



California Regulatory Notice Register

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PROPOSED ACTION ON REGULATIONS

	<i>Page</i>
TITLE 2. STATE LANDS COMMISSION	
<i>Marine Invasive Species Control Fund Fee—Notice File No. Z04-0106-02</i>	65
TITLE 5. BOARD OF EDUCATION	
<i>Countywide Charter Schools—Notice File No. Z04-0113-08</i>	67
TITLE 5. BOARD OF EDUCATION	
<i>Golden State Seal Merit Diploma—Notice File No. Z04-0113-09</i>	69
TITLE 5. BOARD OF EDUCATION	
<i>Vision Screening—Notice File No. Z04-0113-06</i>	71
TITLE 5. BOARD OF EDUCATION	
<i>Withholding Funds—Special Education Mandates—Notice File No. Z04-0113-07</i>	73
TITLE 8. DIVISION OF WORKERS’ COMPENSATION	
<i>Initial Lien Filing Fees—Notice File No. Z04-0109-01</i>	75
TITLE 8. DIVISION OF WORKERS’ COMPENSATION	
<i>Official Medical Fee Schedule—Notice File No. Z04-0113-03</i>	78
TITLE 14. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD	
<i>LEA Staffing Adequacy—Notice File No. Z04-0112-01</i>	90
TITLE 15. DEPARTMENT OF CORRECTIONS	
<i>Work/Training Incentive Groups Violations—Notice File No. Z04-0108-01</i>	92

GENERAL PUBLIC INTEREST

AIR RESOURCES BOARD	
<i>Notice of Postponement</i>	94
DEPARTMENT OF HEALTH SERVICES	
<i>Drug Use Review Board Meeting</i>	94

(Continued on next page)

*Time-
Dated
Material*

DEPARTMENT OF TOXIC SUBSTANCES CONTROL <i>Intent to Certify</i>	95
MEDICAL BOARD OF CALIFORNIA <i>Requirement Disclosure Language—Change of Location</i>	97
OFFICE ENVIRONMENTAL HEALTH HAZARD ASSESSMENT <i>TAC Program—URF for Naphthalene</i>	98

DECISION NOT TO PROCEED

MEDICAL BOARD OF CALIFORNIA <i>Concerning Notice published in the California Regulatory Notice Register on December 5, 2003, OAL File Z03-1125-09</i>	98
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SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State	99
Sections Filed, September 10, 2003 to January 14, 2004.....	99

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**

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

**TITLE 2. STATE
LANDS COMMISSION**

**CHAPTER 1. ADMINISTRATION, DIVISION 3.
STATE PROPERTY OPERATIONS
ARTICLE 4.5. MARINE INVASIVE SPECIES
CONTROL FUND FEE**

The California State Lands Commission (the Commission) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Commission proposes to amend Sections 2270 and 2271 under Article 4.5 in Title 2, Division 3, Chapter 1 of the California Code of Regulations (CCR). This section would amend the fee to be paid by vessels calling at California ports (the Fee). The Fee is to be used for the Marine Invasive Species Control Fund (the Fund) under Division 36 of the Public Resources Code (P.R.C.) entitled, "Marine Invasive Species Act," established under Chapter 491, Statutes of 2003 (the Act). The proposed regulation would increase the Fee from two hundred dollars (\$200) per vessel per voyage to five hundred dollars (\$500) per vessel per voyage if the vessel has traveled outside of California. Provisions are also included whereunder the Commission's Executive Officer would appoint a technical advisory group (TAG) to provide recommendations with regard to the Fee.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed regulatory action to the Commission. The written comment period closes at 5.00 PM on March 8, 2004. All written comments must be received at the Commission, by that time. Written comments should be submitted to:

Livin Prabhu
Supervisor, Planning Branch
California State Lands Commission,
Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802

Written comments may also be submitted by facsimile to (562) 499-6317, attention Livin Prabhu or by e-mail to "prabhul@slc.ca.gov"

PUBLIC HEARING

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

AUTHORITY AND REFERENCE

P.R.C. Section 71207 describes the State program to regulate discharges of ballast water in order to limit the introduction of nonindigenous species. In enforcing the provisions of the Act, the Commission is authorized to adopt the proposed regulations, which would implement, interpret or make specific P.R.C. Section 71215.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

P.R.C. Section 71215 created the Fund and requires the Commission to establish a reasonable and appropriate Fee to carry out the activities required by the Marine Invasive Species Act. It also mandates that the Fee may not exceed one thousand dollars (\$1,000) per vessel voyage. Under P.R.C. Section 71215(c), the State Board of Equalization shall collect the fee from the owner or operator of each vessel that arrives at a California port of place from a port or place outside California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port of place.

