



California Regulatory Notice Register

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

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. CALIFORNIA EARTHQUAKE
AUTHORITY**

**NOTICE OF INTENTION TO AMEND THE
CONFLICT OF INTEREST CODE
OF THE CALIFORNIA EARTHQUAKE
AUTHORITY**

NOTICE IS HEREBY GIVEN that the California Earthquake Authority, pursuant to the authority vested in it by Government Code section 87306, proposes to amend its Conflict of Interest Code. The purpose of the amendment is to implement the requirements of Government Code sections 87300 through 87302 and 87306.

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

The proposed amendment adds the position of Compliance Manager to the List of Designated Positions. The proposed amendment deletes the Administrative Manager and Assistant Administrative Manager/Governing Board Liaison positions. The amendment changes the following position titles:

Current Position Title	Proposed Position Title
Public & Government Affairs Director	Director of Communications and External Affairs
Public & Government Affairs Coordinator	Legislative Coordinator
Controller	Assistant Chief Financial Officer
Staff Counsel III (Senior Counsel) Staff Counsel	All Staff Counsel
Senior Management Auditors Staff Services Management Auditor/Associate Management Auditor	All Auditors
Chief Operating Officer	Chief Operations Officer

This amendment makes other technical changes to reflect the current organizational structure of the California Earthquake Authority. Copies of the amended code are available and may be requested from the Contact Person, 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 28, 2009, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person, below.

At this time, no public hearing has been scheduled concerning the proposed amendments. If any interested person or the person's representative requests a public hearing, he or she must do so no later than December 14, 2009, by contacting the Contact Person, below.

The California Earthquake Authority has prepared a written explanation of the reasons for the proposed amendments (Initial Statement of Reasons) and has available the information on which the amendments are based. Copies of the proposed amendments, the Initial Statement of Reasons, and the information on which the amendments are based may be obtained by contacting the Contact Person, below.

The California Earthquake Authority has determined that the proposed amendments:

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

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

Contact Person: Direct all inquiries concerning this proposed amendment and any communication required by this notice to:

Ms. Niel Hall
California Earthquake Authority
801 K Street, Suite 1000
Sacramento, CA 95814
Telephone: (916) 325-3800
E-mail: halln@calquake.com

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD
PROPOSES TO AMEND
REGULATION SECTIONS 1859.2 AND
1859.41, ALONG WITH TWO
ASSOCIATED FORMS, TITLE 2, CALIFORNIA
CODE OF REGULATIONS,
RELATING TO LEROY F. GREENE SCHOOL
FACILITIES ACT OF 1998

FORMS PROPOSED FOR AMENDMENT:

Enrollment Certification/Projection, Form SAB 50–01, (Revised 05/09), referenced in Regulation Section 1859.2

Existing School Building Capacity, Form SAB 50–02, (Revised 05/09), referenced in Regulation Section 1859.2

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend the above-referenced regulation sections, including two associated forms, contained in Title 2, California Code of Regulations (CCR). A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Section 17070.35 of the Education Code. The proposals interpret and make specific reference Sections 17070.35, 17071.75 and 17071.76 of the Education Code.

**INFORMATIVE DIGEST/POLICY OVERVIEW
STATEMENT**

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school

districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

The SAB, at its May 27, 2009 meeting, adopted amendments to implement Senate Bill (SB) 1556, Chapter 723, Statutes of 2008. SB 1556 allows large qualifying elementary school districts which are located within a high school district to establish SFP new construction funding eligibility on a “high school attendance area” (HSAA) basis if they meet all of the following criteria:

- Average daily attendance greater than 20,000 pupils,
- Maintains at least 37 elementary schools, and the high school district maintains at least 12 high schools, and
- Geographical boundaries encompassing more than 100 square miles.

Districts may thereby attain greater new construction eligibility than by filing on a district-wide basis.

A summary of the proposed regulatory amendments is as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments change the latest revision date to “05/09” for the Forms SAB 50–01 and SAB 50–02. Existing Regulation Section 1859.41 specifies criteria for school districts opting to request eligibility determinations for new construction grants based on a HSAA or Super HSAA basis. The proposed amendment adds authority for a qualifying elementary school district to request eligibility determinations for new construction grants based on a HSAA or Super HSAA basis. To qualify, elementary school districts must meet the existing HSAA or Super HSAA criteria in this Section and all of the conditions in Education Code Section 17071.76(c).

Existing Form SAB 50–01, *Enrollment Certification/Projection*, is submitted by applicant school districts to determine initial eligibility for funding under the SFP. Under the subheading “Pupil Enrollment Projection Options” on the existing Form, qualifying high school districts, unified school districts, and county superintendents of schools may file on a HSAA or Super HSAA basis. The proposed amendment adds that qualifying elementary school districts may file on a HSAA or Super HSAA basis.

Existing Form SAB 50–02, *Existing School Building Capacity*, is submitted by applicant school districts to determine the total number of pupils that may be housed in the district’s gross classroom inventory. Under “Gen-

eral Information” on the existing Form, qualifying high school districts, unified school districts, and county superintendents of schools may file on a HSAA or Super HSAA basis. The proposed amendment adds that qualifying elementary school districts may file on a HSAA or Super HSAA basis. In addition, under “Specific Instructions,” elementary school districts are added to the coverage of the instructions. To facilitate communications, three form fields are added for applicant school districts to print or type their name after signing, plus provide an e-mail address and telephone number.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- There will be no impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- There are no costs or savings to any State agency.

- The SAB has made an initial determination that there will be no impact on housing costs.

EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)–(4) of Section 4, Title 1, CCR. These regulations only apply to school districts for purposes of determining eligibility and funding school facility projects.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than January 4, 2010, at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Robert Young, Regulations Coordinator

Mailing Address: Office of Public School Construction
1130 K Street, Suite 400
Sacramento, CA 95814

E-mail Address: robert.young@dgs.ca.gov

Fax No.: (916) 445-5526

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 445-0083. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 322-1043.

ADOPTION OF REGULATIONS

Please note that, following the public comment period, the SAB may adopt the regulations substantially as

proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB

would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.

TITLE 8. DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Industrial Relations ("Director") proposes to amend regulations governing the approval and operation of Labor Compliance Programs by state and local agencies involved with public works construction contracts. The Director also proposes to adopt new regulations governing fees and compliance monitoring and enforcement standards for the Labor Commissioner on state bond-funded and other specified public works projects, as required under the provisions of Stats. 2009, ch. 7 [SBX2-9]. The existing Labor Compliance Programs regulations are found in Subchapter 4 of Chapter 8, commencing with section 16421, of Title 8 of the California Code of Regulations. The new regulations are being proposed as a new Subchapter 4.5 of Chapter 8, Division 1 (sections 16450-16464). In connection with these substantive proposals, the Director is also proposing to redesignate Articles 6 (Severability) and 8 (Debarment) of Subchapter 4 as Subchapters 4.6 and 4.8 respectively and make an additional technical revision to section 15000 (Severability).

PUBLIC HEARING, WRITTEN COMMENT PERIOD, AGENCY CONTACTS

Public Hearing:

A public hearing will be held on the proposals as follows:

January 6, 2010 at 10:00 a.m.

Hiram Johnson State Building

Senator Milton Marks Conference Center—

Monterey Room

455 Golden Gate Avenue

San Francisco, California 94102

At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The Director requests but does not require persons who make oral comments to submit a written copy of their testimony.

Written Comment Period:

Any person or authorized representative may submit written comments relevant to the proposed regulatory action to the contact person listed below. The written comment period closes on January 6, 2010, at 5:00 p.m., and the Director will only consider comments received by that deadline. Written comments may be submitted in person at the hearing *or* by letter, facsimile, or e-mail as follows:

DIR, Office of the Director — Legal Unit
 455 Golden Gate Avenue, Suite 9516
 San Francisco, CA 94102
 Facsimile: (415) 703-4277
 E-mail: LCPComments@dir.ca.gov

Agency Contacts:

Inquiries concerning the proposed regulations may be directed to:

Primary Contact:

John Cumming
 Department of Industrial Relations
 Office of the Director — Legal Unit
 455 Golden Gate Avenue, Suite 9516
 San Francisco, CA 94102
 (415) 703-4265

Back-up Contact:

Nance Steffen
 Department of Industrial Relations
 Office of the Director
 455 Golden Gate Avenue, 10th Floor
 San Francisco, CA 94102
 (415) 703-5063

Questions about the substance of the proposed regulations may be directed to either Mr. Cumming or Ms. Steffen.

AUTHORITY AND REFERENCE

Authority: Labor Code Sections 54, 55, 1742(b), 1771.55(b), and 1773.5.

Reference: Sections 17250.30 and 81704, Education Code; section 6531, Government Code; sections 90, 207, 226, 1726, 1729, 1741, 1742, 1771.2, 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, 1771.9, 1773, 1773.1, 1773.2, 1773.3, 1775, 1776, 1781, and 1813, Labor Code; and sections 20133,

20175.2, 20193, 20209.7, 20209.24, and 20919.3, Public Contracts Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Overview:

The laws regulating public works projects require among other things that contractors and subcontractors pay their workers not less than the general prevailing wage rates as determined under the Labor Code. State prevailing wage requirements customarily are enforced by the State Labor Commissioner, as Chief of the Division of Labor Standards Enforcement, through the investigation of complaints and the issuance of civil wage and penalty assessments to compel the payment of sums found due. The Director also approves labor compliance programs to enforce state prevailing wage requirements on behalf of public agencies that award public works contracts.¹ In addition to enforcement, labor compliance programs have education and monitoring responsibilities and are subject to oversight by the Labor Commissioner and the Director.

Labor compliance programs were first authorized through the adoption of Labor Code Section 1771.5, which became effective in 1990. Subsection (b) of Section 1771.5 sets forth general requirements for operating a labor compliance program, and subsections (c) and (d) specify that the programs must be approved and are subject to revocation in accordance with regulations adopted by the Director.

Subsequent legislation began to require awarding agencies either to have or to contract with an approved labor compliance program for monitoring and enforcement on projects using specified bond funds or other statutory authorizations.² These statutes, including most notably Labor Code Section 1771.7 (which required labor compliance programs for public works projects funded by the Kindergarten–University Public Education Facilities Bond Acts of 2002 and 2004), brought about a vast expansion in the number of approved programs and led to two sets of revisions to the regulations that govern these programs. In 2004, the labor compliance program regulations (at Title 8, California Code of Regulations, §§16421–16439) were amended to address new statutory requirements, provide some specific rules for third party contract programs, and incorporate other changes in the laws gov-

¹ State and local agencies that award public works contracts are referred to in this Notice and in the Initial Statement of Reasons as “awarding agencies.” They are also referred to formally in public works laws and regulations as “awarding bodies.” (*See* Labor Code Section 1722.)

² A list of these laws is available at <http://www.dir.ca.gov/lcp/StatutesRequiringLCPs.pdf>.

erning prevailing wage enforcement. In 2008, these regulations were further amended to clarify and set forth in greater detail the monitoring, enforcement, and reporting responsibilities of labor compliance programs.

On February 20, 2009, the Governor signed into law Senate Bill 9 (Padilla), *i.e.* SBX2–9, one of several measures adopted in the Legislature’s second extraordinary session to address California’s budget crisis. SBX2–9 amended all but one of the laws that currently require awarding agencies to have or to contract with an approved labor compliance program as a condition for using specified bond funding or other particular statutory authorizations.³ In lieu of monitoring and enforcement by a labor compliance program, the statutes instead will require awarding agencies to pay a capped fee to the Department for prevailing wage monitoring and enforcement on projects subject to the fee. SBX2–9 also expanded the range of projects that are subject to or eligible for this fee–based monitoring and enforcement by the Department in two respects: (1) it will be required for projects funded by *any* state–issued public works construction bond (rather than just specified bonds); and (2) it will be available to awarding agencies that meet certain conditions and agree to pay the fee for compliance monitoring and enforcement by the Department on all of their projects in order to have higher prevailing wage exemptions.

SBX2–9 requires the Department to determine the amount of the fee that will be assessed for its monitoring and enforcement, subject to the approval of the Department of Finance and specified statutory caps. The statute also provides that the Department may waive this fee for awarding agencies with previously approved labor compliance programs that want to continue using their programs for their own projects; however, it does not permit waivers for awarding agencies that contract out their labor compliance program responsibilities to a third party. In addition, SBX2–9 requires the Department to adopt reasonable regulations setting forth the manner in which it will ensure compliance and enforce prevailing wage requirements on projects subject to the fee, taking into consideration the duties of labor compliance programs under Title 8 California Code of Regulations sections 16421–16439. SBX2–9 further provides that the fee for compliance monitoring and enforcement by the Department will apply only to public works contracts awarded after both the fee and the regulatory monitoring standards have been adopted; for

contracts awarded prior to that date, any pre–existing labor compliance program requirements will continue to apply.

The primary purpose of this rulemaking is to adopt the regulations needed to implement the requirements of SBX2–9. A secondary purpose is to make further revisions to the existing labor compliance program regulations to bring them into conformity with the requirements of SBX2–9 and make other isolated improvements suggested through the Department’s recent experience in regulating labor compliance programs. The proposals can be divided into four parts: (1) revisions to the labor compliance program regulations in Subchapter 4 of Chapter 8, Title 8 of the California Code of Regulations; (2) a new set of regulations governing notices, fees, and fee waivers under SBX2–9, which will constitute Article 1 of a new Subchapter 4.5 of Chapter 8, Title 8 of the California Code of Regulations addition; (3) another new set of regulations setting forth the Department’s compliance monitoring standards, which will constitute Article 2 of the new Subchapter 4.5; and (4) conforming technical revisions to the headings and text of subsequent regulations.

Proposed Amendments to Existing Regulations (Subchapter 4)

The Director proposes to amend the title and six of the regulations found in subchapter 4 of Chapter 8 of Division 1, sections 16421 through 16439, Title 8 of the California Code of Regulations.

The Director proposes to delete “Awarding Body” from the *title* of subchapter 4 so that the subchapter heading will read “Labor Compliance Programs.”

Section 16421 pertains to the composition and components of a labor compliance program. The Director proposes to delete subpart (c) pertaining to the governmental rights and responsibilities of private entities when operating labor compliance programs on behalf of awarding agencies.

Section 16423 pertains to the statutory requirement to have a labor compliance program pursuant to Labor Code Section 1771.5, including the findings an awarding agency must make and notices it must send when adopting such a program. The Director proposes to add language to this section to include paying a fee to the Department for fee–supported compliance monitoring and enforcement pursuant to a contract with the Labor Commissioner, as a third option for meeting an existing statutory requirement to have a labor compliance program. Specifically, the Director proposes to add language at the end of subpart (a) that identifies this third option, and a new subpart (b)(3), which would require the awarding agency to make a written finding that it had entered into a contract with the Labor Commission-

³ The exception is Public Resources Code §75075, which requires use of a labor compliance program for projects financed in any part by the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). Because this measure was adopted by voter initiative, it can only be amended by another ballot measure.

er for monitoring and enforcement pursuant to Subchapter 4.5, if using this new third option.

Subpart (b) of this section also requires an awarding agency to transmit its written finding (to adopt or contract for a labor compliance program) to the Department, along with notice of whether it intends to enforce the program for all projects and notice of any contract for third party enforcement. The Director proposes to add additional language to this notice provision to require awarding agencies to specify if they intend to use their own labor compliance program for all projects to which the notice, fee, and fee waiver provisions of Article 1 of new Subchapter 4.5 would apply. The words “if applicable” are also being added before the language pertaining to notice of any contract.

Section 16427 pertains to applications for “extended authority,” which is a status that entitles a program to automatic approval for forfeiture requests unless affirmatively disapproved within twenty days by the Division of Labor Standards Enforcement, and that also authorizes the program to enter an agreement with the Director for alternative reporting requirements. The Director proposes to amend subpart (a) to include having a record of submitting and obtaining approvals of forfeiture pursuant to section 16437 of the regulations as a specific criterion for obtaining extended approval. The Director also proposes to add a new subpart (e) to expressly authorize the Director to withdraw a program’s “extended approval” for “good cause,” which is defined as including the failure to request or obtain any approvals of forfeitures pursuant to section 16437 within the preceding three years.

Section 16428 pertains to the Director’s authority to revoke approval of a Labor Compliance Program, and subparts (a)(1)–(a)(5) set forth a non-exclusive list of causes for revocation. The Director proposes to add language within subpart (a)(1) to provide that the specific cause of “failure . . . to monitor compliance with the requirements of the Labor Code and these regulations or to take appropriate enforcement action . . .” must include the following three factors: (1) the failure was serious or sustained; (2) the failure was harmful to the interests of workers on the project; and (3) the failure was not based on a good-faith interpretation of the law or the Labor Commissioner’s enforcement practices. The Director also proposes to amend subpart (b), pertaining to revocation complaints by interested parties, by adding language that would require service of a copy of the complaint and supporting evidence on the program that is the subject of the complaint.

