building or structure or outdoors on premises or property in accordance with Health and Safety Code Section 17040.

(c) Mobilehome Parks and Special Occupancy Parks: relative to the use of plumbing equipment and systems in or on any permanent buildings and accessory buildings and structures within the park in accordance with Health and Safety Code Sections 18300, 18630 and 18640.

(d) Factory-Built Housing Law: relative to residential buildings, dwellings or portions thereof, or building components, or manufactured assemblies in accordance with Health and Safety Code Section 19990.

These amendments: (1) bring forward previously-adopted California amendments to ensure their continuation in the California Plumbing Code; (2) define the application and scope of these standards; (3) update statutory authority references; (4) direct users to the California Building Code for information regarding accessibility provisions; (5) clarify certain terms through the amendment of their definitions; (6) correlate the administrative provisions with the California Building, Mechanical and Electrical Codes; (7) modify existing California amendments relating to the use of listed solvent cements and primers for CPVC piping; (8) bring forward previously-adopted model code language from the 2000 UPC, relating to water heaters; (9) modify existing California amendments relating to non-potable and reclaimed water identification; (10) bring forward an existing California amendment and propose a new amendment for materials used in water supply and distribution; (11) remove existing California amendments for materials used in sanitary drainage, venting and storm drainage; (12) propose new California amendments referencing the California Building Code for fire-stop protection. These amendments pro-

vide clarity and continuity, without increasing requirements, for the regulated public.

FISCAL IMPACT

Estimate of Cost or Savings

- A. Cost or Savings to any state agency: Health and Safety Code Section 17922 requires HCD to adopt by reference the most recent edition of the model building code. This action will result in a minimal cost to HCD which will be absorbed in the current budget.
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE.
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: NONE.
- D. Other nondiscretionary cost or savings imposed on local agencies: NONE.
- E. Cost or savings in federal funding to the state: NONE.

Estimate: HCD believes that any additional expenditure resulting from this proposed action will be minimal and will be able to be absorbed within existing budgets and resources.

Cost Impact on Representative Private Person or Business

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

Initial Determination of Significant Effect on Housing Costs

HCD has made an initial determination that this proposal would not have a significant effect on housing costs. The CBSC contact person designated below will make HCD's initial evaluation of the effect of the proposed regulatory action on housing costs available upon request. (See *Economic Impact of the Proposed California Plumbing Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

Mandate on Local Agencies or School Districts

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. Therefore, it does not mandate state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ECONOMIC IMPACT

Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

HCD has made an initial determination that the proposed action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states. (See *Economic Impact of the Proposed California Plumbing Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

HCD has initially assessed whether or not, and to what extent, this proposal will affect the following:

- The creation or elimination of jobs within the State of California.

These regulations will not affect the creation, or cause the elimination, of jobs within the State of California.

- The creation of new businesses or the elimination of existing businesses within the State of California.

These regulations will not affect the creation or the elimination of businesses within the State of California.

- The expansion of businesses currently doing business within the State of California.

These regulations will not affect the expansion of businesses currently doing business within the State of California.

(See *Economic Impact of the Proposed California Plumbing Code Regulations on Private Persons and Businesses in the State of California* in the rulemaking file.)

APPENDIX C

**CODE CHANGE SUBMITTAL
PROPOSED BY THE
DIVISION OF THE STATE ARCHITECT,
STRUCTURAL SAFETY**

DSA SS 06/06 Part 5

INFORMATIVE DIGEST

Summary of Existing Laws

Section 16023 of the Health and Safety Code authorizes the State Architect to establish building standards for the design, construction and inspection of plumbing systems for state-owned or state-leased essential ser-

vices buildings. Sections 17310 and 81142 of the Education Code authorize the State Architect to establish building standards for the design, construction and inspection of plumbing systems for public elementary and secondary schools, and community colleges.

Summary of Existing Regulations

Existing building standards which prescribe requirements for the design, construction and inspection of plumbing systems for state-owned or state-leased essential services buildings, and public elementary schools, secondary schools and community colleges are promulgated by the Division of the State Architect. These regulations are contained in the California Plumbing Code (Part 5, Title 24).

Summary of Effect

The proposed action would update Part 5 of Title 24 by repealing the adoption of the 2000 edition Uniform Plumbing Code, and adopting the 2006 edition Uniform Plumbing Code (published by the International Association of Plumbing and Mechanical Officials) with necessary amendments for state-owned or state-leased essential services buildings, and public elementary schools, secondary schools and community colleges for effectiveness as the 2007 California Plumbing Code.