Accordingly, the proposed regulation would amend the Fee requirement under P.R.C. Section 71215(b)(1). The Fee is required to fulfill the specific multi-agency tasks mandated by the Act. However, the current Fee amount (\$200 per vessel per voyage) is not expected to produce funds sufficient to meet the budget needs of the programs. Section 2271(a) of the CCR would set the exact amount of the fee to be used to support the programs required under the Act at five hundred dollars (\$500) per vessel voyage.

DIFFERENCES FROM FEDERAL REGULATIONS

Recognizing the severity of the problem, the federal government implemented a National ballast water exchange and reporting program in July 1999, but it is

voluntary for vessels entering the United States and consists of little more than information gathering at the present time. The Federal program was promulgated in the Federal Register, Vol. 68 No. 146 of July 30, 2003. The Federal Government is considering making the ballast water management program mandatory. The proposed regulations will be published in 33 CFR Part 151. The Federal requirements however, do not require or specify a fee. The Federal monitoring program provides for review of shipboard ballast exchange records and selective ballast water sampling. The Federal program does not contain a mechanism to research alternative methods of ballast water management. The state program established a mandatory, statewide, multi-agency ballast water management and control program. Responsible agencies include the Commission, Department of Fish and Game, State Water Resources Control Board and the Board of Equalization. Each agency is required to work in cooperation with the others in developing reports and conducting research into the extent of current invasions, and potential long-term solutions to the problem of nonindigenous species introductions. All the activities required by the Act are paid for through the Fund.

SMALL BUSINESS DETERMINATION

The Commission has determined that these regulations do not affect small businesses as defined in Government Code (Gov. C.) Section 11342.610, because all affected businesses are commercial maritime transport owners and operators, as specified under Gov. C. Section 11342.610, and having annual gross receipts of more than \$1,500,000, as specified under Gov. C. Section 11342.610(b)(7).

REGULATIONS IN PLAIN ENGLISH

The proposed regulations have been drafted in a plain and straightforward manner pursuant to Government Code section 11346.2(a)(1).

ESTIMATED COSTS TO THE STATE

No costs to the State would be incurred in implementing and enforcing these proposed regulations beyond those collected in the Fund. Since the regulation here proposed is limited to amending a fee to pay for programs already mandated by the Act; the regulations will not increase costs to the State. While the various programs mandated under the Act are estimated to cost approximately \$3,479,000 each year until the Act expires under its current terms, all of those programs are mandated by the Act; none can be attributed to the regulatory action here proposed.

Under this proposal, the Fee would be set at a level that is expected to provide revenues equal to costs required to implement the Act. No costs will be incurred by the State in implementing any or all programs mandated by the Act beyond the amounts generated through collection of the Fee.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None.

Costs or savings to any state agency: None.

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

Other non-discretionary cost or savings imposed upon local agencies: None.

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

Cost impact on private persons or directly affected businesses: All vessel owners or operators affected by the proposed amended regulation will be required to pay a fee of five hundred dollars (\$500) per vessel voyage.

Creation or elimination of jobs within the State of California: The Commission has determined that adoption of the proposed regulations will not:

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

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

Significant effect on housing costs: None.

CONSIDERATION OF ALTERNATIVES

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

The Commission invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearings or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Maurya Falkner
Staff Environmental Scientist
California State Lands Commission,
Marine Facilities Division
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-2568
Or to: Mark A. Meier
Senior Staff Counsel
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Telephone: (916) 574-1853

Requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be directed to:

Livin Prabhu
Supervisor, Planning Branch
California State Lands Commission,
Marine Facilities Division
200 Oceangate, Suite 900
Long Beach, CA 90802
Telephone: (562) 499-6312

AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS

The Commission will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at either of the above addresses. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Livin Prabhu at the address or telephone number listed above.