Section 16431 pertains to the filing of annual reports. The Director proposes to delete the requirement to file annual reports within sixty days after the close of a prescribed annual reporting period and replace it with a requirement to file an annual report by no later than Au-

gust 31 of each year, with the report to cover the standard fiscal year period of July 1 through June 30. Additional language would also permit the Director to authorize a different reporting period and submission deadline for good cause. The second and third sentences of existing subpart (a) (“The annual report shall be made on the appropriate form . . .”) will be redesignated as subpart(b), and the succeeding three subparts will be redesignated as (c), (d), and (e) respectively. The Director also proposes to delete all of the language in the last subpart which pertains to the annual reporting period, and replace it with new language that would require a program that ceases operations to file a closing annual report within 60 days following its last day of operation as an approved program.

Section 16433 pertains to the higher prevailing wage exemptions provided to awarding agencies with an approved labor compliance program for all public works projects. The Director proposes to amend the first sentence by adding an additional citation to new Labor Code Section 1771.55(a), which provides the same higher exemptions as Labor Code Section 1771.5(a).

Proposed New Regulations (Proposed subchapter 4.5)—Article 1

Article 1 (Sections 16450 through 16455) sets forth the standards and specific rules that will govern notices required for public works projects that are subject to fee-based monitoring and enforcement by the Department of Industrial Relations, the fees assessed for that work, and fee waivers.

Proposed *section 16450* sets forth the four categories of projects that will be governed by the regulations in this subchapter: (1) projects funded in any part by state-issued public works construction bonds; (2) projects under any other statutory mandate to pay a fee for monitoring and enforcement by the Department; (3) projects subject to a labor compliance program requirement under existing law that enter into an agreement with the Department for fee-based monitoring and enforcement; and (4) all projects undertaken by an awarding agency that opts to comply with Labor Code Section 1771.55(a) in exchange for higher prevailing wage exemptions.

Proposed *section 16451* prescribes three different notice requirements for awarding agencies. Subparts (a) and (b) address the notice that an awarding body will be required to send to inform the Department of a project that is subject to fee-based monitoring and enforcement under SBX2–9 and these rules. Subparts (a)(1) and (2) provide for this notice to be sent either when bond funding is awarded or released, or when the initial prime contract is awarded if there is no bond funding. Subpart (a)(3) requires this notice to be sent to the Director’s headquarters in San Francisco and requires that the no-

tice include information about the date of the public works contract, the parties, the work to be performed, location, estimated starting date, sources of funds, amount awarded for the project, and the name and contact information for the awarding agency's representative. Subpart (a)(4) provides an exception to the requirements in (a)(1)–(3) in the case of an ongoing project for which the awarding agency seeks to enter into a contract with the Department in order to meet an existing labor compliance program requirement. Subpart (b) provides that the Director may provide for the required subpart (a) notice to be submitted on a single form together with the information that awarding agencies are required to submit to the Division of Apprenticeship Standards under Labor Code Section 1773.3.

Subpart (c) of this section requires awarding agencies to include language in bid advertisements and public works contracts concerning (1) prevailing wage requirements, and (2) the fact that the project is subject to fee-based monitoring and enforcement by the Department and will require direct submission of certified payroll records to the Labor Commissioner. Subpart (d) requires and prescribes the contents of a notice to be posted at each project job site.

Proposed *section 16452* sets forth standards governing the calculation, payment, and use of fees assessed for monitoring and enforcement by the Department. Subpart (a) sets the amount of the fee as follows: (1) one-fourth of one percent of bond proceeds for any project that is subject to the fee solely due to the receipt of state-issued bond funds; and (2) for any other project, either one-quarter of one percent of the bond proceeds or one-quarter of one percent of "total project costs," whichever is higher. Subpart (a)(3) provides that the term "total project costs" does not include amounts paid for land acquisition, and subpart (a)(4) authorizes the Department to accept a lesser or pro rata fee in the case of an ongoing project for which the awarding agency is requesting fee-based enforcement and monitoring by the Department in lieu of meeting a continuing requirement to have or contract for a labor compliance program.

Subpart (b) of this section requires fees to be paid at the same time project notices must be submitted to the Department under section 16451(a). Subpart (c) requires the fees to be deposited in the State Public Works Enforcement Fund and used only for the monitoring and enforcement of prevailing wages on projects subject to the fee. Subpart (d) authorizes the Director to enter into agreements with other agencies that award state public works bond funds for the purpose of receiving project notices and fee payments directly from those agencies.

Proposed *section 16453* sets forth standards governing the voluntary payment of fees for compliance monitoring and enforcement by the Department as an option for meeting an existing requirement to have a labor compliance program. Subpart (a) specifies that awarding agencies have the option to enter into an agreement with the Labor Commissioner for fee-based monitoring in lieu of having their own labor compliance program or contracting with an approved third party program. Subpart (b) requires fees to be calculated in the same manner as prescribed in section 16452, subject to the possibility of a negotiated reduction for ongoing projects under section 16452(a)(4). Subpart (c) requires an agreement for services under this section to be in writing and authorizes the Labor Commissioner to decline to enter into an agreement due to the inadequacy of the fee or a lack of sufficient staff or resources to provide the necessary services.

Proposed *section 16454* sets forth specific rules that apply to awarding agencies that elect to have fee-based monitoring and enforcement by the Department on all projects in exchange for higher prevailing wage exemptions. Subparts (a) and (c) require the awarding agency to comply with all of the notice requirements in section 16451 and to pay the fees prescribed by section 16452. Subpart (b) sets forth the obligation to conduct a prejob conference and the requirement to keep a checklist of items discussed, with the use of Appendix A (following section 16421 in the existing labor compliance program regulations) constituting presumptive compliance.

Proposed *section 16455* sets forth the standards governing fee waivers for awarding agencies with approved labor compliance programs that want to continue using those programs for projects that otherwise would be subject to the fee. Subpart (a) provides that an awarding agency that has and uses an approved labor compliance program for all of its own projects will not be subject to the fee, notice, or other compliance monitoring provisions of this subchapter. Subpart (b) provides that an awarding agency that has and uses an approved labor compliance program for just those projects that otherwise would be subject to this subchapter, shall be exempt from the fee and other compliance monitoring provisions of this subchapter, but will have to provide the notices required by sections 16423(b) and 16451. Subpart (b) provides that an awarding agency may lose the fee exemption in subparts (a) or (b) by contracting out its labor compliance responsibilities in whole or in part to a third party. Subpart (d) provides that an exempt awarding body may obtain or withhold the fee that otherwise would be due to the Department under this subchapter and use that fee to fund its own labor compliance activities.

Proposed New Regulations (Proposed subchapter 4.5)—Article 2

Article 2 (sections 16460 through 16464) sets forth the standards and specific rules that will govern monitoring and enforcement activities by the Labor Commissioner on public works projects for which fees are paid to the Department under Article 1.

Proposed *section 16460* provides in subpart (a) for the establishment of a Compliance and Monitoring Unit within the Division of Labor Standards Enforcement to carry out the Department's compliance monitoring and enforcement responsibilities under this subchapter. Subpart (b) provides that nothing in this new subchapter shall limit the prevailing wage enforcement authority and responsibilities of awarding agencies under state law, nor preclude the availability and use of other legal remedies to remedy prevailing wage violations.

Proposed *section 16461* sets forth the specific manner in which the Compliance and Monitoring Unit will monitor and enforce compliance with prevailing wage requirements on fee-based projects. Subpart (a) explains the purposes of the Unit and this regulation, which include providing common terminology to awarding agencies, contractors, and the Department with respect to prevailing wage compliance. Subpart (b) requires contractors and subcontractors to furnish certified payroll records to the Compliance and Monitoring Unit at least monthly or within 10 days of any separate request. It requires the records to be submitted in the format prescribed by section 16401 of Title 8 of the California Code of Regulations. It also states that in lieu of paper forms, the Compliance and Monitoring Unit may provide for and require electronic submission of these records.

Subpart (c) of this section requires the Compliance and Monitoring Unit to review payroll records within thirty days after receipt, with "review" defined as an inspection of records furnished to determine whether all required data has been reported, the legally required certification has been made, and the reported rates of pay are no less than the legal prevailing rates for the classifications listed. Subpart (d) requires the Unit to confirm the accuracy of payroll reports on a random basis and at such other times as it deems appropriate, with "confirmation" defined as the corroboration of reported information through independent sources, which may include worker interviews, examination of other pay records, and any other legal and reasonable means of corroboration.

Subpart (d) of this section provides for on site inspection by representatives of the Compliance and Monitoring Unit, to be undertaken randomly or whenever deemed necessary. This subpart provides that such visits may include visual inspections of required job site

notices, inspections of records, observations of the site and work activities, interviews of workers and others, and any other activity deemed necessary to ensure compliance with prevailing wage requirements. This subpart also sets forth the Unit's right, as an agent of the Labor Commissioner, to have free access to any project site and to obtain information pertaining to compliance with any laws enforced by the Labor Commissioner, including but not limited to the duty of employers to provide itemized wage stubs to employees.

Subpart (e) requires the Compliance and Monitoring Unit to prepare an "audit," defined as a written summary reflecting prevailing wage deficiencies and corresponding penalties for each worker, whenever the Unit determines that there has been a violation of prevailing wage requirements resulting in an underpayment of wages.

Proposed *section 16462* sets forth standards and procedures governing the submission of complaints to the Compliance and Monitoring Unit. Subpart (a) requires the Unit to accept complaints from workers or the public alleging violations of prevailing wage requirements on fee-based projects. This subpart specifies that complaints must be made in writing to the Division of Labor Standards Enforcement and provides that the Division may decline to investigate claims filed more than 90 days after the completion of a project. Subpart (b) requires the Compliance and Monitoring Unit to notify the contractor and subcontractor of any noncompliance as soon as practicable where that notice may enable the contractor or subcontractor to correct the problem. The early notice need only describe the nature of the violation and does not have to provide a full summary of wages due.

Proposed *section 16463* sets forth standards and procedures governing the withholding of contract payments to contractors, when required payroll records are delinquent or inadequate. Subparts (a) through (d) define the terms "withhold," "contracts," "delinquent payroll records," and "inadequate payroll records" for purposes of exercising this authority. Subpart (d) specifies that the Labor Commissioner may require the awarding agency to withhold contract payments when payroll records are delinquent or inadequate, with prescribed limitations on the amount that may be withheld based on the potential liability of the contractor or subcontractor whose records are delinquent or inadequate. This subpart also requires a contractor to cease making payments to a subcontractor whose records are delinquent or inadequate until the Labor Commissioner provides notice that the problem has been cured.

Subpart (f) of this section requires the Labor Commissioner to provide written notice to the contractor and subcontractor when contract funds are withheld pur-

suant to this section and requires the notice to specify (1) what records are delinquent or why submitted records are deemed inadequate, (2) what amounts the awarding agency has been directed to withhold, and (3) that the contractor or subcontractor has a right to request an expedited hearing pursuant to Labor Code Section 1742 to challenge the action. Subpart (f) prohibits continued withholding pursuant to this section once the required records have been provided, and subpart (g) specifies that in addition to the withholding authorized by this section, penalties may also be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records.

Proposed *section 16464* provides that if the Compliance and Monitoring Unit determines that there has been a violation of prevailing wage requirements, the Labor Commissioner will issue and serve a civil wage and penalty assessment pursuant to Labor Code Section 1741.

Technical Revisions to Succeeding Regulations on Severability and Debarment:

Current *Article 6* of subchapter 4 pertains to the severability of public works regulations within Subchapters 3 (Payment of Prevailing Wages Upon Public Works [commencing with section 16000]) and 4 (Awarding Body Labor Compliance Programs [commencing with section 16421]). The Director proposes to change the heading from Article 6 to “Subchapter 4.6.” Within the text of *section 16500*, the Director propose to replace the word “Group” with the word “Subchapter” in two places in the first line of the regulation.

Current *Article 8* of Subchapter 4 (commencing with section 16800) pertains to the debarment of contractors and subcontractors by the Division of Labor Standards Enforcement. The Director proposes to change the heading from Article 8 to “Subchapter 4.8.” No changes to the text of the regulations within this article are being proposed.

Comparable Statutes and Regulations:

Federal law requires the payment of prevailing wages and adherence to other minimum employment standards for work performed on federal public works projects through the Davis–Bacon Act, 40 U.S.C. sections 276a–276a–7, the Contract Work Hours and Safety Standards Act, 40 U.S.C. sections 327–334, and related statutes that incorporate these requirements into specific federal programs. (See 29 C.F.R. § 5.1 for a list of 60 such laws.) Some local entities, including the City and County of San Francisco, have their own prevailing wage ordinances. However, these laws all have distinct requirements in terms of the types of work covered, how prevailing wages are determined, and how prevailing wage requirements are enforced.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Director has made the following initial determinations with respect to these proposals. The Director notes that these proposals implement SBX2–9’s duties to assess fees “sufficient to support the department’s costs in ensuring compliance with and enforcing prevailing wage requirements” and to “adopt reasonable regulations setting forth the manner in which the department will ensure compliance with and enforce prevailing wage requirements” on projects subject to the fees. These proposals impose no significant mandates, costs, or savings that are different or distinct from what the Legislature has required by statute, although the Director is trying to implement these proposals in a manner that will minimize costs and create some savings for awarding agencies and contractors in relation and comparison to existing obligations under other statutes and regulations. The Director invites further comment on these specific impacts.

Mandates on Local Agencies or School Districts:

The proposals do not impose mandates on local agencies or school districts. 17 of the 18 statutory sections that were added or amended by SBX2–9 require local agencies and school districts to do one or both of the following as a condition for obtaining construction bond funds, using specified contracting authority, or having higher prevailing wage exemptions: (1) establish or contract for use of an approved labor compliance program, or (2) pay a fee to the Department for prevailing wage monitoring and enforcement. Under SBX2–9, most existing requirements to use a labor compliance program will be replaced by a requirement to pay a fee to the Department for monitoring and enforcement for any project awarded after these regulatory proposals become effective. Under SBX2–9, the new fee requirement also will apply to projects funded by any state–issued public works construction bond rather than just to projects funded by specific bonds. The choice to undertake public works projects that are subject to either requirement is voluntary. For local agencies and schools districts that choose to undertake these projects, the fees required for compliance monitoring and enforcement by the Department under SBX2–9 will be substantially less than the fees they have been paying for labor compliance programs under existing statutory requirements.

Costs or Savings to State Agencies; Reimbursable Costs Imposed on Local Agencies or School Districts; other nondiscretionary costs or savings imposed on local agencies; and costs or savings in federal funding to the state:

The proposals impose substantial costs on the Division of Labor Standards Enforcement within the De-

partment of Industrial Relations and to a lesser extent on the Office of the Director of the Department of Industrial Relations, including the Director's Legal Office, to implement the monitoring and compliance provisions, administer the payment of fees, and handle appeals from enforcement actions generated by the new monitoring unit. These costs are expected to be borne by the fees generated pursuant to the requirements of SBX2-9 and these proposals.

Other state agencies that undertake bond-funded public works construction may have costs or saving associated with SBX2-9 and these proposals. For agencies that have been subject to an existing labor compliance program requirement on such construction, the proposals should reduce administrative costs associated with labor compliance since they impose negligible obligations (sending and posting notices and incorporating language into bid and contract documents), while eliminating the ongoing and potentially substantial costs of internal management or external contract administration of labor compliance programs. For agencies that have not been subject to an existing labor compliance program requirement, the costs of sending and posting notices and incorporating additional language into bid and contract documents represent new albeit negligible costs associated with bond-funded construction that the agencies elect to undertake.

Local agencies and school districts that undertake public works construction that has been subject to a labor compliance program requirement under existing law and that will be subject to fee-based monitoring and enforcement by the Department under SBX2-9 should have the same costs and savings outlined in the preceding paragraph. No nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action, and the proposed regulatory action does not impose costs on any local agency or school district which must be reimbursed in accordance with Government Code Section 17561. The minimal obligations imposed on public agencies by these proposals are required to implement the requirements of SBX2-9 and are only imposed on agencies that voluntarily decide to seek state bond-funding or exercise other statutory contracting authority that is subject to fee-based monitoring and enforcement by the Department.

The proposals do not involve any costs or savings in federal funding to the state.

Initial Determination of Economic Impact on Business:

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

wage statutes impact only businesses that choose to enter into public works contracts, and they are neutral in their treatment of California businesses as compared to businesses from other states.

Known Cost Impacts on Representative Private Person or Business:

These proposals revise how compliance with prevailing wage requirements will be monitored and enforced on projects that are subject to the new fee-based monitoring and enforcement requirements of SBX2-9. The only change these proposals will make for private persons or businesses is that contractors on these projects will be required to furnish certified payroll records directly to the Division of Labor Standards Enforcement on a regular and ongoing basis in lieu of submitting them regularly to a labor compliance program or the awarding agency or holding the records and furnishing them only on request. The Director believes that most contractors engaged in public works construction use electronic payroll systems, and the Director intends to provide for no-cost web-based reporting that will reduce costs for contractors that currently are required to prepare and submit paper copies of their records.

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

Creation, Elimination, or Expansion of Jobs or Businesses (Results of Assessment under Government Code section 11346.3, subpart (b)):

The Director has made initial determinations that (1) these proposals will not affect the creation or elimination of jobs within the State of California; (2) these proposals will not affect the creation of new businesses or the elimination of existing businesses within the State of California; and (3) these proposals will not affect the expansion of businesses currently doing business within the State of California.