FISCAL IMPACT

Estimate of Cost or Savings

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

Cost Impact on Representative Private Persons or Businesses

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

Initial Determination of Significant Effect on Housing Costs

The Division of the State Architect has made an initial determination that this proposed regulatory action WOULD NOT have a significant effect on housing costs. The CBSC contact designated below will make the Division of the State Architect's evaluation of the effect of the proposed regulatory action on housing costs available upon request.

Mandate on Local Agencies or School Districts

The Division of the State Architect has determined that this proposed regulatory action would not impose a mandate on local agencies or school districts.

ECONOMIC IMPACT

Initial Determination of Significant Statewide Adverse Economic Impact on Businesses

The Division of the State Architect has made an initial determination that this proposed regulatory action will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

Assessment of The Effect of Regulation Upon Jobs and Business Expansion, Elimination or Creation

The Division of the State Architect has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.
The Division of the State Architect has determined that the proposed action has no effect.
- The creation of new businesses or the elimination of existing businesses within the State of California.
The Division of the State Architect has determined that this proposal has no effect.
- The expansion of businesses currently doing business with the State of California.
The Division of the State Architect has determined that the proposed action has no effect.

GENERAL PUBLIC INTEREST

OFFICE OF ADMINISTRATIVE LAW

**REQUEST FOR PUBLIC INPUT
ANNUAL RULEMAKING CALENDAR
GOVERNMENT CODE 11017.6**

Each year all state government agencies with rulemaking authority are required to prepare a rulemaking calendar pursuant to section 11017.6 of the Government Code. The rulemaking calendar lists anticipated rulemaking activity by the agency for the coming year. The rulemaking calendar is non-binding. Section 11017.6 specifically allows agencies to adopt rules that

were not listed in the rulemaking calendar if it is required by unanticipated circumstances.

The requirement to prepare a rulemaking calendar was established in 1982 and has not been amended since 1987. In 2000 the Legislature adopted section 11340.85 of the Government Code, which requires state agencies to post all their rulemaking activity on their web sites. The information that must be posted on the web pursuant to section 11340.85 is much more extensive than that included in the annual rulemaking calendar pursuant to section 11017.6. Use of the internet as a primary information source has, obviously, increased greatly since 1982.

The Office of Administrative Law is attempting to evaluate the public's current level of reliance upon the annual rulemaking calendar as a source of information about state agency rulemaking. If you have found that the annual rulemaking calendar continues to be a valuable source of information to you, please let us know through one of the following methods:

1. Send an e-mail message to staff@oal.ca.gov;
2. Send a note via fax to (916) 323-6826;
3. Leave a telephone voice message at (916) 323-6815; or
4. Send a letter to:

Office of Administrative Law
Rulemaking Calendar Survey
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Any information that you could provide on this subject would be greatly appreciated.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

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

AIR RESOURCES BOARD

Inboard and Stern Drive Boat Regulations

This action amends the schedule for implementation of previously adopted more stringent emissions limits on marine inboard and stern drive engines in order to add an alternative plan for compliance that would provide manufacturers of marine engines additional flexi-

bility in introducing technology new to marine engines while assuring net emissions comparable to those under the current rule.

Title 13
California Code of Regulations
AMEND: 2111, 2112, 2441, 2442, 2444.2, 2445.1, 2445.2, 2446
Filed 11/13/06
Effective 12/13/06
Agency Contact: Alexa Malik (916) 322-4011

AIR RESOURCES BOARD

Marine Engines

This filing corrects a cross-reference in section 2445.2, subdivision (a) to conform with renumbering of the referenced definition and updates CALIFORNIA EXHAUST EMISSION STANDARDS AND TEST PROCEDURES FOR 2001 MODEL YEAR AND LATER SPARK-IGNITION MARINE ENGINES, PART 1, Section 9 to include new regulatory standards approved in filing 06-0929-05 S.

Title 13
California Code of Regulations
AMEND: 2445.2(a)
Filed 11/13/06
Effective 12/13/06
Agency Contact: Alexa Malik (916) 322-4011

BOARD OF EDUCATION

Standardized Testing and Reporting (STAR)

This rulemaking amends several sections of Title 5, Articles 1 and 2 by adding tests to the STAR program, as well as incorporating the regulations for the Designated Primary Language Test ("DPLT"), currently found in Article 3, into Articles 1 and 2. The amendments initially proposed shortening the testing window for STAR tests from 21 "instructional" days to 11 "instructional" days and moving the testing window from after the completion of 85% of the school year to completion of 90% of the school year. However, multiple comments objecting to the changes in the testing window and time-frame resulted in the SBE retaining the current time-frame.