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

Following the hearing, the Commission may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the Commission adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Livin Prabhu at the address indicated above. The Commission will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

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

AVAILABILITY OF DOCUMENTS ON
THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at

[http://www.slc.ca.gov/Program_Pages/
Program_Pages.htm](http://www.slc.ca.gov/Program_Pages/Program_Pages.htm)

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Countywide Charter Schools

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

Program staff will hold a public hearing beginning at **1:00 p.m. on March 8, 2004** at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. 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 State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The State Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on March 8, 2004**. The State Board will consider only written comments received by the Regulations Adoption Coordinator by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814

E-mail: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority for these regulations is found in *Education Code* Section 33031. *Education Code* Section 33031 is the State Board's general authority to adopt rules and regulations for the government of the day and evening schools of the state that are not inconsistent with the requirement of statute.

Additional authority is provided in *Education Code* Section 47605.6(b)(5)(I), which requires the State Board to adopt regulations to determine the manner in which financial audits for countywide charter schools shall be conducted.

References are made to *Education Code* sections 47632 and 47651. These statutes govern the funding of charter schools.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

The proposed regulation is necessary to fund and to determine the manner in which financial audits shall be conducted for countywide charter schools, which were established by Assembly Bill (AB) 1994 (Chapter 1058, Statutes of 2002).

Specifically, this adds Section 11967.8 to Title 5 of the California Code of Regulations to provide technical clarity regarding the funding calculation and process for providing operational funding to countywide charter schools. This section addresses a similar issue as that addressed in Section 11967.7 above but for countywide, rather than statewide charters. However, in this case, the regulations apply an exiting statutory definition of "sponsoring local education agency" that is currently applied to other county-authorized charter schools.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district that must be reimbursed in accordance with Government Code Section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

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

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or

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

Adoption of this regulation will not:

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

Significant effect on housing costs: None.

Effect on small businesses: The proposed amendments to the regulations do not have an effect on small businesses because they provide a process for a new type of charter school to obtain funding and therefore, have no effect on existing charter schools or small businesses. The proposed regulations do not impose additional workload on small businesses or contractors funded by the Department.

CONSIDERATION OF ALTERNATIVES

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

The State Board 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.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Eileen Cubanski, Administrator
California Department of Education
Charter School Division
1430 N Street, Room 5401
Sacramento, CA 95814
E-mail: ecubansk@cde.ca.gov
Telephone: (916) 322-6029
FAX: (916) 322-1465

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF
PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulation as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON
THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's Web site at <http://www.cde.ca.gov/regulations>.

REASONABLE ACCOMMODATION FOR ANY
INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990*, any individual with a disability who requires reasonable accommodation to attend or participate in a meeting or function of the California State Board of Education (SBE), may request assistance by contacting the

Jennifer Jackson, Charter School Division,
1430 N Street, Sacramento, CA, 95814; telephone,
(916) 322-6029; fax, (916) 322-1465.

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Golden State Seal Merit Diploma

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

Staff will hold a public hearing beginning at **9:00 a.m. on March 9, 2004**, at 1430 N Street, Room 1801, Sacramento. The room is wheelchair accessible. 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 State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on March 8, 2004**. The Board will consider only written comments received by the Regulations Adoption Coordinator or at the Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
E-mail: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Sections 33031, 51450 and 51451, Education Code.

Reference: Sections 51450, 51451 and 51452, Education Code.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

California Education Code Section 33031 states, "The board shall adopt rules and regulations not inconsistent with the laws of this state (a) for its own government, (b) for the government of its appointees and employees, (c) for the government of the day and evening elementary schools, the day and evening secondary schools, and the technical and vocational schools of the state, and (d) for the government of other schools, excepting the University of California, the California State University, and the California Community Colleges, as may receive in whole or in part financial support from the state.

The rules and regulations adopted shall be published for distribution as soon as practicable after adoption.

The purposes of the proposed regulations are to specify the California Standards Tests and scores that students may use to qualify a student for the Golden State Seal Merit Diploma, and to provide for phase out of the use of Golden State Examinations for the same purpose. These regulations are needed because that the Golden State Examinations that were used previously to identify students eligible to receive the diploma were eliminated by the Legislature. However, the laws related to awarding Golden State Seal Merit Diplomas remain intact.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

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

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

Adoption of these regulations will not:

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

Significant effect on housing costs: None

Effect on small businesses: The proposed regulations would not have a significant adverse economic impact on any business because they only apply to Local Educational Agencies and their subgrantees.