Reporting Requirements (Finding under Government Code section 11346.3, subpart (c)):

These proposals revise the annual reporting requirements for labor compliance programs, which include private businesses that have been approved as contract third party programs (currently about forty in number statewide). Such businesses conduct this work as agents of local and state government rather than as a private enterprise, and the Director makes a preliminary finding that the revised reporting responsibilities are necessary for the proper enforcement of the state's prevailing wage laws and therefore necessary for the welfare of the people of the State of California.

Effect on Housing Costs:

These proposals have no effect on housing costs.

Effect on Small Business:

The Director has made an initial determination that these proposals will not affect small business. The proposals are directed toward public agencies that elect to enforce public works prevailing wage requirements by adopting and enforcing a labor compliance program and toward the new fee requirements and monitoring and enforcement responsibilities of the Department under SBX2-9. None of the proposals are regulations that small businesses legally would be required to comply with or that small businesses legally would be required to enforce. Small business will derive no new or distinct benefit nor will they incur any new or distinct detriment from the enforcement of these proposals.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Director must determine that no reasonable alternative considered by the Director or that otherwise has been identified and brought to the Director's attention would either be more effective in carrying out the purpose for which the action is proposed or be as effective as the proposed action and less burdensome to affected private persons. These proposals consist of amendments to existing regulations governing labor compliance programs and new regulations governing the assessment of fees and compliance monitoring and enforcement by the Department on specified public works construction projects. In light of the limitation on fees authorized under SBX2-9, the Director believes that these proposals provide the most cost-effective means for complying with the statute's objectives and specific requirements. The Director has looked for ways to achieve greater efficiency and savings through agreements with bond-funding agencies for notices and fee payments, the combining of multiple notices into a single reporting requirement, and providing for web-based reporting at no cost to agencies and contractors in lieu of requiring the continued use or submission of paper forms. Other alternatives, including a more detailed process for the assessment and collection of fees from awarding agencies and imposing more compliance obligations directly on public works contractors would be both more burdensome and less effective in meeting the goals of SBX2-9. The Director invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AVAILABILITY OF INFORMATION PERTAINING TO THE PROPOSED ACTION

The Director will have the rulemaking file available for inspection and copying through out the rulemaking

process. Initially the file will consist of this notice, the initial statement of reasons, and the text of the proposed regulations, including proposed forms. The text of the file will be available at the following location:

Department of Industrial Relations
Office of the Director — Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco, CA 94102

or from contact person John Cumming.

Website:

Rulemaking records, including the text of the proposed regulations may be accessed through the Department's Internet website at <http://www.dir.ca.gov/DIRRulemaking.html>.

Availability of Changed or Modified Text:

After holding the hearings and considering all timely and relevant comments received, the Director may adopt the proposed regulations substantially as described in this notice. If the Director makes modifications which are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be made available to the public for at least 15 days before the Director adopts the regulations as revised. Any such modifications will also be posted on the Department's website. Please send requests for copies of any modified regulations to the attention of the contact persons listed above. The Director will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Availability of the Final Statement of Reasons and the Rulemaking File:

Upon completion, the Final Statement of Reasons will be available and the entire rulemaking file may be obtained from the contact persons named in this notice.

TITLE 10. MANAGED RISK MEDICAL INSURANCE BOARD

NOTICE OF PROPOSED RULEMAKING ER-04-09

**TITLE 10. CALIFORNIA CODE OF REGULATIONS
CHAPTER 5.8 HEALTHY FAMILIES PROGRAM**

AMEND SECTION 2699.6825

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Managed Risk Medical Insurance Board (MRMIB) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal will be held on January 4, 2010, at 1:30 p.m., at 1000 G Street, Suite 450, Sacramento, CA 95814.

Following the public hearing MRMIB may thereafter adopt the proposal substantially as described below or may modify the proposal if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the:

Managed Risk Medical Insurance Board
Attn: Dianne Knox (ER-4-09)
1000 G Street, Suite 450
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at (916) 445-0898 or by e-mail to dknox@mrmib.ca.gov. Comments must be received by no later than 5:00 p.m. on January 4, 2010.

AUTHORITY AND REFERENCE

Authority: Insurance Code section 12693.21
Reference: Insurance Code sections 12693.21, 12693.74 and 12693.96.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Healthy Families Program (HFP) is California's state- and federally-funded Children's Health Insurance Program (CHIP) established pursuant to Title XXI of the federal Social Security Act. MRMIB administers the HFP. HFP provides comprehensive health, dental and vision insurance for low-income children under age 19 whose family income is above the Medi-Cal income eligibility levels. (Insurance Code sections 12693 *et seq.*) The proposed HFP regulations are to comply with the federal CHIPRA requirements for federal fund participation (FFP) for new legal immigrants covered in the HFP. Currently, these new legal immigrants are funded with State General Funds only.

Existing Law: Insurance Code section 12693.70(a)(4) states that, as a condition of eligibility for the HFP, a child must "[m]eet citizenship or im-

migration status requirements that are applicable to persons participating in the program established by Title XXI of the Social Security Act." In order to implement this statute, MRMIB adopted Title 10 CCR section 2699.6600(c)(1)(T). However, the new federal CHIPRA statute requires the HFP to re-validate the immigration status of new legal immigrants annually during the Annual Eligibility Review (AER) process to qualify for FFP. In order to comply with the new federal requirements, applicants will be required to submit immigration status documentation during the AER process.

Policy Statement: The objective of the proposed regulations amendments is to conform the wording of all applicable program regulations to the federal CHIPRA requirements for new legal immigrants and allow FFP to fund a portion of the HFP costs for new legal immigrants.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This proposal does not impose a mandate on local agencies or school districts for which reimbursement would be required pursuant to Part 7 commencing with Section 17500 of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies, or cost or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

The State will realize a General Fund savings of \$12,474,067 in fiscal year 2009-10 (and for the two subsequent fiscal years) due to drawing down federal funds for recent legal immigrants.

BUSINESS IMPACT/SMALL BUSINESS

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

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The MRMIB has determined that this regulatory proposal will not have any impact on the creation of jobs or

new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The MRMIB 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

None.

ALTERNATIVES

The MRMIB must determine that no reasonable alternative considered by the agency, or that has been otherwise identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the adoption of this regulation is proposed.

CONTACT PERSONS

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to:

Dianne Knox
Managed Risk Medical Insurance Board
1000 G Street, Suite 450
Sacramento, CA 95814
(916) 324-0592

or

Randi Turner
Managed Risk Medical Insurance Board
1000 G Street, Suite 450
Sacramento, CA 95814
(916) 327-8243

INITIAL STATEMENT OF REASONS

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of

the information upon which this proposal is based, may be obtained upon request from the Managed Risk Medical Insurance Board at 1000 G Street, Suite 450, Sacramento, CA 95814. These documents may also be viewed and downloaded from the MRMIB website at www.mrmib.ca.gov.

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

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

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.mrmib.ca.gov.

TITLE 14. DEPARTMENT OF CONSERVATION/DIVISION OF OIL, GAS, AND GEOTHERMAL RESOURCES

NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC HEARING

**TITLE 14. NATURAL RESOURCES
DIVISION 2. DEPARTMENT OF CONSERVATION
CHAPTER 4. DIVISION OF OIL, GAS, AND GEOTHERMAL RESOURCES**

**REGARDING
AB 1960 IMPLEMENTATION**

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Department of Conservation (Department), Division of Oil, Gas, and Geothermal Resources (DOGGR) proposes to take the action described in the Informative Digest. Commencing with Chapter 4, Division 2, Title 14 of the California Code of Regulations, DOGGR will propose permanent regulations, after the consideration of all comments, objections, or recommendations.

Any interested person, or their authorized representative, may present statements or arguments orally or in writing relevant to the proposed action at one of the public hearings to be held at the following times and places:

- December 2, 2009 10:00 a.m. Woodfin Hotel, 5905 Corporate Ave., Cypress Ca 90630
- December 3, 2009 1:00 p.m. Marriot Hotel, 801 Truxton Ave., Bakersfield Ca 93301
- January 5, 2010 10:00 a.m. Renaissance Tower, 801 K St, 20th Floor Conf. Rm., Sacramento Ca 95814

All of the conference rooms are wheelchair accessible.

Any interested person, or their authorized representative, may submit written comment to the Department at any time during the public comment period. Written comments not submitted at one of the public hearings should be directed to one of the persons designated in this notice as a contact person. We request that written comments reference the sections or subdivisions that are discussed. Written comments may also be emailed to: DOGGRRegulations@conservation.ca.gov, or faxed to (916) 324-0948. Comments must be submitted no later than the close of the public comment period on January 5, 2010. Comments received after the close of the public comment period will not be responded to.

After the close of the public comment period the Department may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposals will be available for 15 days prior to its adoption from one of the persons designated in this notice as a contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony at a public hearing, or who have requested notification of any changes to the proposal.

AUTHORITY/REFERENCE

Pursuant to the authority vested by Sections 3013, 3270, 3270.4 and 3782 of the Public Resources Code, and to implement, interpret or make specific Sections 3010, 3106, 3202, 3203, 3204, 3208, 3219, 3222, 3223, 3224, 3226, 3229, 3230, 3270, 3270.1, 3270.4, 3782 and 3783 of the Public Resources Code, the Department is considering changes to Chapter 4 of Division 2 of Title 14 of the California Code of Regulations as follows: adoption of sections 1722.8, 1722.8.1, 1772, 1772.1, 1773.1, 1773.2, 1773.3, 1773.4, 1773.5, 1773.6, 1774.1, 1774.2, 1777, 1777.1, 1777.2 and

1777.3; amendment of sections 1722, 1760, 1770, 1773 and 1774; and repeal of section 1724.2.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing Law:

As specified in Section 3106, Chapter 1, Division 3 of the Public Resources Code (PRC), the Department of Conservation's Division of Oil, Gas, and Geothermal Resources (DOGGR) regulates oil, gas, and geothermal well operations throughout the State. DOGGR's mission is to prevent damage to life, health, property, and natural resources by ensuring that wells are properly drilled, operated, repaired, and plugged and abandoned. Existing regulation requires that, "All operations shall be conducted in accordance with good oilfield practice." (14 CCR § 1722(a).) Various existing regulations set specific standards for oilfield practices, some of which relate to specific types of oil and gas production facilities.

Assembly Bill 1960 (Nava, Chapter 562, Statutes of 2008), which became effective January 1, 2009, expands DOGGR's oversight of oil and gas production facilities. AB 1960 requires that DOGGR promulgate regulations prescribing minimum maintenance standards for all oil and gas production facilities in the state. The production facility maintenance standards established by DOGGR must address, at a minimum, leak detection, corrosion prevention, tank inspection and cleaning, valve and gauge maintenance, and secondary containment maintenance.

AB 1960 provides DOGGR with new enforcement authorities and enhancement of existing authority. The new authorities include the authority to impose a life-of-well or life-of-production facility bond on any operator that has a history of violations or that has outstanding liability in connection with its oil and gas operations.

AB 1960 establishes various recordkeeping and reporting requirements related to production facilities. The recordkeeping and reporting requirements established by AB 1960 include: maintaining records of all production facility maintenance, repairs, inspections and testing; reporting to DOGGR any construction, alteration, or decommissioning of a production facility; reporting to DOGGR any acquisition of a production facility; and submitting a spill contingency plan to DOGGR.

Statement of Policy:

It is the Department's goal that this rulemaking will respond to the legislative mandate of AB 1960 in a manner that will result in a significant reduction in the number of reportable spills and leaks caused by oil and gas production, without imposing unnecessary burden on

the industry. The specific standards that are proposed are each consistent with the existing general requirement that all operations be conducted in accordance with good oilfield practice.

Proposed Action:

The purpose of the proposed rulemaking action is to implement the provisions of AB 1960. The proposed rulemaking specifies minimum standards for the inspection, testing, maintenance and construction of all production facilities. Minimum standards are established for periodic testing of tanks and minimum wall thicknesses are specified for in-service tanks. Standards are established for draining, securing and decommissioning out-of-service production facilities, and for testing an out-of-service production facility prior to returning it to service. Minimum standards are specified for secondary containment of production facilities containing liquids, and for maintenance of the secondary containments. Standards are specified for inspection, testing, maintenance and construction of pipelines. The existing requirement that operators maintain a pipeline management plan is expanded to ensure that maintenance information is available for all pipelines. The proposed rulemaking will require operators to develop a written preventative maintenance plan to address production facility corrosion and leaks. The proposed rulemaking will require prompt clean up of all spills.

The proposed rulemaking implements DOGGR's authority to impose a life-of-well and life-of-production facility bond by establishing criteria for when such a bond would be imposed, how the amount of a bond would be determined, and how a bond would be levied upon.

The proposed rulemaking implements the record-keeping and reporting requirements of AB 1960, including the requirement that operators submit a spill contingency plan to DOGGR. The proposed rulemaking specifies the contents and the retention time for the recordkeeping and reporting required by AB 1960. The proposed rulemaking amends the existing requirement that certain operational incidents be reported to DOGGR in order to clarify and narrow what is a reportable incident.

The proposed rulemaking will allow DOGGR to make use of geologic and engineering information available from previous production operations when establishing field rules for any oil or gas field.

Comparable Federal Regulation:

Public Resources Code Section 3270.1 requires all operators to submit a spill contingency plan to DOGGR. Comparable federal regulations require that some, but not all, operators prepare Spill Prevention Control and Countermeasure Plan. The federal regulations are found in Title 40 of the Code of Federal Regu-

lations, Part 112. In order to avoid redundancy or conflict with the comparable federal regulations, the proposed rulemaking provides that the requirements of Public Resources Code Section 3270.1 are met by submitting a copy of a plan prepared in accordance with the federal regulations.

PLAIN ENGLISH REQUIREMENT

The Department staff prepared the proposed regulation changes pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). The proposed regulations are written to be easily understood by the parties that will use them.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

COST OR SAVINGS TO STATE AGENCIES

Implementation of the mandates of AB 1960, which includes adoption of the proposed rulemaking, requires a baseline appropriation of \$2,690,000 from the Oil, Gas, and Geothermal Administrative Fund and ongoing annual appropriation of \$1,960,000. The 2009-10 State Budget allocated the necessary funding to implement this program.

EFFECT ON HOUSING COSTS

The Department has determined that the proposed regulations will not have a significant effect on housing costs.

IMPACT ON BUSINESS

The Department has made an initial determination that the adoption and amendment of these regulations may have a significant, statewide adverse economic im-

pact directly affecting business, including the ability of California business to compete with businesses in other states. This rulemaking will affect businesses engaged in oil and gas production or injection operations in the state.

The following compliance requirements are projected to result from the proposed action:

- Periodic visual inspection of production facilities for leaks and corrosion on a monthly or annual basis, depending on the type of facility.
- Periodic external inspection and testing of tanks, and internal inspection of specified tanks.
- Possible construction or improvement of secondary containment for production facilities.
- Draining and securing out-of-service production facilities.
- Decommission of production facilities that have been out-of-service for five years.
- Development of a preventative maintenance plan addressing production facility corrosion and leaks.
- Maintenance of a pipeline management plan listing information about each pipeline and describing its testing schedule.

AB 1960 expressly establishes the following reporting and recordkeeping requirements, which are made specific and implemented by the proposed action:

- Public Resources Code Section 3270, subdivision (d) requires that records be maintained of all production facility maintenance, repairs, inspections and testing.
- Public Resources Code Section 3270, subdivision (c) requires that any construction, alteration, or decommissioning of a production facility be reported to DOGGR.
- Public Resources Code Section 3270.1 requires submission of a spill contingency plan to DOGGR.
- Public Resources Code Section 3202, as amended by AB 1960, requires that any acquisition of a production facility be reported to DOGGR.

The Department has not considered proposed alternatives that would lessen any adverse economic impact on business and invites submission of proposals. Submissions may include the following:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- Consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.

- Exemption or partial exemption from the regulatory requirements for businesses.

EFFECT ON CREATION OR ELIMINATION OF JOBS OR BUSINESS IN THE STATE OF CALIFORNIA

The Department has determined that the proposed rulemaking will not have a significant impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

Existing regulations require that all operations be conducted in accordance with good oilfield practice. The specific maintenance requirements established by this rulemaking are consistent with industry standards for good oilfield practices, including the standards detailed by the American Petroleum Institute. For businesses that are already conducting their operations in accordance with these standards there will be minimal costs incurred in reasonable compliance with the proposed action. For businesses that are not already conducting their operations in accordance with these standards, costs incurred in reasonable compliance with the proposed action might result from:

- More frequent visual inspection of production facilities.
- Conducting specified inspections and testing of tanks.
- Possible construction or improvement of secondary containment where production facilities are not already adequately contained.
- Disposing of standing fluids in out-of-service production facilities and securing the out-of-service equipment.
- Assessment and compilation of preventative maintenance measures employed to address production facility corrosion and leaks.
- Maintaining up to date information about the pipelines in operation.

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

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative that it considers or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the pur-

pose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. The Department has not identified any adverse impacts resulting from these proposed regulations.

FINDING OF NECESSITY OF REPORTS

The Department has found that the proposed requirements for reports are necessary to implement the statutory requirements of AB 1960, including the requirement that minimum maintenance standards be prescribed for all production facilities, and it is necessary for the health, safety, and welfare of the people of the state that the requirements apply to businesses.