Title 5
California Code of Regulations
AMEND: 850, 851, 852, 853, 854, 855, 857, 858, 859, 861, 862, 863, 864, 864.5, 865, 866, 867, 870
REPEAL: 850.5, 880, 881, 882, 883, 884, 886, 887, 888, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 901
Filed 11/08/06
Effective 12/08/06
Agency Contact: Debra Strain (916) 319-0155

BOARD OF EQUALIZATION

Permits, Place of Sale

This action amends provisions governing the business permits required and the allocation to counties of tax collected when a retailer negotiates a sale out-of-state but the goods are shipped from the retailer's in-state stock.

Title 18
California Code of Regulations
AMEND: 1699, 1802
Filed 11/13/06
Effective 12/13/06
Agency Contact: Diane G. Olson (916) 322-9569

BOARD OF OCCUPATIONAL THERAPY

Renewal

This regulatory action (1) increases the term of an occupational therapist license and an occupational therapist assistant certificate from one year to two years, (2) requires licensees and certificate holders to document compliance with continuing competency requirements, (3) provides that partial credit will not be given for certain professional development activities, and (4) eliminates the 30 day grace period for charging a delinquent fee to licensees and certificate holders who renew their license or certificate after its expiration.

Title 16
California Code of Regulations
AMEND: 4120, 4121, 4161, 4162
Filed 11/15/06
Effective 11/15/06
Agency Contact: April Freeman (916) 322-3278

BOARD OF OCCUPATIONAL THERAPY

Fees

This rulemaking reduces the fees charged to occupational therapy assistants for licensure and renewal and changes the renewal period from an annual, to a biannual renewal period. When the Board was established, the renewal fees were set at the maximum amount of \$150 to create a fiscally sound fund condition in an amount necessary to support its regulatory activities. The fund condition now supports a reduction in fees. The regulation reduces renewal fees to \$150 biannually (reduction of one half) and delinquent fees to one half the renewal. It also reduces the fee for a limited permit from \$100 to \$75, among other things.

Title 16
California Code of Regulations
AMEND: 4130
Filed 11/08/06
Effective 11/08/06
Agency Contact: April Freeman (916) 322-3278

DENTAL BOARD OF CALIFORNIA

Application for Licensure by WREB candidates

This is the second readopt of emergency regulations (OAL file no. 06-0301-02 E and 06-0711-04 EE) that established new provisions for licensure for the practice of dentistry in California. It is to interpret and make specific statutes within SB 1865, which became law in September 2004 as an urgency statute. Previously, the only way that a dental licensure candidate could qualify to practice dentistry in California was to pass a clinical examination developed and administered by the Board. The major component of this new law is that, effective January 1, 2005, dental licensure candidates can also qualify to practice dentistry in California if they pass the Western Regional Examining Board (WREB) exam.

Title 16
 California Code of Regulations
 ADOPT: 1034.1
 AMEND: 1021, 1028, 1034
 Filed 11/15/06
 Effective 11/15/06
 Agency Contact: Donna Kantner (916) 263-2300

DEPARTMENT OF BOATING AND WATERWAYS

Public Small Craft Harbor Loan Regulations

In this regulatory action, the Department of Boating and Waterways amends its "public small craft harbor loan regulations" to include in the priorities for considering loan applications small craft harbor improvement projects relating to restroom facilities, vessel pumpout facilities, oil recycling facilities, and certain solid waste material receptacles.

Title 14
 California Code of Regulations
 AMEND: 5101, 5104
 Filed 11/14/06
 Effective 12/14/06
 Agency Contact: Mike Sotelo (916) 263-0787

DEPARTMENT OF FOOD AND AGRICULTURE

Oriental Fruit Fly Eradication Area

This emergency regulatory action adds the county of Riverside to the list of counties already proclaimed to be eradication areas with respect to the Oriental fruit fly, "Bactrocera dorsalis."

Title 3
 California Code of Regulations
 AMEND: 3591.2(a)
 Filed 11/08/06
 Effective 11/08/06
 Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF FOOD AND AGRICULTURE

Oriental Fruit Fly Interior Quarantine

This emergency regulatory action establishes a quarantine area for Oriental fruit fly in the Santa Ana area of Orange County covering approximately 93 square miles.

Title 3
 California Code of Regulations
 AMEND: 3423(b)
 Filed 11/13/06
 Effective 11/13/06
 Agency Contact: Stephen Brown (916) 654-1017

DEPARTMENT OF HOUSING AND COMMUNITY

DEVELOPMENT

Permit Exemption

This amendment to 25 CCR section 16 clarifies that it is not necessary to obtain a construction permit if the work is exempt under the California Building Standards Code or other rules and regulations.