EFFECTS ON SMALL BUSINESSES

The Department has determined that the proposed regulatory action may affect small businesses.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons may be obtained, when it becomes available, from the agency contact person or backup contact person identified in this notice.

ACCESSING INFORMATION REGARDING THIS FILE ON THE DEPARTMENT OF CONSERVATION WEBSITE

The text of the proposed regulations, the Notice of Proposed Action, the Initial Statement of Reasons and the Final Statement of Reasons, when available for review, will be on the Department of Conservation website at: www.conservation.ca.gov.

INFORMATION IS AVAILABLE UPON REQUEST

Copies of the text, the express terms of the proposed action, the Initial Statement of Reasons, and all of the information upon which this proposal is based are available upon request from our agency contact person and at the Department website: www.conservation.ca.gov. The rulemaking file is available to the public for review during normal business hours at the Division of Oil, Gas and Geothermal Resources, 801 "K" Street, 20th Floor, Sacramento, California, (916) 322-4180.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following primary contact person:

Tim Shular
AB 1960 Implementation Regulations
Department of Conservation
Office of Governmental and Environmental Relations
801 "K" St., MS 24-02
Sacramento, CA 95814
(916) 322-4180

The backup agency contact person is:

Rebecca Salazar
AB 1960 Implementation Regulations
Department of Conservation
Office of Governmental and Environmental Relations
801 "K" St., MS 24-02
Sacramento, CA 95814
(916) 322-4180

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology (hereinafter "the Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the action orally or in writing at a hearing to be held at the following date, time and location:

**Monday, January 4, 2010
10:00 a.m.**

Board of Barbering and Cosmetology
Sequoia Room
2420 Del Paso Road
Sacramento, California 95834

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 p.m. on January 4, 2010 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption

from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 7312 and 7362 of the Business and Professions Code, and to implement, interpret or make specific Sections 7362.5, 7365, 7366 and 7395.1 of said Code, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Amend Sections 950.1, 950.4 and 950.5, California Code of Regulations

Section 7362 of the Business and Professions Code requires the Board to set the subject matter for barbering and cosmetology curriculums offered at Board-approved trade schools, including the minimum number of hours of technical instruction and number of practical operations for each subject. The Board is proposing to change its existing requirements for the barbering, nail care and electrolysis curriculums to allow schools to offer courses of study that are more relevant to the real world. The Board has already taken steps to accomplish by amending the cosmetology (OAL Files # 2008-0912-01 SR and 2009-0219-01N) and skin care (OAL Files # 2008-1231-02SR) curriculums.

Repeal Sections 962.3, 962.4, 962.5 and 962.6, California Code of Regulations

Section 7395A of the Business and Professions Code gives barbering and cosmetology students the option of working as unpaid “externs” to earn credit toward completing their curriculum requirements, for which the Board set up complimentary, but separate, extern curriculums for cosmetology, skin care, nail care and the barbers in a cosmetology crossover program. Over the years, however, it became clear to the Board that many barbering and cosmetology establishments that might otherwise have agreed to serve as an externship site, were declining because of the extern curriculum. Establishment owners complained that the curriculum did not accurately reflect the activities of a shop and that teaching the extern curriculum interfered with their business. They argued that students would be better served by focusing on the “real world” activities of a shop. The Board has determined that the best course of action under the circumstances is to repeal the curriculums altogether.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact:

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

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will have no impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

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

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations will have no effect on small businesses. The regulations merely change already existing curriculums already taught by barbering and cosmetology schools.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice. Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS
AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Barbering and Cosmetology at 2420 Del Paso Road, Suite 100, Sacramento, California 95834.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below, or by accessing the Web site listed below.

CONTACT PERSON

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

Name: Kevin Flanagan, Legislation and Regulations Analyst
Address: 2420 Del Paso Road, Suite 100
Sacramento, CA 95834
Telephone No.: (916) 575-7104

The backup contact person is:

Name: Betty Ho
Address: 2420 Del Paso Road, Suite 100
Sacramento, CA 95834
Telephone No.: (916) 575-7102
Fax No.: (916) 575-7281
E-Mail Address: Betty_Ho@dca.ca.gov

Web site Access: Materials regarding this proposal can be found at www.barbercosmo.ca.gov under "Laws and Regulations/Proposed Regulations."

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on January 4, 2010.

Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 1625 N. Market Blvd., Hearing Room, Sacramento, California, at 9:30 a.m. on January 20, 2010.

The Board of Pharmacy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference. Pursuant to the authority vested by Section 4005 of the Business and Professions Code, and to implement, interpret or make specific Sections 4076 and 4076.5, of said Code, the Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law sets forth the requirements for a prescription drug container label for any drug dispensed to a patient in California (Business and Professions Code section 4076). However, existing law does not describe with specificity what elements are necessary to make the label "patient-centered," as required by Business and Professions Code section 4076.5. Proposed regulation at Section 1707.5 specifies *how* prescription drug information is to be placed on the prescription drug container label, and clarifies what interpretive services are required to be provided by pharmacies in compliance with Section 4076.5 of the Business and Professions Code.

As mandated by Business and Professions Code section 4076.5 (The California Patient Medication Safety Act enacted by SB 472, Stats. 2007, ch. 470) and to make specific the prescription drug container label requirements found in Business and Professions Code section 4076, the Board of Pharmacy has proposed to add Section 1707.5 to Title 16 of the California Code of Regulations. This proposal would establish the requirements for a standardized, patient-centered prescription drug container label. This regulation would, among other things, mandate the format of all prescription drug container labels for prescription drugs dispensed in California, including: font type, font size, placement, wording, and grouping of information. It would require pharmacists, when applicable, to use standardized

words and phrases, as specified, to describe directions for use of the drug on the drug container label.

This regulation would also require the California State Board of Pharmacy (Board) to publish on its Web site by October 2011 translations of certain directions for use, as specified, into at least five (5) languages other than English to facilitate the use of these translations by pharmacies. The Board would also be required, beginning in October 2010, to collect and publish on its Web site examples of labels conforming to the requirements of this proposed regulation.

In addition, this regulation would require a pharmacy, upon request by a patient with limited English proficiency, to provide oral translation of the prescription drug container label's information.

Under this proposal, the Board would be required to re-evaluate the requirements of this regulation by December 2013 to ensure optimal conformance with Business and Professions Code section 4076.5.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This regulatory proposal applies to pharmacies that dispense prescription drug medications to patients in California — licensed pharmacy sites within California, as well as those nonresident sites outside of California.

Additionally, the proposed regulation requires that a pharmacy that dispenses prescription drug medication to patients in California, and upon request by the patient, to provide an oral language translation of specified information on the label. To address the needs of patients with limited English proficiency and who require oral language interpretation of prescription drug label information, subdivision (d) of the proposed regulation contains language requiring a pharmacy, upon request of the patient, to provide an oral language inter-

pretation of the prescription drug label information specified in subdivision (a)(1). The board received testimony from chain and retail pharmacy industry representatives that this service is already provided to patients with limited English proficiency and that a regulation requiring a pharmacy to provide this service would not impose any further economic impact. Additionally, and as required in subdivision (b) of the proposed regulation, the board will post on its Web site the translation of the standard directions for use phrases (subdivision (a)(4)) in five non-English languages. The board will work with health care advocates to develop these translations.

For more than two years prior to this notice, the Board has publicly engaged in discussions at hearings and at public meetings to seek input and determine how the board can best implement its mandate to promulgate regulations by January 1, 2011, to develop a patient-centered prescription drug label. The board has received input and information from industry representatives, affected businesses, and others and has determined that the proposed regulation will provide patients with a prescription drug container label that they can better understand, as well as one that will aid the patient to take their prescription drug medications as instructed by their physician. Ultimately, this will improve patient adherence to a prescription drug therapy and aid in better health by reducing medication errors.

Impact on Jobs/New Businesses: The Board of Pharmacy has determined that the proposed regulatory action would have no significant statewide adverse economic impact affecting business, including the ability of California businesses to compete with businesses in other states.

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

Senate Concurrent Resolution No. 49—Relative to Medication Errors. Resolution Chapter 123, Filed with Secretary of State September 2005.

SCR 49 Final Report on Medication Errors

SCR 49, Senate Health Committee Analysis (for bill version 6/15/05, hearing date 6/22/05)

Senate Bill 470 (Corbett)—Chapter 472, Statutes of 2007

Meeting Materials and Minutes from the following:

Information, comments and/or testimony received at Senate Bill 472 Medication Label Subcommittee Public Forums held on the following dates: April 12, 2008, November

20, 2008, January 27, 2009 and March 12, 2009.

Information, comments and/or testimony received at Communication and Public Education Committee meetings held on the following dates: June 27, 2007, January 8, 2008, April 12, 2008, July 23, 2008, and October 2, 2008.

Information, comments and/or testimony received at Legislation and Regulations Committee meetings held on the following dates: April 3, 2007, July 5, 2007, July 10, 2008, and October 29, 2008.

Information, comments and/or testimony received at Board of Pharmacy Board Meetings held on the following dates: August 19, 2009, and October 21–22, 2009.

Hernandez, Lyla M., Rapporteur. Roundtable on Health Literacy. “Standardizing Medication Labels: Confusing Patients Less, Workshop Summary.” ISBN: 0–309–11530–2.

Testimony from Doreena Wong, National Health Law Program, November 20, 2008; and Issue Brief: Language Services in Pharmacies: What is Required?

Board of Pharmacy Prescription Container Label Survey; survey responses; and Fact sheet: Do you understand the directions on your Rx medicine label?

Improving Prescription Drug Container Labeling in the United States, A Health Literacy and Medication Safety Initiative. A White Paper commissioned by the American College of Physicians Foundation, October 12, 2007.

Effect of Content and Format of Prescription Drug Labels on Readability, Understanding, and Medication Use: A Systematic Review, *The Annals of Pharmacotherapy*, 2007 May, Volume 41.

Shrank, William H., MSHS, MD; Agnew–Blais, Jessica, BA; Choudhry, Niteesh K., MD PhD; Wolf, Michael S., PhD, MPH; Kesselheim, Aaron S., MD, JD; Avorn, Jerry, MD; Shekelle, Paul, MD PhD. *The Variability and Quality of Medication Container Labels*. ARCH INTERN MED/VOL 167 (No. 16), September 10, 2007.

2009–2010 Chain Industry Pharmacy Profile, National Association of Chain Drug Stores.

Cost Impact on Representative Private Person or Business: The Board of Pharmacy is not aware of any cost impacts that a representative private person would incur in reasonable compliance with the proposed ac-

tion. This regulation proposal applies to pharmacy sites licensed by the board, not individual licensees.

For a pharmacy licensed by the board that distributes prescription drug medications to patients in California, that business may incur one–time costs associated with the configuration or re–configuration of how their prescription drug labels are printed. The board received testimony in October 2009 from one industry member who indicated that his pharmacy may incur a \$1,000 one–time cost to re–configure the printing of that pharmacy’s prescription labels to ensure compliance with the proposed regulation.

The board heard testimony in October 2009 from the California Retailers Association and pharmacy chain representatives who indicated that the interpretive language services they currently provide to patients with limited English proficiency as a result of their compliance with regulations established by the Department of Managed Health Care and the Department of Insurance (SB 853, Chapter 713 Statutes of 2003) will be extended to all pharmacy patients. Thus, the board is not aware of a significant cost impact to industry for providing oral language interpretive services of specified prescription label content.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

To determine the number of small businesses that may be affected by this proposed regulation, the board utilized data from the National Association of Chain Drug Stores (NACDS) 2009–2010 Chain Pharmacy Industry Profile (2008 data), which reports that in 2008 California had 4,828 chain drug, supermarket, mass merchant and independent drug store locations. Of that number, NACDS considers 1,670 (or approximately 35%) to be independent pharmacies. The board also utilized its own licensee data that shows that as of December 2008 the board issued licenses to 6,149 pharmacies. (This number does not include those licenses issued to correctional facilities, hospitals or licensed clinics — these are pharmacies that rarely dispense prescription drug medications to outpatients.) Utilizing the NACDS profile data, if 35% of California’s pharmacies are considered independent pharmacies, this would represent that — using actual licensee data — California would have approximately 2,150 independent pharmacies.

CONSIDERATION OF ALTERNATIVES

The Board of Pharmacy must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would

be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments in writing relevant to the above determinations by e-mailing, mailing, or transmitting by facsimile to the Contact Person on or before January 4, 2010. Interested persons may also present to the board statements or arguments orally or in writing relevant to the above determinations at the regulation hearing scheduled for January 20, 2010.

**INITIAL STATEMENT OF REASONS
AND INFORMATION**

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Board of Pharmacy at 1625 N. Market Blvd., N219, Sacramento, California 95834, or from the Board of Pharmacy's Web site (www.pharmacy.ca.gov).

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board of Pharmacy's Web site (www.pharmacy.ca.gov).

CONTACT PERSON

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

Name: Carolyn Klein
 Address: 1625 N. Market Blvd., N219
 Sacramento, CA 95834
 Telephone No.: (916) 574-7913
 Fax No.: (916) 574-8618
 E-Mail Address: Carolyn_Klein@dca.ca.gov

The backup contact person is:

Name: Anne Sodergren
 Address: 1625 N. Market Blvd., N219
 Sacramento, CA 95834
 Telephone No.: (916) 574-7910
 Fax No.: (916) 574-8618
 E-Mail Address: Anne_Sodergren@dca.ca.gov

Website Access. Materials regarding this proposal can be found at www.pharmacy.ca.gov.

**TITLE 22. DEPARTMENT OF HEALTH
CARE SERVICES**

ACTION: Notice of Proposed Rulemaking
 Title 22, California Code of Regulations
SUBJECT: Health Insurance Premium Payment Program, DHCS-07-004

PUBLIC PROCEEDINGS

Notice is hereby given that the Department of Health Care Services (Department) will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

California Welfare and Institutions (W & I) Code Sections 10725 and 14124.5 authorize the director of the Department to adopt, amend, or repeal regulations as necessary and proper to carry out the purposes and intent of the statutes governing the Medi-Cal program.

The Health Insurance Premium Payment (HIPP) program operates under Section 14124.91 of the W & I Code, Title 22, Section 50778 of the California Code of Regulations (CCR), as well as the California State Plan, Attachment 4.22-C (SPA), which provide the bases for establishing program enrollment, eligibility, and cost-effective criteria.

Assembly Bill (AB) 3328 (Margolin, Chapter 940, Statutes of 1986) enacted the state statute requiring payment of premiums for third-party coverage. The provisions of AB 3328 are codified in W & I Code Section 14124.91. This statute provides a description of a cost-effective payment plan for maintaining third-party health coverage for persons who are Medi-Cal beneficiaries.

Title 22, CCR, Section 50778 mandates the Department, through the HIPP program as part of the Medi-Cal program, to pay the premiums for persons who are

Medi-Cal eligible and who have access to group or private health insurance plans— third-party health coverage — whenever it is cost-effective.

The Department received federal approval to change the cost-savings percentage for the HIPP program in its State Plan effective January 1, 2008. Using a lower cost savings percentage that requires the estimated savings to the Medi-Cal Program to be 110% of the premium costs is less difficult for applicants to meet than the current percentage requirement of 200%, and will increase the potential net program savings. This change is warranted because an increase in HIPP enrollment will increase yearly Medi-Cal savings. Allowing larger numbers of potential Medi-Cal beneficiaries to maintain their current health insurance and providers ensures continuity of care, which may maintain or improve individuals' health status, and avoid increased Medi-Cal expenditures.

This proposed regulatory action would assure conformance with the State Plan, as approved by the federal Centers for Medicare & Medicaid Services and affect Title 22, CCR, by amending Section 50778 to specifically accomplish the following:

1. Delete the current (a) at the beginning of the section.
2. Add a comma after "Department" in the first paragraph.
3. Change the basic description of what constitutes "cost-effectiveness" to comply with the SPA and read, "when the estimated savings to the MediCal program is 110% or greater than the premium costs."
4. Delete the words "cost of Medical benefits," and insert the word "savings."
5. Change the numerical designations to alphabetical designations.
6. Add Section 20, Health and Safety Code as an Authority, because it authorizes the name change from the Department of Health Services to the Department of Health Care Services.
7. Change, under the Reference, the colon to a semicolon after "Code," eliminate the space after "1396," and change the (A) to (a).

AUTHORITY

Section 20, Health and Safety Code; and Sections 10725 and 14124.5, Welfare and Institutions Code.

REFERENCE

Sections 14124.91, Welfare and Institutions Code; and 42 USC 1396 b(a)(1).

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on January 8, 2010, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-5748; or
3. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS-07-004" in the subject line to facilitate timely identification and review of the comment).

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

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Michael Marchello of Health Insurance Premium Payment Program at (916) 650-6488.

All other inquiries concerning the action described in this notice may be directed to Ben Carranco of the Office of Regulations at (916) 440-7766, or to the designated backup contact person, Lynette Cordell, at (916) 440-7695.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-07-004.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the pro-

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

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the Decisions Pending and Opportunity for Public Participation link (from the left menu), then selecting the Proposed Regulations link.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: Additional cost of \$736,000 in Fiscal Year 2009-10. This amount has been included in the May 2009 Medi-Cal Estimate.
- C. Fiscal Effect on Federal Funding of State Programs: Additional cost of \$1,180,000 in Fiscal Year 2009-10. This amount has been included in the 2009 Medi-Cal Estimate.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private

person or business would necessarily incur in reasonable compliance with the proposed action.

- E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None

DETERMINATIONS

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

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

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

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the proposed regulations would not affect small businesses. These regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

The Department has determined that the proposed regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) 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 the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No public hearing has been scheduled; however any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Susan Pierson, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7695 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
PROPOSITION 65

NOTICE OF PROPOSED RULEMAKING

TITLE 27, CALIFORNIA CODE OF REGULATIONS

**PROPOSED AMENDMENT OF SECTION 25903
NOTICE OF VIOLATION**

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend Title 27, Cal. Code of Regulations, section 25903(c)(1), to allow 60-day notices of violation to be sent to certain state and local prosecutors via electronic mail, if the prosecutor has consented to such service. At the request of affected stakeholders, OEHHA has developed proposed regulatory amendments to Title 27, Cal. Code of Regulations, section 25903(c)(1). The text of the proposed amendments is attached to this notice.

PUBLIC PROCEEDINGS

OEHHA is requesting public comment concerning these proposed amendments to the regulation. A public hearing to present oral comments will be scheduled only upon request. Such request must be submitted in writing no later than 15 days before the close of the

comment period on January 19, 2010. The written request must be received by OEHHA at the address listed below no later than January 4, 2010. A notice for the public hearing, if one is requested, will be posted on the OEHHA web site at least ten days in advance of the hearing date. The notice will provide the date, time, location and subject matter to be heard. Notices will also be sent to those individuals requesting such notification.

Any written statements or arguments, regardless of the form or method of transmission, must be received by OEHHA by 5:00 p.m. on January 19, 2010, which is hereby designated as the close of the written comment period. Written comments regarding this proposed action may be sent by fax, mail or by e-mail addressed to:

Fran Kammerer
Office of Environmental Health Hazard Assessment
P. O. Box 4010
Sacramento, California 95812-4010
Telephone: 916-445-4693
Fax: 916-323-2610
E-mail: fkammerer@oehha.ca.gov

Comments sent by courier should be delivered to:

Fran Kammerer
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
Sacramento, California, 95814

It is requested, but not required, that hard-copy statements or arguments be submitted in triplicate.

CONTACT

Inquiries concerning the action described in this notice may be directed to Fran Kammerer, Staff Counsel via e-mail at fkammerer@oehha.ca.gov, or via mail at OEHHA, P.O. Box 4010 Sacramento, California 95812-4010. Monet Vela is a back-up contact person for inquiries concerning processing of this action and is available at (916) 323-2517 or mvela@oehha.ca.gov.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65 (hereinafter referred to as "Proposition 65" or "the Act"), was enacted as a voters' initiative on November 4, 1986, and codified at Health and Safety Code section 25249.5 et seq. The Office of Environmental Health Hazard Assessment, within the California Environmental Protection Agency is the state entity responsible for the implementation of the Act. OEHHA has the authority to promulgate and amend regulations to further the purposes

of the Act.¹ The Act requires businesses to provide a warning when they cause an exposure to a chemical listed as known to cause cancer or reproductive toxicity. The Act also prohibits the discharge of listed chemicals to sources of drinking water.

Section 25903(c)(1) of the California Code of Regulations, Title 27 requires a person who brings an action in the public interest for violation of Proposition 65 to first give notice of the alleged violation to the alleged violator, the Attorney General, district attorney, city attorney or prosecutor in whose jurisdiction the violation occurred (city attorneys only for cities with populations over 750,000), 60 days prior to filing an enforcement action. Currently, these so-called "60-Day Notices" are served via U.S. Mail on all public prosecutors in the state. This notification process can be expensive and time-consuming for both the person providing the notice and the district attorneys and city attorneys throughout the state who have to sort through a significant volume of mail to determine whether any specific notice affects their jurisdiction. This process also requires a significant amount of paper, and creates additional, and often unnecessary, mail work at these offices. Often the alleged violations did not take place in the counties or cities that have been notified, and thus are disregarded. Therefore, the current notification process is not efficient for all parties involved and an amendment to the existing regulation is necessary.

AUTHORITY

Health and Safety Code section 25903.

REFERENCE

Health and Safety Code sections 25249.5, 25249.6, 25249.11(b), and 25249.12.

**IMPACT ON LOCAL AGENCIES
OR SCHOOL DISTRICTS**

OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts; nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action. Proposition 65 expressly does not apply to federal, state or local governmental agencies (Health and Safety Code section 25249.11(b)).

¹ Health and Safety Code section 25249.12(a).

COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has initially determined that no significant savings or increased costs to any State agency will result from the proposed regulatory action. Proposition 65 expressly does not apply to federal, state or local governmental agencies (Health and Safety Code section 25249.11(b)).

**EFFECT ON FEDERAL FUNDING
TO THE STATE**

OEHHA has initially determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has initially determined that the proposed regulatory action will have no effect on housing costs.

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

OEHHA has made an initial determination that the adoption of the amendments to the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation does not impose any new requirements upon private persons or business.

**IMPACT ON THE CREATION, ELIMINATION,
OR EXPANSION OF JOBS/BUSINESSES**

OEHHA has initially determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSONS OR BUSINESSES**

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

EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulatory action will not impose any new or additional require-

ments on small businesses and may reduce the costs associated with service of 60-day notices of violation by allowing such notices to be served via electronic mail on certain public prosecutors.

CONSIDERATION OF ALTERNATIVES

OEHHA is required by Government Code section 11346.5(a)(13) to determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action. OEHHA requested comments from District Attorneys and City Attorneys in all 58 California counties and received favorable responses to the proposed amendments. The electronic service option that will be made available through these proposed amendments is not mandatory. Since a few District Attorneys were uncomfortable with electronic notice, the proposed regulatory amendments provide that electronic service may only be used where the public prosecutor has consented to such a service and has provided an e-mail address to the Attorney General's Office for posting on their Web site.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the proposed regulatory amendments, all the critical information upon which the regulation is based, and the text of the proposed amendments to the regulation. A copy of the Initial Statement of Reasons and a copy of the text of the proposed regulation are available upon request from Monet Vela at the telephone number indicated above. These documents are also posted on OEHHA's Web site at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any proposed regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on the changed proposed regulations and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from

OEHHA of availability of such change. Copies of the notice and the changed regulation will also be available at OEHHA's web site at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from OEHHA's Monet Vela at the telephone number indicated above. The Final Statement of Reasons will also be available at OEHHA's web site at www.oehha.ca.gov.

TITLE MPP. DEPARTMENT OF SOCIAL SERVICES

ORD #0508-03

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (CDSS)

ITEM #1 Division 31 Grievance Review Procedures

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held January 13, 2010, as follows:

January 13, 2010
Office Building # 8
744 P St. Room 105
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on January 13, 2010.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption

to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at <http://www.dss.cahwnet.gov/ord>. Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading/perusal at the address listed below.

Following the public hearing, copies of the Final Statement of Reasons will be available from the office listed below.

CONTACT

Office of Regulations Development
California Department of Social Services
744 P Street, MS 8-4-192
Sacramento, California 95814

TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures, Division 31 (Child Welfare Services Program), Chapter 31-000 (General Requirements), Section 31-003 (Definitions — Forms) and Section 31-021 (Child Abuse Central Index (CACI) Grievance Procedures); Chapter 31-400 (Placement), Section 31-410 (Temporary Placement); and Chapter 31-500 (Special Requirements), Section 31-501 (Child Abuse and Neglect Reporting Requirements)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 2004, the California Department of Social Services (CDSS) was party to a lawsuit, *Gomez v. Saenz*, which alleged that individuals' names were submitted to the Child Abuse Central Index (CACI), a child abuse registry maintained by the California Department of Justice, without a right to challenge the placement, which the plaintiff alleged was a violation of due process guarantees of the California Constitution. In addition, the lawsuit challenged the accuracy of information

retained on the CACI, alleging that a significant number of listings were maintained on the CACI without adequate underlying files to support the listing. This lawsuit was settled in October 2007 and as part of the agreement between the parties, CDSS agreed to amend current regulations to reflect the new grievance hearing procedures as required by the settlement.

Pursuant to Penal Code Section 11169, an individual's name is submitted to the CACI whenever a county child welfare services (CWS) agency determines that a child abuse and/or neglect (excluding general neglect) allegation regarding that individual is found to be inconclusive or substantiated. Prior to *Gomez v. Saenz*, individuals did not have the opportunity to challenge their listing. This settlement agreement provides individuals with due process by allowing them to dispute their listing on the CACI. The settlement agreement further stipulates that county CWD agencies are to furnish a request for grievance hearing and notice of listing on CACI forms to persons subject to listing on CACI.

The stipulation to create regulations based on *Gomez v. Saenz* requires the adoption of a new section in the Manual of Policies and Procedures, Division 31 regulations. In addition, amendments to other portions of Division 31 were necessary to provide consistency and to accurately reflect the due process requirements pursuant to the *Gomez v. Saenz* settlement agreement.

The settlement agreement includes specific language that explains the procedures to provide due process for individuals listed on CACI. Significant additions to these regulations include: 1) grievance request procedures, 2) grievance hearing procedures, and 3) procedures for grievance review decisions.

Section 31-003 provides definitions for the new notification forms required by the settlement agreement. The new notification forms are added by reference (i.e., SOC 832 ("Notice of Child Abuse Central Index Listing" Rev. 5/08), SOC 833 ("Grievance Procedures for Challenging Reference to the Child Abuse Central Index," Rev. 3/08), and SOC 834 ("Request for Grievance Hearing," Rev. 6/08)).

Section 31-021 provides detailed grievance hearing procedures.

Section 31-410 of Division 31 regulations outlines special requirements for notifying individuals of their listing on the CACI. Additional information is included to specify that a substantiated CACI listing does not preclude temporary placement of a child with a relative or non-relative extended family member.

Section 31-501 of Division 31 regulations outlines special requirements for reporting child abuse and neglect to the California Department of Justice. Amendments to this section are needed to include new procedures and handbook information defining child abuse

or neglect requirements as stipulated in the *Gomez v. Saenz* lawsuit settlement agreement.

COST ESTIMATE

1. Costs or Savings to State Agencies: The May Revision includes \$2.3 million total funds (\$1.6 million general fund) for the anticipated costs under the *Gomez vs. Saenz* premise.]
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500–17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: Additional expenditures of approximately \$700,000 in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation implements the court mandate set forth by the Superior Court of California court in the case of *Gomez vs. Saenz*.
4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

LOCAL MANDATE STATEMENT

The addition to Division 31, Section 31–021 (Child Abuse Central Index [CACI] Grievance Review Procedures), the amendments to Division 31, Section 31–501 (Child Abuse and Neglect Reporting Requirements), and the amendments to Division 31, Section 31–410 (Temporary Placement) will impose mandates on local county child welfare agencies.

These regulations will require additional workload for the agencies. The additional activities include noticing individuals of their listing on the CACI, preparing for and performing grievance hearings as requested, and other documentation as specified in the regulations. This will create additional costs for the local CWS agencies.

At this time, it is unknown what fiscal impact these new regulations will have on the CDSS. County CWS agencies are currently time–studying grievance hearing activities to a Program Code created specifically for this purpose.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide ad-

verse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

CDSS has determined that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

The proposed regulatory action will have no effect on housing costs.

STATEMENT OF ALTERNATIVES CONSIDERED

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

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553, 10554, and 10850.4, Welfare and Institutions Code; *Gomez v. Saenz* Settlement Agreement and Court Order, Case No: BC284896, and *Nicholas v. CDSS and Marin County*, Case No: CIV092626. Subject regulations implement and make specific Section 827, Welfare and Institutions Code; Penal Code Sections 11165.5, 11165.12, 11166(g), 11166.3, 11167, and 11169.

CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION

Contact Person: Kenneth Jennings (916) 651-2586
Backup: Robin Garvey (916) 657-2586

EMERGENCY STATEMENT

These regulations are to be adopted on an emergency basis. In order to allow interested persons an opportunity to submit statements or arguments concerning these regulations, they will be considered at a public hearing in accordance with Government Code Section 11346.4.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
Tracking Number 2080-2009-015-02

PROJECT: Interstate 80 Bicycle and Pedestrian Overcrossing Project
LOCATION: East and West Drainage Canals, City of Sacramento, Sacramento County
APPLICANT: City of Sacramento
NOTIFIER: ICF Jones and Stokes

BACKGROUND

The City of Sacramento (City) proposes to construct an overcrossing to connect the existing bicycle path in South Natomas to a new bicycle path along the East Drainage Canal in North Natomas (Project). The connection will consist of two bridge segments: one across Interstate 80 (I-80) and one across the West Drainage Canal. The south connection point will be to the existing path running north-south at the present terminus of Gateway Oaks Drive near the east levee of the Natomas Main Drainage Canal. The new path will rise in elevation approximately 20 feet to cross I-80. The north connection point will be on the west levee bank of the West Drainage Canal in North Natomas. From there, the path will cross the West Drainage Canal on a second bridge to connect to an existing trail.

The overcrossing of I-80 will consist of a cast-in-place box girder section, supported by two cast-in-place concrete abutments and five cast-in-place con-

crete columns on driven piles. The overcrossing will follow a gentle "S" curve alignment with radii of 328.1 feet.

An at-grade level bridge across the West Drainage Canal will link the north end of the proposed overcrossing with paths on the east side of the West Drainage Canal. The bridge will include a pre-manufactured steel truss "flat slab" structure. This unit will consist of weathering steel, a concrete deck, and smooth steel handrails; it will be designed to be removable as needed for maintenance or access to the canal. Reclamation District 1000 requires the canal bottom under the bridge and 10 feet beyond in both directions to be lined with concrete. The area under the bridge will be completely dewatered using two temporary dams to be placed across the West Drainage Canal during construction.

Grading and earthwork will primarily consist of fill to support bridge approaches, which will connect the paths at ground level to the elevated structures. Minor grading will be required to direct drainage from the paved path and structure to natural drainage outlets in the immediate area. Bridge embankments will be stabilized with 1:3 slopes. These embankments will be mechanically placed and compacted to be permanently stable. Long-term erosion and sedimentation will be controlled by hydro seeding with native dry land grasses and typical grass cover according to approved construction site best management practices (BMPs), as appropriate. Irrigation and decorative landscaping is not included in the proposed Project.

The pathways will be paved with impervious surfaces, primarily asphalt, the overcrossing deck will be concrete, and the Canal Bridge deck will be concrete or treated timber. The paved pathways will be 12 feet wide, with gravel shoulders (approximately 4 feet wide) on each side. Drainage from the overcrossing structure will be carried through open channel curbing and collected by small culverts at each end of the bridge. These culverts will carry any surface water away from the structure and into the natural drainages of the area. The presence of the bridge structures will not produce appreciable changes in the existing amount or rate of surface runoff.

The giant garter snake (*Thamnophis gigas*) (GGS) is listed as a threatened species under both the federal Endangered Species Act (ESA) (16 U.S.C., § 1531, *et seq.*) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2050, *et seq.*). The Project lies within and adjacent to the Natomas Basin, where the GGS is a featured species for conservation focus. Suitable GGS habitat is present within and adjacent to the Project area, including the Natomas Main Drainage Canal, East Drainage Canal, and the West Drainage Canal. Project activities have the potential to affect GGS where activities would take place within 200 feet of

suitable permanent aquatic habitat. These activities include temporary dewatering of the West Drainage Canal, earthwork within 200 feet of aquatic GGS habitat, placement of a pre-manufactured steel bridge over the West Drainage Canal, and the operation of construction staging areas adjacent to GGS habitat.

IMPACTS TO CESA-LISTED SPECIES

Temporary impacts to 0.12 acre of aquatic Giant Garter Snake (GGS) habitat will occur within the West Drainage Canal. This area will be dewatered during construction of the bridge over the canal. Temporary impacts to 1.08 acres of upland GGS habitat will result from disturbance around staging areas and bridge embankments. Permanent impacts to 0.67 acre of upland GGS habitat will result from construction of the path, and permanent impacts to 0.13 acre of aquatic GGS habitat will result from lining the canal with concrete. Because of the presence of on-site suitable habitat, the surrounding upland habitat, and the proximity of verified recorded observations of GGS, the U.S. Fish and Wildlife Service (USFWS) believes that this species is reasonably certain to occur within the proposed Project's action area and, therefore, the proposed Project is likely to result in incidental take of GGS.

Because of the Project's potential for take of GGS, the City consulted with the USFWS, as required by the ESA. On January 27, 2009, the USFWS issued a letter (Service file No. 81420-2009-F-1688-2) to the City (hereafter, the Append Letter) appending the Project to the USFWS *Programmatic Biological Opinion on the Effects of Small Highway Projects on the Threatened Giant Garter Snake in Butte, Colusa, Glenn, Sacramento, San Joaquin, Solano, Sutter, Yolo, and Yuba Counties, California* (Service file No 1-1-03-F-0154) (Programmatic BO). The Append Letter describes Project actions and requires the City to comply with terms of the Programmatic BO and its incidental take statement and incorporates additional measures, including the requirement that the City implement and adhere to all measures described in the December 2008 *Natomas Interstate 80 Bicycle and Pedestrian Overcrossing Project, Biological Assessment for the Giant Garter Snake, Sacramento County, California* (BA).