Title 25
 California Code of Regulations
 AMEND: 16
 Filed 11/08/06
 Effective 12/08/06
 Agency Contact: Doug Hensel (916) 445-9471

DEPARTMENT OF INDUSTRIAL RELATIONS

Conflict of Interest Code Amendments

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

Title 8
 California Code of Regulations
 AMEND: 17000 Appendix
 Filed 11/08/06
 Effective 12/08/06
 Agency Contact: John Cumming (415) 703-4265

DEPARTMENT OF INSURANCE

Modified Guaranteed Annuity

This regulatory action revises existing regulations governing modified guaranteed annuities primarily to conform to recent changes made to the National Association of Insurance Commissioners Modified Guaranteed Annuity Model Regulation #255 and also to conform to section 10506.3 of the Insurance Code.

Title 10
 California Code of Regulations
 AMEND: 2534.27, 2534.28
 Filed 11/09/06
 Effective 11/09/06
 Agency Contact: Nancy Hom (415) 538-4144

DEPARTMENT OF INSURANCE
 CEA Fund Transfer from base Limits Program to Optional Limits Program

Allows the California Earthquake Authority (CEA) to borrow funds from its base-limits fund to finance its reinsurance of risks associated with optional higher coverage limits for personal property, loss of use, and building code upgrade. Loans would have to be paid back by the end of 2008.

Title 10
 California Code of Regulations
 AMEND: 2697.6, 2697.61
 Filed 11/15/06
 Effective 11/15/06
 Agency Contact:
 Lisbeth Landsman-Smith (916) 492-3561

DEPARTMENT OF INSURANCE
 CAARP's Proposed Increase to Current CAIP Rates

This regulatory action raises the overall allowable rate for insurance under the California Automobile Assigned Risk Plan (CAARP) based upon the petition of CAARP. It is exempt from the APA and OAL review in accordance with Government Code section 11340.9, subdivision (g), as falling within the "rate, price, or tariff" exemption.

Title 10
 California Code of Regulations
 AMEND: 2498.5
 Filed 11/09/06
 Effective 11/09/06
 Agency Contact: Michael Riordan (415) 538-4226

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 Grain Handling Facilities

This rulemaking package amends sections 3482, 5161 and 5178 of Title 8 of the CCR in response to a petition received by OSHSB. The petition requested OSHSB adopt the federal standards contained in 29 CFR 1910.272 to govern grain handling facilities. OSHSB is also applying the federal grain standards to outdoor grain storage, which is not addressed in the federal standards.

Title 8
 California Code of Regulations
 AMEND: 3482, 5161, 5178
 Filed 11/14/06
 Effective 12/14/06
 Agency Contact: Marley Hart (916) 274-5721

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
 Fuel Houses, Chip Bins and Hopper-Sawmills

This amendment to Title 8 CCR section 6368 removes references to specific safety regulations related to the retrieval of a worker from bins, bunkers and hoppers and requires sawmill operations instead comply with Title 8 CCR Section 3482, located in "General Industry Safety Orders." Section 3482 includes all of the safety requirements being deleted from Section 6368 and has many other requirements and alternatives to the safety requirements of Section 6368. This change is implemented at the request of the Department of Industrial Relations, Division of Occupational Safety and Health.

Title 8
 California Code of Regulations
 AMEND: 6368
 Filed 11/14/06
 Effective 12/14/06
 Agency Contact: Marley Hart (916) 274-5721

OFFICE OF THE STATE FIRE MARSHAL
 Automatic Fire Extinguishing System

This regulatory action is to adopt the current nationally recognized standard for servicing, testing and maintaining automatic fire extinguishing systems. This action incorporates by reference specified portions of NFPA 25, 2002 edition — Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems. This action also requires the use of nine new forms which have additional regulatory content. The effective date of these regulations is 4-1-07.

Title 19
 California Code of Regulations
 ADOPT: 902.9, 902.19, 906.1, 906.2, 906.3
 AMEND: 901, 902, 902.4, 902.11, 902.12, 902.15, 902.18, 904, 904.1, 904.2, 904.7, 905, 905.2, 906
 REPEAL: 904.3, 904.4, 904.5, 904.6
 Filed 11/14/06
 Effective 04/01/07
 Agency Contact:
 Kevin Reinertson (916) 327-4998

SUPERINTENDENT OF PUBLIC INSTRUCTION
 Alternative Payments

This regulation will clarify the method by which the amounts allowed for administrative and support costs

are calculated and the limits to reimbursement for Alternative Payment program contracts. This will allow contracts to be finalized and enable contractors to properly budget and administer their programs.