Because GGS is also listed as a threatened species pursuant to the California Endangered Species Act (CESA; Fish and G. Code, § 2050 et seq.), on October 8, 2009 (in a letter dated October 7, 2009), ICF Jones

and Stokes, on behalf of the City, notified the Director of the Department of Fish and Game (DFG) that the City was requesting a determination, pursuant to Fish and Game Code section 2080.1, that the Append Letter, now a part of the Programmatic BO and its related incidental take statement (ITS) is consistent with CESA for purposes of the Project.

DETERMINATION

DFG has determined that the Programmatic BO, including the ITS and Append Letter, are consistent with CESA as they relate to the Project because the mitigation measures contained in the Programmatic BO, Append Letter, and ITS, as well as the conditions in the BA, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, DFG finds that take of GGS will be incidental to an otherwise lawful activity, the mitigation measures identified in the Programmatic BO, Append Letter, and ITS will minimize and fully mitigate the impacts of the authorized take, and construction of the Project will not jeopardize the continued existence of GGS. The mitigation measures in the Programmatic BO, Append Letter, ITS, and BA include, but are not limited to, the following:

Take Avoidance Measures

- The City shall follow all general conservation measures outlined in the Natomas Basin Habitat Conservation Plan.
- The City shall confine clearing to the minimum area necessary to facilitate construction activities and shall install orange construction barrier fencing to identify environmentally sensitive areas and ensure GGS habitat outside the identified construction area is avoided. The construction specifications shall require that a USFWS-approved biologist identify sensitive biological habitat on site and areas to avoid during construction. The environmentally sensitive areas shall be clearly identified on the construction specifications. The fencing shall be installed before construction activities are initiated and shall be maintained throughout the construction period. The fencing shall be commercial-quality woven polypropylene, orange in color, and at least 4 feet high (Tensor Polygrid or equivalent). The fencing shall be tightly strung on posts with maximum 10-foot spacing.

- Construction personnel shall participate in a USFWS–approved worker environmental awareness program. As part of this program, a USFWS–approved biologist shall inform all construction personnel about the life history of the GGS; how to identify the species and their habitats, and what to do if a GGS is encountered during construction activities; and the terms and conditions of the Programmatic BO. Proof of this instruction shall be submitted to the USFWS Sacramento Office.
- Plastic, monofilament, jute, or similar erosion control matting that could entangle snakes shall not be placed on the Project site when working within 200 feet of GGS aquatic habitat. Possible substitutions include coconut coir matting, tactified hydro seeding compounds, or other material approved by the USFWS.

Minimization and Monitoring Measures

- All construction activities involving disturbance of GGS habitat shall be conducted between May 1 and September 30, which is the active period for GGS. Conducting construction activities during this period lessens direct impacts on GGS because they are active and can avoid danger. If construction activities are necessary in snake habitat between October 1 and April 30, the City shall contact the USFWS Sacramento Office to determine whether additional measures are necessary to minimize or avoid take. Construction outside of the snake’s habitat (i.e., within the median of I–80) may be done during the snake’s inactive period.
- Between April 15 and September 30, any dewatered habitat must remain dry, with no puddled water, for at least 15 consecutive days before workers excavate or fill the dewatered habitat. The City shall ensure dewatered habitat does not continue to support GGS prey (e.g., fish, tadpoles, aquatic insects), which could detain or attract GGS into the area. If a site cannot be completely dewatered, the City shall net and/or salvage prey items to discourage use of the area by GGS.
- A USFWS–approved biologist shall conduct a preconstruction survey for GGS, no more than 24 hours prior to the start of construction activities (site preparation and grading). If construction activities stop on the Project site for a period of two or more weeks, a new survey shall be completed no more than 24 hours prior to the restart of construction activities.
- A USFWS–approved biologist shall monitor all ground–disturbing activities in GGS habitat, including but not limited to all work on the embankments, the canal bridge, and the staging areas. A monitor will not be necessary when working in the I–80 median or when working on the bridge deck, railing, fencing or overhead sign on the overcrossing of I–80.
- If a GGS is encountered, the USFWS–approved biologist shall have the authority to stop all activities which may threaten GGS and redirect activities if needed until it is determined that the snake will not be harmed. The biologist shall report all sightings of live or dead snakes within three days of their discovery to the Assistant Field Supervisor of the Endangered Species Division at the Sacramento USFWS Office. Though not a condition of the Programmatic BO or the Append Letter, DFG requests that the City also provide this notification to DFG by contacting Mr. Kent Smith of the DFG–North Central Region, at 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670.
- Fill or construction debris may be used by GGS as an over–wintering site. Therefore, upon completion of construction activities, any temporary fill and construction debris that could not be removed during May 1 to September 30, shall be removed from the site during the second season.

Mitigation Measures

- The City shall mitigate for loss of GGS habitat in accordance with the *Guidance for Restoration and/or Replacement of Giant Garter Snakes Habitat* (Guidelines; Appendix C of the Programmatic Consultation). The City shall mitigate at a 1:1 ratio for Level 2 temporary impacts for two seasons to 1.08 acres of upland habitat (1.08 acres mitigation). The City shall mitigate at a 3:1 ratio for Level 3 permanent impacts to 0.67 acre of upland habitat (2.01 acres mitigation) and 0.13 acre of aquatic habitat (0.39 acre mitigation). The total amount of mitigation is 3.48 acres. The City has obtained approval to fulfill this obligation through payment to the Natomas Basin Conservancy of the per–acre fee for the 3.48 acres. Prior to Project construction, the City shall provide verification of purchase to the USFWS. Though not a condition of the Programmatic BO or the Append Letter, DFG requests that the City provide verification of mitigation habitat purchase from the Natomas Basin Conservancy prior to Project construction

by contacting Mr. Kent Smith of the DFG–North Central Region, at 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670.

- The City shall restore all temporarily disturbed aquatic and upland GGS habitat in accordance with the Guidelines.

Pursuant to Fish and Game Code section 2080.1, incidental take authorization under CESA will not be required for incidental take of GGS for the Project, provided the City implements the Project as described in the Append Letter, including adherence to all measures contained in the BA, and complies with the mitigation measures and other conditions described in the Programmatic BO and ITS. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the USFWS amends or replaces the Append Letter, the Programmatic BO including its ITS, or BA, the City will be required to obtain a new consistency determination or a CESA incidental take permit from DFG. This determination is limited to consistency of the Programmatic BO as applied specifically to the Project, and does not cover other activities that might be appended to the Programmatic BO in the future. Separate determination(s) or take authorization(s) must be obtained for future activities that may result in take of CESA–listed species.

DEPARTMENT OF FISH AND GAME

**CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
CESA Tracking No. 2080–2009–016–03**

- PROJECT:** Water Supply, Flood Control Operations, and Channel Maintenance Conducted by the U.S. Army Corps of Engineers, the Sonoma County Water Agency, and the Mendocino County Russian River Flood Control and Water Conservation Improvement District in the Russian River watershed.
- LOCATION:** Russian River watershed and vicinity
- NOTIFIER:** Randy Pole, General Manager, Sonoma County Water Agency

BACKGROUND

The Sonoma County Water Agency (SCWA) proposes to conduct activities under the Water Supply, Flood Control Operations and Channel Maintenance Project (Project) for a period of fifteen years. Project–related activities occur in the Russian River Estuary, the

Zone 1A flood control maintenance area, the Russian River below Coyote Valley Dam, and Dry Creek below Warm Springs Dam. Elements of the Project include: water supply releases from Coyote Valley Dam and Warm Springs Dam; channel maintenance activities in Dry Creek, the Russian River and the Zone 1A flood control channel area; water level management of the estuary in Jenner; fish hatchery operations at Warm Springs Dam and Coyote Valley Dam; and water diversion operations.

Dry Creek below Warm Springs Dam, the Russian River below Coyote Valley Dam, and the Russian river estuary are known to have a population of Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch*), which is listed as an endangered species under both the federal Endangered Species Act (ESA) (16 U.S.C., § 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.; Cal. Code Regs., tit. 14, § 670.5). Because the Project is expected to result in take of federally listed species, the United States Army Corps of Engineers (USACOE) consulted with the National Marine Fishery Service (NMFS) under Section 7 of ESA. On September 24, 2008, NMFS issued a Biological Opinion (BO)(F/SWR/2006/07316), that describes the Project, including the Reasonable and Prudent Alternative (RPA), conservation measures developed to minimize impacts to CCC coho salmon, measures to mitigate impacts to CCC coho salmon and its habitat, and an incidental take statement (ITS). On October 12, 2009, the Director of the California Department of Fish and Game (DFG) received a written request from Mr. Randy Poole of SCWA for a determination pursuant to Fish and Game Code section 2080.1 that the BO, including its RPA and ITS, is consistent with CESA.

DETERMINATION

DFG has determined that the above referenced BO, including all RPA requirements and the related ITS, is consistent with CESA because the mitigation measures therein meet the criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for DFG to authorize incidental take of CESA–listed species. This determination is limited to only those actions specifically identified and analyzed in the BO. Specifically, DFG finds that: take of CCC coho salmon will be incidental to an otherwise lawful activity; the mitigation measures identified in the BO and RPA and required by the ITS will minimize and fully mitigate the impacts of the authorized take of CCC coho salmon; the BO and related financial assurances agreement ensure SCWA shall provide adequate funding to implement the minimization and mitigation measures and compliance and effectiveness monitoring; and the Project with the pre-

scribed measures and RPA in place will not jeopardize the continued existence of the species. The minimization and mitigation measures in the RPA include but are not limited to the following:

- **Sections X 2.1.1., X 2.2, X 2.3, and X 2.4 Adaptive Management and Monitoring of the Outlet Channel at the Russian River estuary.** To enhance the quality of the Russian River estuary as a rearing habitat for juvenile salmonids, SCWA shall adaptively manage the outlet channel in the Russian River Estuary to be entirely closed or as a perched lagoon. To achieve this, SCWA shall meet the following estuary water level management targets: (1) a daily minimum water surface elevation of 3.2 feet during 70% of the year; and (2) an average daily water surface elevation of at least seven feet from May 15 to October 15. SCWA shall monitor water quality conditions, invertebrate production, and estuary use by salmonids including CCC coho salmon to document improved conditions, inform future adaptive management decisions, and avoid additional adverse effects.
- **Section X 3.1.1. Enhancement of Salmonid Rearing Habitats in Dry Creek.** SCWA shall enhance low flow season, pool–riffle habitat along the fourteen–mile segment and install additional large boulder clusters to provide velocity refuges and habitat for CCC coho salmon. The enhancement of Dry Creek will convert sections of stream containing marginal or poor quality salmonid rearing habitat due to high current velocities and minimal instream cover (*e.g.*, absence of large woody debris) to near optimal quality habitats so that, when Warm Springs Dam releases are 110 to 175 cfs, at least six miles of Dry Creek contains excellent quality habitats for rearing CCC coho salmon and the remaining reaches are enhanced with large boulder clusters.
- **Section X 3.1.2. Enhancement of Salmonid Rearing Habitats in Tributaries to Dry Creek and the Russian River.** Because of the endangered status of CCC coho salmon and because enhancements of Dry Creek habitats will not be constructed until five years after completion of the BO, it is important that SCWA take actions to promote the survival of CCC coho salmon in the Dry Creek watershed prior to Year 5 of the project. By the end of Year 3 of the Project, SCWA shall complete at least five of the ten habitat restoration projects within Russian River or Dry Creek tributaries as identified in the RPA, Section X A.3.1.2.
- **Section X 4.3. Coho Salmon Smolt Broodstock Program.** To avoid reducing the likelihood of both survival and recovery of Russian River stock CCC coho salmon until adverse effects of high summer and fall flow releases from Warm Springs Dam are remedied in Year 12 of the period covered by the BO (see RPA element 3.1), SCWA shall expand the Russian River Coho Salmon Brood Stock Program (RRCSBSP) to include a smolt stocking program that would complement the planting of wild–stock, juvenile CCC coho salmon. Funding for this effort shall be provided to DFG to facilitate the rearing of smolt stage CCC coho salmon beginning one year after issuance of the BO. The annual production of 10,000 smolt stage CCC coho salmon at the Warm Springs Dam hatchery and their release in Dry Creek at Warm Springs Dam are expected to yield an annual return of approximately 100 adult Russian River stock CCC coho salmon to the Warm Springs Dam hatchery (assuming a 1% marine survival) for spawning and production of a succeeding generation. This will help ensure that enough adult CCC coho salmon are available to continue the captive broodstock program. The RRCSBSP is managed by the DFG.
- **Section X 6. Ensured Funding.** SCWA shall provide security (Security), as required by the BO, in a form and an amount to be approved by DFG, to cover all costs of monitoring and management of the Russian River estuary, and for monitoring, management and construction of habitat enhancement projects in Dry Creek, and the tributaries to Dry Creek, as specified in Sections [X 2.1.1], [X 2.2–2.4.], [X 3.1.1 and 3.1.2] and Section [X 4.3] (coho broodstock smolt program) of the BO. SCWA shall provide Security in three stages: (1) security for Stage 1 has already been provided in the form of a standby letter of credit in the amount of \$7,770,280 to cover years 1–6 of the Project (2009–2013). SCWA provided the letter of credit for Stage 1 in compliance with the terms of the BO and the terms of the Memorandum of Agreement Between Sonoma County Water Agency and California Department of Fish and Game Regarding Implementation of Financial Assurances for a Consistency Determination, which was contemplated by the BO and which was entered into by DFG and SCWA on October 5, 2009; (2) security for Stage 2 shall cover years 7–9 (2014–2016) and shall be provided to DFG no later than January 1, 2013; and (3) security for Stage 3 shall cover years 10–15 (2017–2022) and

shall be provided to DFG no later than January 1, 2016. SCWA shall obtain DFG approval of the amount of the Security and language of the Security, which shall be consistent with this provision. The Security shall allow DFG to draw on the principal sum if DFG, in its sole discretion and in compliance with the provisions of the Security, determines that SCWA has failed to fully implement the required management, monitoring, and enhancement activities for that stage.

Based on this consistency determination, no authorization from DFG under CESA for incidental take of CCC coho salmon that occurs in connection with the Project is required, provided SCWA implements the Project as described in the BO, and complies with the mitigation measures, the RPA, and other conditions described in the BO. However, if the Project as described in the BO, including the mitigation measures therein, changes after the date of the BO, or if NMFS amends or replaces the BO, including the RPA or ITS, SCWA will need to obtain from DFG a new consistency determination or a separate incidental take permit (see generally Fish & G. Code, §§ 2080.1, 2081.).

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

Please see under PROPOSED ACTION ON REGULATIONS above:

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT—Proposition 65 — Electronic Notice — Notice File No. Z2009-1109-01.

DECISION NOT TO PROCEED

**DIVISION OF OCCUPATIONAL SAFETY
AND HEALTH**

November 5, 2009

Susan Lapsley, Director
State of California, Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814-4339

RE: OAL File No. Z-2009-0413-01
(Amusement Ride Fees, T8 §§ 344.16 and 344.18.)

Dear Ms. Lapsley:

I am the Agency Contact Person for the above-captioned rulemaking action of the Division of Occupational Safety and Health. I have enclosed a completed Std. 400, Part A, and request that you cause the following "Notice of Decision Not to Proceed with Rulemaking Action" to be published in the Notice Register on November 20, 2009:

**NOTICE OF DECISION NOT TO PROCEED
WITH RULEMAKING ACTION**

The California Division of Occupational Safety and Health has decided not to proceed with its rulemaking action described in the Notice published in the California Regulatory Notice Register on April 24, 2009, OAL File #Z-2009-0413-01, concerning Amusement Ride Fees (8 CCR 344.16 and 344.18). The Division will notice a new proposed regulatory action pertaining to the same subject matter in the near future.

Thank you for your assistance in this matter.

Sincerely,

/s/

Chris Grossgart
Staff Counsel III/Associate Safety Engineer

Encl.

Cc: Len Welsh, Chief
Jon Wroten

**OAL REGULATORY
DETERMINATION**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATION
(Summary Disposition)**

**(Pursuant to Government Code Section
11340.5 and Title 1, section 270, of the
California Code of Regulations)**

Date: November 5, 2009

To: James Cato

From: Chapter Two Compliance Unit

Subject: **2009 OAL DETERMINATION NO. 25(S)**
(CTU2009-0910-01)

(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition Challenging as an Underground Regulation a Memorandum Dated September 18, 2007, with a Subject Heading “Compact Discs Containing Explicit Lyrics”

On September 10, 2009, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether a Memorandum dated September 18, 2007, with a subject heading “Compact Discs Containing Explicit Lyrics” (Memorandum), constitutes an underground regulation. This Memorandum is signed by J. Mattingly for James A. Yates, Warden. James A. Yates is the warden of Pleasant Valley State Prison, Coalinga, California. The Memorandum is addressed to “All Staff” and “All Inmates.” You specifically challenge the provision requiring the confiscation as contraband of all compact discs that contain explicit lyrics. A copy of the Memorandum that was included with the petition is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).² Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a “regulation” in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation:

¹ “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

...
The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition applies solely to the inmates of Pleasant Valley State Prison, Coalinga, California. The Memorandum was issued by James A. Yates, warden of Pleasant Valley State Prison, and applies only to inmates at Pleasant Valley State Prison. Inmates housed at other institutions are governed by those other institutions’ rules dealing with contraband. Therefore, the rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1).³

³ The rules challenged by your petition are the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

- (A) The challenged rule has been superseded.
- (B) The challenged rule is contained in a California statute.
- (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
- (D) The challenged rule has expired by its own terms.
- (E) **An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.** (Emphasis added.)

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
Susan Lapsley
Director

/s/
George Shaw
Staff Counsel

Copy: Matthew Cate
John McClure
Tim Lockwood

DISAPPROVAL DECISION

**State of California
Office of Administrative Law**

**In re:
Department of Mental Health**

**Regulatory Action: Title 9
California Code of Regulations**

Adopt section: 3855

**DECISION OF PARTIAL DISAPPROVAL
OF REGULATORY ACTION**

Government Code Section 11349.3

OAL File No. 2009-0923-01 S

SUMMARY OF REGULATORY ACTION

The Department of Mental Health (Department) proposed to adopt new sections 3200.125, 3200.215, 3200.217, 3200.253, 3200.254, 3200.255, 3200.256, 3200.275, 3200.276, 3200.320, 3200.325, 3550, 3810, 3820, 3830, 3840, 3841, 3842, 3843, 3844, 3844.1, 3845, 3850, 3851, 3851.1, 3852, 3853, 3854, 3854.1, 3854.2, 3855, and 3856, and to amend existing sections 3310 and 3510 in title 9 of the California Code of Regulations concerning the Workforce Education and Training component of the Mental Health Services Act.

DECISION

New sections 3200.125, 3200.215, 3200.217, 3200.253, 3200.254, 3200.255, 3200.256, 3200.275,

3200.276, 3200.320, 3200.325, 3550, 3810, 3820, 3830, 3840, 3841, 3842, 3843, 3844, 3844.1, 3845, 3850, 3851, 3851.1, 3852, 3853, 3854, 3854.1, 3854.2, and 3856 and the amendments to sections 3310 and 3510 were approved by the Office of Administrative Law (OAL) on November 4, 2009. The proposed adoption of new section 3855 was disapproved on November 4, 2009 for failure to comply with the clarity standard and the requirements for incorporation by reference, and for failure to make a required form available to the public for comment during the rulemaking proceeding.

Date: November 6, 2009 /s/
Craig S. Tarpinning
Senior Staff Counsel

FOR: SUSANLAPSLEY
Director

Original: Stephen Mayberg
Copy: Jon Cordova

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

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

File# 2009-0924-01
BUREAU OF AUTOMOTIVE REPAIR
Emission Inspection System Revisions

The Bureau of Automotive Repair (BAR), within the Department of Consumer Affairs, implements the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources, such as passenger vehicles and trucks, by requiring them to meet specific emissions standards. BAR licenses Smog Check stations and certifies inspection equipment. This regulatory amendment implements the following changes to the Program:

1. Revises the emissions standards (cutpoints) and incorporates the new standards into regulation.
2. Includes pass/fail criteria for On-Board Diagnostic (OBDII) system readiness monitors pursuant to U.S. Environmental Protection Agency rules.

3. Incorporates by reference the revised Emission Inspection System (EIS) Specifications. The EIS Specifications are revised to accommodate the proposed Vehicle Lookup Table (VLT) Row Specific Emissions Standards (Cutpoints) and the pass/fail criteria for OBDII system readiness monitors. It also includes revised EIS Specifications to allow Smog Check inspections of diesel-powered vehicles.

4. Specifies how a station's EIS will be disabled through the Vehicle Information Database (VID) when determined to be non-compliant.

Title 16
California Code of Regulations
ADOPT: 3340.42.2 AMEND: 3340.17, 3340.42
Filed 11/05/2009
Effective 12/05/2009
Agency Contact: Virginia Vu (916) 255-2135

File# 2009-1020-05
BUREAU OF STATE AUDITS
Voters FIRST Act

The Bureau of State Audits adopts through this File and Print action, numerous provisions within Title 2 of the California Code of Regulations to implement the Voters FIRST Act which was approved by the voters at the November 4, 2008 general election as Proposition 11. The Voters FIRST Act requires the Bureau of State Audits to perform various duties related to the redistricting process. The Bureau of State Audits is exempt from review by the Office of Administrative Law pursuant to Government Code section 8546.

Title 2
California Code of Regulations
ADOPT: 60800, 60801, 60802, 60803, 60804, 60805, 60806, 60807, 60808, 60809, 60810, 60811, 60812, 60813, 60814, 60815, 60816, 60817, 60818, 60819, 60820, 60821, 60822, 60823, 60824, 60825, 60826, 60827, 60828, 60829, 60830, 60831, 60832, 60833, 60834, 60835, 60836, 60837, 60840, 60841, 60842, 60843, 60844, 60845, 60846, 60847, 60848, 60849, 60850, 60851, 60852, 60853, 60854, 60855
Filed 11/05/2009
Effective 11/06/2009
Agency Contact: Janis Burnett (916) 445-0255

File# 2009-1009-01
CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE
Definition of California Supplier

The California Institute for Regenerative Medicine adopted section 100502 in title 17 of the California Code of Regulations to define the term "California sup-

plier" as used in section 125290.30(i) of the Health and Safety Code.

Title 17
California Code of Regulations
ADOPT: 100502
Filed 11/10/2009
Effective 12/10/2009
Agency Contact: C. Scott Tocher (415) 396-9136

File# 2009-1013-02
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
Training and Testing Specifications for Peace Officer Basic Courses

This regulatory action revises the training and testing specifications for peace officer basic courses to standardize the testing specifications and make additional updates to the training as part of ongoing review.

Title 11
California Code of Regulations
AMEND: 1005, 1007, 1008
Filed 11/09/2009
Effective 01/01/2010
Agency Contact: Cheryl Smith (916) 227-0544

File# 2009-1006-01
DEPARTMENT OF CORPORATIONS
Correction of Regulations due to recent changes in names of exchanges and related entities.

This action makes minor amendments in the regulations of the Commissioner to reflect changes in the names and function of certain national security exchanges, stock exchanges, markets and related entities.

Title 10
California Code of Regulations
AMEND: 260.101.2, 260.103.4, 260.105.7, 260.105.17, 260.105.33, 260.105.34, 260.211.1, 260.217, 260.230, 260.241.4, 260.242 REPEAL: 260.105.37, 260.204.11
Filed 11/10/2009
Effective 12/10/2009
Agency Contact: Karen Fong (916) 322-3553

File# 2009-1105-01
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This emergency regulatory action merges the northern boundaries of Contra Costa and Marin counties with the boundary of the Napa, Sonoma and Solano counties' contiguous areas; expands existing regulated areas in the counties of Alameda, Marin, Monterey, Napa, San Luis Obispo and Santa Clara (approximately 111 square miles); and establishes a new quarantine area in the Tracy area of San Joaquin County of approximately

27 square miles, all due to recent findings of the light brown apple moth "LBAM" ("Epiphyas postvittana"). This will result in a total of approximately 3,894 square miles under regulation within the State for the pest. The effect of these amendments to the regulation is to establish the authority for the State to perform quarantine activities against the LBAM in these additional areas.

Title 3

California Code of Regulations

AMEND: 3434(b)

Filed 11/10/2009

Effective 11/10/2009

Agency Contact:

Stephen S. Brown (916) 654-1017

File# 2009-0923-01

DEPARTMENT OF MENTAL HEALTH

MHSA Workforce Education and Training

The Department of Mental Health amended sections 3310 and 3510 and adopted more than thirty new sections in title 9 of the California Code of Regulations concerning the Workforce Education and Training component of the Mental Health Services Act. Section 3855 of the new regulation sections was disapproved.

Title 9

California Code of Regulations

ADOPT: 3200.125, 3200.215, 3200.217, 3200.253, 3200.254, 3200.255, 3200.256, 3200.275, 3200.276, 3200.320, 3200.325, 3550, 3810, 3820, 3830, 3840, 3841, 3842, 3843, 3844, 3844.1, 3845, 3850, 3851, 3851.1, 3852, 3853, 3854, 3854.1, 3854.2, 3856 AMEND: 3310, 3510

Filed 11/04/2009

Effective 12/04/2009

Agency Contact: Jon Cordova (916) 651-1446

File# 2009-0930-01

DEPARTMENT OF SOCIAL SERVICES

SB 39, Child Fatality Reporting and Disclosure Requirements

This rulemaking action makes permanent the emergency amendments to the California Department of Social Services' Manual of Policies and Procedures regarding procedures following the death of a child under circumstances of suspected or determined abuse or neglect. It defines previously undefined terms, updates a county reporting form, itemizes documents which must be released to the public following a public request, establishes a process whereby counsel for other children may challenge all or part of the release of records of a deceased child, lists a number of related information-privacy laws which establish the confidentiality of cer-

tain information, and specifies what information must be redacted from any records which are released.

Title MPP

California Code of Regulations

AMEND: 31-002, 31-003 and 31-502

Filed 11/10/2009

Agency Contact: Sandra Ortega (916) 657-2586

File# 2009-0928-01

DIVISION OF WORKERS COMPENSATION

Health Care Organization Regulations

The Division of Workers Compensation amended sections 9771, 9778, 9779, and 9779.5 and repealed section 9779.9 in title 8 of the California Code of Regulations to reduce fees charged of Health Care Organizations and reduce the amount of information required to be reported.

Title 8

California Code of Regulations

AMEND: 9771, 9778, 9779, 9779.5 REPEAL: 9779.9

Filed 11/04/2009

Effective 01/01/2010

Agency Contact:

Destie Overpeck (510) 286-7100

File# 2009-1007-09

OFFICE OF THE STATE FIRE MARSHAL

Automatic Fire Extinguishing Systems —Type L

The State Fire Marshall amended sections 901, 905, 905.2, and 906.3 of title 19 of the California Code of Regulations to establish an A license (Type L) and a licensing fee, a second and subsequent re-inspection fee, and a weekly fire pump test certification and certification fee.

Title 19

California Code of Regulations

AMEND: 901, 905, 905.2, 906.3

Filed 11/06/2009

Effective 12/06/2009

Agency Contact: Diane Arend (916) 324-9592

File# 2009-0929-03

STATE ALLOCATION BOARD

Leroy F. Greene School Facilities Act of 1998; Charter and COS

On December 17, 2008, the State's Pooled Money Investment Board took action to temporarily halt disbursing cash from the State's Pooled Money Investment Account (PMIA) for capital projects, including school construction projects because of the State's financial situation. The Office of Public School Construction (OPSC) utilizes cash from the PMIA to release State funds for school construction projects that have been

approved by the State Allocation Board (SAB). This Certificate of Compliance makes permanent the prior emergency action (OAL file no. 2009-0414-03E) that allows the SAB to make a finding that preliminary apportionments under the Charter School Facilities Program (CSFP) and the Critically Overcrowded School Facilities Program (COS Program) are "inactive." This temporarily suspends the time period for conversion to final apportionment under these programs. This period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon SAB approval. When State financing again becomes available for bond-funded projects, the time period will resume as it existed on December 17, 2008. This regulatory action includes the definition for the terms "Inactive Preliminary Apportionment" and "Inactive Preliminary Charter School Apportionment," and the criteria to be met in order for SAB to make a finding that an apportionment is "inactive."

Title 2
 California Code of Regulations
 ADOPT: 1859.148.2, 1859.166.2 AMEND: 1859.2, 1859.121, 1859.164.2, 1859.197
 Filed 11/09/2009
 Agency Contact: Robert Young (916) 445-0083

File# 2009-1029-01
STATE WATER RESOURCES CONTROL BOARD
 Storage of Biodiesel Blends in Underground Storage Tanks

This is a readopt of a prior emergency regulatory action (OAL file no. 2009-0521-02E) that allows for the lawful storage of certain biodiesel blends up to 20% biodiesel, 80% petroleum diesel, commonly known as B20, in underground storage tanks (USTs) that have been tested and approved for storing petroleum diesel, if specified conditions are met; however, the required testing for storing B20 by an independent testing organization has not been completed.

Title 23
 California Code of Regulations
 ADOPT: 2631.2
 Filed 11/04/2009
 Effective 11/28/2009
 Agency Contact: Lori Brock (916) 341-5185

File# 2009-1019-01
VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
 Conflict of Interest Code

The California Victim Compensation and Government Claims Board is repealing and adopting its conflict of interest code found at title 2, division 2, chapter

1, article 1.1. This repeal and adoption was approved for filing by the Fair Political Practices Commission on September 17, 2009.

Title 2
 California Code of Regulations
 ADOPT: 604 REPEAL: 604
 Filed 11/09/2009
 Effective 12/09/2009
 Agency Contact:
 Geoff Feusahrens (916) 491-3863

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN June 10, 2009 TO
 November 11, 2009**

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
 11/09/09 ADOPT: 1859.148.2, 1859.166.2
 AMEND: 1859.2, 1859.121, 1859.164.2, 1859.197
 11/09/09 ADOPT: 604 REPEAL: 604
 11/05/09 ADOPT: 60800, 60801, 60802, 60803, 60804, 60805, 60806, 60807, 60808, 60809, 60810, 60811, 60812, 60813, 60814, 60815, 60816, 60817, 60818, 60819, 60820, 60821, 60822, 60823, 60824, 60825, 60826, 60827, 60828, 60829, 60830, 60831, 60832, 60833, 60834, 60835, 60836, 60837, 60840, 60841, 60842, 60843, 60844, 60845, 60846, 60847, 60848, 60849, 60850, 60851, 60852, 60853, 60854, 60855
 11/03/09 ADOPT: 1859.96 AMEND: 1859.2, 1859.90
 10/01/09 AMEND: 2291, 2292, 2294 ADOPT: 2297
 10/01/09 AMEND: 1898.2, 1898.7
 09/22/09 ADOPT: 18603, 18603.1
 09/22/09 ADOPT: 18901.1 AMEND: 18420.1
 09/18/09 AMEND: 1859.76
 09/17/09 AMEND: 2270, 2271
 09/14/09 AMEND: 588.1, 588.2
 08/31/09 ADOPT: 1859.324.2 AMEND: 1859.302, 1859.324.1, 1859.330
 08/03/09 ADOPT: 647.5, 647.25, 647.36, 647.37.1
 AMEND: 647.1, 647.2, 647.3, 647.4,

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647.20, 647.20.1, 647.22, 647.23,
647.24, 647.26, 647.30, 647.31, 647.32,
647.33, 647.35, 647.38 REPEAL:
647.25, 647.34
07/30/09 ADOPT: 1899.570, 1899.575, 1899.580,
1899.585
07/20/09 ADOPT: 721
07/07/09 AMEND: 18450.4
07/06/09 AMEND: 18940.2
06/15/09 ADOPT: 18746.4 AMEND: 18741.1,
18746.1, 18746.3
06/12/09 ADOPT: 649.14, 649.17, 649.18, 649.23,
649.25, 649.29, 649.32, 649.33, 649.48
AMEND: 647.4, 649, 649.2, 649.4,
649.7, 649.8, 649.11, 649.12, 649.13,
649.15, 649.16, 649.22, 649.24, 649.26,
649.27, 649.28, 649.30, 649.31, 649.35,
649.36, 649.50, 649.51, 649.57, 649.58,
649.59, 649.62 REPEAL: 649.3, 649.6,
649.9, 649.10, 649.14, 649.23, 649.25

Title 3

11/10/09 AMEND: 3434(b)
10/30/09 AMEND: 3435(b), (c) and (d)
10/15/09 AMEND: 3434(b)
10/08/09 AMEND: 3434(b)
10/08/09 AMEND: 3591.20(a)
09/24/09 AMEND: 3406(b)
09/24/09 AMEND: 3434(b)
09/22/09 AMEND: 6562
09/15/09 AMEND: 3434(b)
09/14/09 AMEND: 3435(b)
09/10/09 ADOPT: 2300.1, 2300.2, 2300.3
AMEND: 2300
09/09/09 AMEND: 3434(b)
09/03/09 AMEND: 3434(b)
09/01/09 AMEND: 3435(b)
08/28/09 AMEND: 3434(b)
08/27/09 AMEND: 3435(b)
08/27/09 AMEND: 3588
08/26/09 AMEND: 6400, 6502, 6620,
6626(a)–(b), 6626(c), 6627, 6670, 6672,
6736, and incorporated by reference
forms
08/20/09 AMEND: 3406(b)
08/20/09 AMEND: 3591.13(a)
08/13/09 AMEND: 3434(b)
08/13/09 AMEND: 6618, 6619, 6761.1, 6770,
6771
08/12/09 ADOPT: 902.15
08/07/09 AMEND: 3406(b)
08/05/09 AMEND: 3434(b), 3434(c)
08/04/09 AMEND: 3423(b)
07/31/09 ADOPT: 3436
07/24/09 AMEND: 3434(b)