Title 5
 California Code of Regulations
 AMEND: 18013, 18054
 Filed 11/13/06
 Effective 11/13/06
 Agency Contact: Debra Strain (916) 319-0641

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN JUNE 14, 2006 TO
 NOVEMBER 15, 2006**

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

11/06/06 AMEND: 18216, 18421.1
 11/03/06 AMEND: 1859.73.2
 10/31/06 AMEND: 559.500, 559.501, 559.503, 559.504, 559.505, 559.507, 559.508, 559.509, 559.510, 559.511, 559.512, 559.513, 559.515, 559.516, 559.517
 10/12/06 AMEND: 714
 09/27/06 AMEND: 18754
 09/07/06 AMEND: 21904, 21905
 09/05/06 AMEND: 1859.2, 1859.76, 1859.83, 1859.163.1
 08/23/06 AMEND: 1181.4
 08/21/06 AMEND: 1859.2, 1859.70.1, 1859.71.3, 1859.78.5
 08/15/06 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80
 08/11/06 AMEND: 1859.2, 1859.40, 1859.51, 1859.70, 1859.93.1, 1859.95, 1859.147, 1859.202, 1866
 07/24/06 AMEND: 18944
 07/06/06 AMEND: 575.1, 575.2

06/20/06 AMEND: 18537
Title 3
 11/13/06 AMEND: 3423(b)
 11/08/06 AMEND: 3591.2(a)
 10/27/06 ADOPT: 765 AMEND: 760.4, Article 3.5
 10/19/06 AMEND: 3591.6(a)
 10/12/06 AMEND: 3433(b)
 10/12/06 ADOPT: 3424
 10/12/06 AMEND: 3433(b)
 10/06/06 AMEND: 3700(c)
 10/06/06 AMEND: 3591.13(a)
 10/05/06 AMEND: 3433(b)
 10/05/06 AMEND: 3589
 10/02/06 AMEND: 3591.6(a)
 09/19/06 AMEND: 3433(b)
 09/12/06 AMEND: 3591.12(a)
 09/12/06 AMEND: 3406(b)
 09/08/06 AMEND: 3423(b)
 09/07/06 AMEND: 3433(b)
 09/05/06 AMEND: 3406(b)
 08/29/06 AMEND: 3433(b)
 08/24/06 AMEND: 3433(b)
 08/23/06 AMEND: 3591.12(a)
 08/17/06 AMEND: 3591.19(a)
 08/16/06 AMEND: 3433(b)
 08/15/06 AMEND: 3700(c)
 08/15/06 AMEND: 3700(c)
 08/10/06 AMEND: 3591.6(a)
 08/01/06 AMEND: 3591.6(a)
 08/01/06 AMEND: 3424(b)
 07/28/06 AMEND: 3591.2(a)
 07/26/06 AMEND: 3700(c)
 07/21/06 REPEAL: 1366
 07/19/06 ADOPT: 6310 AMEND: 6170
 07/18/06 ADOPT: 6960 AMEND: 6000
 07/17/06 AMEND: 3591.6(a)
 07/05/06 AMEND: 3591.6
 07/03/06 AMEND: 3589(a)
 06/28/06 AMEND: 3433(b)

Title 4

11/03/06 AMEND: 10152, 10153, 10155, 10159, 10160, 10161, 10162
 10/24/06 AMEND: 1486
 10/16/06 AMEND: 1733
 09/26/06 AMEND: 1976.8
 07/19/06 AMEND: 12358, 12359
 07/17/06 AMEND: 2240(e)
 06/20/06 AMEND: 1472

Title 5

11/13/06 AMEND: 18013, 18054
 11/08/06 AMEND: 850, 851, 852, 853, 854, 855, 857, 858, 859, 861, 862, 863, 864, 864.5,

865, 866, 867, 870 REPEAL: 850.5, 880, 881, 882, 883, 884, 886, 887, 888, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 901
 10/26/06 AMEND: 30023(c)
 10/23/06 ADOPT: 11991, 11991.1, 11991.2
 10/16/06 ADOPT: 11987, 11987.1, 11987.2, 11987.3, 11987.4, 11987.5, 11987.6, 11987.7
 09/29/06 ADOPT: 19833.5, 19833.6 AMEND: 19815, 19816, 19816.1, 19819, 19824, 19828.1, 19831
 09/15/06 REPEAL: 18074.1(b), (c), (d), 18074.3, 18074.4, 18074.5, 18074.6
 08/30/06 ADOPT: 15566, 15567, 15568 REPEAL: 15569
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