07/22/09 ADOPT: 3591.23
07/22/09 AMEND: 3406(b)
07/21/09 AMEND: 3591.2(a)
07/20/09 AMEND: 3591.20(a)
07/13/09 AMEND: 625
07/07/09 AMEND: 3435
07/02/09 AMEND: 3423(b)
06/30/09 AMEND: 3434(b)
06/22/09 AMEND: 3434(b)
06/19/09 AMEND: 3591.20(a)
06/15/09 AMEND: 3406(b)
06/15/09 AMEND: 3434(b)

Title 4

10/27/09 AMEND: 8034, 8035, 8042, 8043
10/20/09 AMEND: 1606
10/07/09 AMEND: 7030, 7034, 7035, 7037, 7038,
7042, 7044, 7045, 7046, 7048, 7049,
7050
08/25/09 ADOPT: 12380, 12381, 12384, 12385,
12386 AMEND: 12360
08/04/09 AMEND: 1853
07/31/09 AMEND: 10020
07/31/09 ADOPT: 7051, 7052, 7053, 7054, 7055,
7056, 7057, 7058, 7059, 7060, 7061,
7062, 7063, 7064, 7065, 7066, 7067,
7068, 7069, 7070, 7071
07/21/09 AMEND: 1979, 1979.1
07/21/09 REPEAL: 1950.1
06/25/09 ADOPT: 12486
06/22/09 ADOPT: 8078.1 AMEND: 8070, 8072,
8076, 8078

Title 5

11/03/09 AMEND: 1200, 1204.5, 1207, 1207.5,
1210, 1211.5, 1215, 1215.5, 1216
REPEAL: 1207.2
08/20/09 ADOPT: 19825.1 AMEND: 19816,
19816.1, 19825, 19825.1 (renumber to
19825.2)
07/21/09 ADOPT: 43200
07/21/09 ADOPT: 43220
07/21/09 AMEND: 42920
07/21/09 ADOPT: 40411
07/09/09 AMEND: 18100
07/03/09 ADOPT: 80027.1, 80048.7 AMEND:
80027
06/29/09 ADOPT: 19821.5, 19825.1, 19828.4,
19837.3, 19839, 19845.2 AMEND:
19815, 19816, 19816.1, 19828.3,
19837.2, 19845.1, 19846

Title 8

11/04/09 AMEND: 9771, 9778, 9779, 9779.5
REPEAL: 9779.9
10/28/09 AMEND: 3333, 3650

10/26/09 AMEND: 5306
 10/22/09 AMEND: 3277
 10/07/09 AMEND: 2395.6
 08/31/09 AMEND: 3385
 08/27/09 AMEND: 3400
 07/31/09 AMEND: 1637, 1646
 07/27/09 AMEND: 5006.1
 07/24/09 AMEND: 3466
 07/23/09 AMEND: 1598, 1599
 07/06/09 ADOPT: 5199
 07/06/09 ADOPT: 5199.1
 06/22/09 AMEND: 230.1
 06/18/09 ADOPT: 9792.23.1, 9792.23.2,
 9792.23.3, 9792.23.4, 9792.23.5,
 9792.23.6, 9792.23.7, 9792.23.8,
 9792.23.9, 9792.24, 9792.24.1,
 9792.24.2, 9792.24.3, 9792.25, 9792.26
 AMEND: 9792.20, 9792.21, 9792.22,
 9792.23

Title 9

11/04/09 ADOPT: 3200.125, 3200.215, 3200.217,
 3200.253, 3200.254, 3200.255,
 3200.256, 3200.275, 3200.276,
 3200.320, 3200.325, 3550, 3810, 3820,
 3830, 3840, 3841, 3842, 3843, 3844,
 3844.1, 3845, 3850, 3851, 3851.1, 3852,
 3853, 3854, 3854.1, 3854.2, 3856
 AMEND: 3310, 3510
 10/26/09 ADOPT: 4350
 09/22/09 ADOPT: 7213.4, 7213.5, 7213.6, 7214.1,
 7214.2, 7214.3, 7214.4, 7214.6, 7214.8,
 7215.1, 7216.1, 7216.2, 7220.3, 7220.5,
 7220.7 AMEND: 7213, 7213.1, 7213.2,
 7213.3, 7214, 7215, 7216, 7218, 7220,
 7221, 7224, 7225, 7226, 7226.1, 7226.2,
 7227, 7227.1, 7227.2 REPEAL: 7219
 09/14/09 ADOPT: 4000, 4005
 08/04/09 AMEND: 7331
 06/29/09 ADOPT: 10700, 10701 AMEND: 10518,
 10529 REPEAL: 10532, 10533
 06/26/09 ADOPT: 7212.1, 7212.2, 7212.3, 7212.4
 AMEND: 7210, 7211, 7212

Title 10

11/10/09 AMEND: 260.101.2, 260.103.4,
 260.105.7, 260.105.17, 260.105.33,
 260.105.34, 260.211.1, 260.217,
 260.230, 260.241.4, 260.242 REPEAL:
 260.105.37, 260.204.11
 10/29/09 AMEND: 2699.6809
 10/29/09 AMEND: 2699.6600, 2699.6607,
 2699.6619, 2699.6621, 2699.6705,
 2699.6715, 2699.6725
 10/26/09 AMEND: 2632.9
 10/26/09 AMEND: 2695.85

10/15/09 AMEND: 2632.5
 10/06/09 ADOPT: 2728, 2773, 2903 AMEND:
 2731, 2848, 2930 REPEAL: 2728, 2755
 09/29/09 AMEND: 2699.6625
 09/24/09 AMEND: 260.004, 260.017.1,
 260.102.14, 260.165, 260.210, 260.211,
 260.230.1, 260.236, 260.236.1,
 260.237.2, 260.240, 260.241.3
 REPEAL: 260.101, 260.103.3,
 260.237.1
 09/23/09 AMEND: 260.102.8(b), 260.103.6,
 260.105.15, 260.113, 260.140.8(b)(4),
 260.140.42(e), 260.140.71.2,
 260.140.114.1(c), 260.151(a),
 260.236(c)(3)(C), 260.608, 1457(d),
 1950.122.1, 2020(c), 2030, Note after
 Subchapter 6 REPEAL: 250.50, 250.51
 09/17/09 AMEND: 2699.6805
 08/19/09 AMEND: 2699.6707, 2699.6711,
 2699.6721, 2699.6723, 2699.6725,
 2699.6809
 08/04/09 ADOPT: 2355.1, 2355.2 AMEND:
 2359.4 amended and renumbered to
 2355.3, 2359.7 renumbered to 2355.4,
 2359.8 renumbered to 2355.5 REPEAL:
 2355.1, 2355.2, 2355.3, 2355.4, 2355.5,
 2355.6, 2355.7, 2355.8, 2356.1, 2356.2,
 2356.3, 2356.4, 2356.5, 2356.6, 2356.7,
 2356.8, 2356.9, 2357.1, 2357.2, 2357.3,
 2357.4, 2357.5, 2357.6, 2357.7, 2357.8,
 2357.9, 2357.10, 2357.11, 2357.12,
 2357.13, 2357.14, 2357.15, 2357.16,
 2357.17, 2357.18, 2357.19, 2358.1,
 2358.2, 2358.3, 2358.4, 2358.5, 2358.6,
 2358.7, 2358.8, 2358.9, 2359.1, 2359.2,
 2359.3, 2359.5, 2359.6
 07/29/09 ADOPT: 2194.50, 2194.51, 2194.52,
 2194.53, 2194.54, 2194.55
 07/14/09 ADOPT: 2359.8
 07/09/09 AMEND: 2797
 07/06/09 AMEND: 250.30
 06/24/09 AMEND: 2498.4.9
 06/24/09 AMEND: 2498.4.9
 06/24/09 AMEND: 2498.4.9
 06/24/09 AMEND: 2498.4.9

Title 11

11/09/09 AMEND: 1005, 1007, 1008
 10/14/09 AMEND: 9052(c), 9053(b), 9053(c),
 9053(e)(5)(A)4, 9053(e)(10)(A),
 9053(e)(10)(B), 9054(e)(4), 9057(b),
 9059(b), 9059(c), 9059(e)(9)(A),
 9059(e)(9)(B), 9060(e)(4)

Title 12

10/13/09 ADOPT: 600 REPEAL: 600

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09/17/09	ADOPT: 508	08/18/09	ADOPT: 1800, 1806, 1812, 1814, 1830, 1831, 1840, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1856, 1857, 1860, 1866, 1867, 1868, 1870, 1872, 1876, 1878, 1888, 1890, 1892
Title 13		08/11/09	AMEND: 2253
10/20/09	AMEND: 2433	08/11/09	ADOPT: 3650, 3651, 3652, 3653, 3654 REPEAL: 3652.1
10/13/09	ADOPT: 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359	07/28/09	ADOPT: 3077, 3077.1, 3077.2, 3077.3, 3077.4 AMEND: 3000, 3043.6, 3375
09/16/09	ADOPT: 2468, 2468.1, 2486.2, 2468.3, 2468.4, 2468.5, 2468.6, 2468.7, 2468.8, 2468.9, 2468.10	06/17/09	ADOPT: 3640, 3730 AMEND: 3500, 3501, 3502, 3600, 3610, 3620, 3625, 3630, 3740
09/01/09	AMEND: 2222	06/17/09	ADOPT: 3099
08/24/09	AMEND: 2193	Title 16	
08/12/09	AMEND: 2020(b)	11/05/09	ADOPT: 3340.42.2 AMEND: 3340.17, 3340.42
07/29/09	AMEND: 599	10/08/09	AMEND: 1888
07/17/09	AMEND: 2111, 2112, Appendix A, 2139, 2147, 2440, 2441, 2442, 2443.1, 2443.2, 2443.3, 2444.1, 2444.2, 2445.1, 2445.2, 2446, 2447, 2474, Documents Incorporated by Reference REPEAL: 2448	10/07/09	ADOPT: 1399.90, 1399.91, 1399.92, 1399.93, 1399.94, 1399.95, 1399.96, 1399.97, 1399.98, 1399.99 REPEAL: 1399.50, 1399.52
06/29/09	AMEND: 2702, 2704	10/05/09	ADOPT: 1399.514
06/16/09	AMEND: 1239	09/16/09	ADOPT: 1950.1 AMEND: 1984
Title 14		09/16/09	ADOPT: 1399.720, 1399.721, 1399.722, 1399.723, 1399.724, 1399.725
10/29/09	AMEND: 551	09/08/09	AMEND: 2310
10/27/09	AMEND: 938.8	08/24/09	AMEND: 4161
10/27/09	ADOPT: 1530.05 AMEND: 1553, 1554, 1561.1, 1562, 1564, 1567	08/11/09	AMEND: 2504.1, 2517.5, 2537, 2540.6, 2564.1, 2575.5, 2590, 2592.6
10/26/09	ADOPT: 1091.15 AMEND: 1091.9	08/05/09	AMEND: 995
10/22/09	ADOPT: 749.5	08/05/09	AMEND: 1399.15
10/20/09	ADOPT: 6594, 6594.1, 6594.2, 6594.3, 6594.4, 6594.5, 6594.6, 6594.7, 6594.8, 6594.9, 6594.20, 659.21, 6594.22, 6594.23, 6594.24, 6594.25, 6594.26, 6594.27, 6594.40, 6594.41, 6594.42, 6594.43, 6594.44, 6594.45, 6594.46, 6594.47	08/04/09	ADOPT: 1773.5 AMEND: 1773
10/20/09	AMEND: 300	07/28/09	AMEND: 4110
10/07/09	AMEND: 122	07/27/09	AMEND: 4130
10/05/09	AMEND: 670.5	07/24/09	AMEND: 1391.10, 1391.12
09/15/09	AMEND: 502	07/24/09	AMEND: 1387, 1387.6
08/25/09	AMEND: 257, 300, 311, 313	07/17/09	AMEND: 1999.5
08/24/09	ADOPT: 749.4	06/26/09	ADOPT: 2611 AMEND: 2606, 2614, 2615, 2616, 2621, 2649 REPEAL: 2612, 2613, 2623
07/14/09	AMEND: 124	06/26/09	AMEND: 426.51
07/13/09	AMEND: 163	06/16/09	AMEND: 1524
06/23/09	AMEND: 3959(b)(4)	06/12/09	AMEND: 2021, 2068.5, 2068.6 REPEAL: 2067, 2068
06/23/09	ADOPT: 4351.1 AMEND: 4351	Title 17	
06/16/09	AMEND: 753.5	11/10/09	ADOPT: 100502
06/15/09	AMEND: 27.80	10/15/09	ADOPT: 1230 REPEAL: 1230
06/12/09	AMEND: 265, 353, 360, 361, 362, 363, 364, 555, 708	09/22/09	AMEND: 2500, 2502, 2505
Title 15		09/18/09	AMEND: 100500
10/23/09	ADOPT: 3999.8	09/01/09	ADOPT: 95360, 95361, 95362, 95363, 95364, 95365, 95366, 95367, 95368, 95369, 95370
10/14/09	AMEND: 3045.2	08/19/09	ADOPT: 100081
10/06/09	AMEND: 3000, 3173.1, 3176, 3176.3, 3315, 3323		
09/29/09	AMEND: 3341.5		

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08/13/09	AMEND: 6500.74, 6500.77	09/16/09	ADOPT: 2814.20, 2814.21, 2814.22, 2814.23, 2814.24, 2814.25, 2814.26, 2814.27, 2814.28, 2814.29, 2814.30, 2814.31, 2814.32, 2814.33, 2814.34, 2814.35, 2814.36, 2814.37
06/18/09	AMEND: 94508, 94509, 94510, 94512, 94513, 94515		REPEAL: 2814.20, 2814.21, 2814.22, 2814.23, 2814.24, 2814.25, 2814.26, 2814.27, 2814.28, 2814.29, 2814.30, 2814.31, 2814.32, 2814.33, 2814.34, 2814.35, 2814.36, 2814.37
Title 18			
09/29/09	AMEND: 1620		
07/30/09	AMEND: 1668		
Title 19			
11/06/09	AMEND: 901, 905, 905.2, 906.3		
Title 20			
08/03/09	AMEND: 1670, 1671, 1672, 1673, 1674, 1675	09/15/09	ADOPT: 2910.1
07/10/09	AMEND: 1601, 1602, 1604, 1605.3, 1606	09/15/09	ADOPT: 3989.9
07/10/09	AMEND: 1601, 1602, 1603, 1604, 1605.1, 1605.2, 1605.3, 1606, 1607, 1608	09/10/09	ADOPT: 490.1, 492.1, 492.2, 492.3, 492.4, 492.5, 492.6, 492.7, 492.8, 492.9, 492.10, 492.11, 492.12, 492.13, 492.14, 492.15, 492.16, 492.17, 493.1, 493.2
06/23/09	AMEND: 3.1, 3.2, 4.3, 8.6, 10.3, 11.3, 13.2		AMEND: 490, 491, 492, 493, 494
			REPEAL: 495
		08/05/09	ADOPT: 3959.2
Title 21		07/09/09	ADOPT: 3959.3
10/06/09	ADOPT: 1412.1, 1412.2, 1412.3, 1412.4, 1412.5, 1412.6, 1412.7, 1412.8, 1412.9	06/25/09	ADOPT: 3989.8
09/16/09	ADOPT: 7700, 7701, 7702, 7703, 7704, 7705, 7706, 7707, 7708, 7709, 7710, 7711	06/16/09	ADOPT: 3939.36
06/22/09	ADOPT: 7700, 7701, 7702, 7703, 7704, 7705, 7706, 7707, 7708, 7709, 7710, 7711	Title 25	
		10/29/09	AMEND: 1008
Title 22		10/15/09	ADOPT: 4100, 4102, 4104
08/31/09	ADOPT: 2706-7	09/17/09	AMEND: 637
07/31/09	AMEND: 80001, 85002 and 85068.4	09/17/09	AMEND: 1008
07/23/09	AMEND: 120201	09/08/09	ADOPT: 7980, 7980.1, 7982, 7982.1, 7982.2, 7982.3, 7982.4, 7983, 7983.1, 7983.2, 7983.3, 7983.4, 7983.5, 7984, 7984.1, 7984.2
07/22/09	AMEND: 51529	08/19/09	ADOPT: 4200, 4202, 4204, 4205, 4206, 4208, 4210, 4212, 4214, 4216
07/20/09	AMEND: 68201, 68202, 68205, 68206, 68207, 68208, 68209, 68210, 68211, and Appendix 1 to Article 1 of Chapter 47	Title 27	
07/13/09	AMEND: 66273.3, 66273.39	10/26/09	AMEND: 25102(d)
06/17/09	AMEND: 926-3, 926-4, 926-5	07/23/09	AMEND: 25204
Title 23		Title MPP	
11/04/09	ADOPT: 2631.2	11/10/09	AMEND: 31-002, 31-003 and 31-502
11/02/09	ADOPT: 3919.5	09/22/09	AMEND: 40-107, 42-213, 89-130
10/21/09	AMEND: 1062, 1064, 1066, 1070	08/31/09	ADOPT: 31-021 AMEND: 31-003, 31-410, 31-501
10/06/09	AMEND: 3939.2	07/06/09	ADOPT: 31-003, 31-502 AMEND: 31-002
09/30/09	ADOPT: 570, 571, 572, 573, 574, 575, 576	06/29/09	AMEND: 11-425, 22-001, 22-003, 22-009, 45-302, 45-303, 45-304, 45-305, 45-306
09/30/09	AMEND: 3939.2		