CONSIDERATION OF ALTERNATIVES

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

The State Board 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.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Vicki Perez, Associate Governmental
Program Analyst
Standards and Assessment Division
California Department of Education
1430 N Street, 5th Floor
Sacramento, CA 95814
E-mail: vperez@cde.ca.gov
Telephone: (916) 445-8765

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

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

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substan-

tially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990*, any individual with a disability who requires reasonable accommodation to attend or participate in a meeting or function of the California State Board of Education (SBE), may request assistance by contacting Vicki Perez, Standards and Assessment Division, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 445-8765; fax, (916) 319-0967.

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Vision Screening

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

Program staff will hold a public hearing beginning at **12:30 p.m. on March 9, 2004**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. 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 State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Superintendent requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on March 8, 2004**. The State Board will consider only written comments received by the Regulations Adoption Coordinator by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
E-mail: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.
Reference: Sections 44873, 44877, 44878, 49452, 49455 and 49456, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Board proposes to amend Sections 591, 592, 593, 594, 595, and 596 in Title 5 of the *California Code of Regulations* (CCR). These sections concern the screening of pupil vision in the public schools.

The purpose of the proposed amended regulations is to provide clarification for implementing *Education Code* sections 49452, 49455, and 49456. Specifically, the proposed amended regulations clarify who may administer vision tests to pupils, what types of tests may be performed, and when a reevaluation for test failure is required. Technical amendments to each section include the addition of authority and reference citations.

Education Code sections 49452, 49455, and 49456 provide for vision screening in selected grades, basic components of the school vision testing program, and parent notification of suspected vision defects.

Section 590 as amended will replace the old name "Department of Public Health" with the current name

“Department of Health Services.” The amendments provide other technical changes consistent with existing statute.

Section 591 as amended will reflect technical changes consistent with existing statute. The amendments remove “ophthalmologist,” as ophthalmologists are a subset of physicians already on the list of duly authorized providers of vision tests, and add “osteopath,” as osteopaths are licensed in California as a separate body. The amendments replace the term “screening” with “testing” to provide consistency with statute.

Section 592 as amended will reflect changes in technology and replace a brand name test with a generic term. The amendments also replace the term “screening” with “testing” to provide consistency with statute. Additionally, the amendments reflect technical changes consistent with existing statute.

Section 593 as amended will replace the term “eye screening test” with the term “vision test” to more accurately express the type of testing performed in the schools.

Section 594 as amended will reflect changes in technology and replace a brand name test with a generic term. This amended section will also clarify when a reevaluation for test failure is required. The amendments reflect technical changes consistent with existing statute. The amendments also eliminate a reference to the preparation and periodic update of program guidelines related to vision testing.

Section 595 as amended will replace the term “examination” with the term “appraisal” to more accurately express the type of testing performed in the schools. Additionally the amendment will specify color vision appraisal for male pupils that is pursuant to the *Education Code* sections also specified in the amendment.

Section 596 amendments reflect technical changes consistent with existing statute.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

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

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

Adoption of these regulations will not:

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

Significant effect on housing costs: None.

Effect on small businesses: The proposed regulations will have no effect on small businesses because they only apply to local educational agencies.

CONSIDERATION OF ALTERNATIVES

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

The State Board 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.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Linda Davis-Aldritt, Consultant
California Department of Education
School Health Connections
1430 N Street, Suite 6408
Sacramento, CA 95814
E-mail: visionregs@cde.ca.gov
Telephone: (916) 319-0284

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her

office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the Superintendent makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON
THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>.

REASONABLE ACCOMMODATION FOR ANY
INDIVIDUAL WITH A DISABILITY

Pursuant to the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990*, any individual with a disability who requires reasonable accommodation to attend or participate in a meeting or function of the California State Board of Education (SBE), may request assistance by contacting the Joanne Knierem, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 319-0914; fax, (916) 445-7367.

TITLE 5. BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Withholding Funds—Special Education Mandates

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

Program staff will hold a public hearing beginning at **8:00 a.m. on March 8, 2004**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. 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 State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on March 8, 2004**. The Board will consider only written comments received by the Regulations Adoption Coordinator or at the Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
Email: dstrain@cde.ca.gov
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.
Reference: Section 56845, Education Code; 20 USC Section 1413; 34 CFR 300.197.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

The Special Education Division on behalf of the Superintendent of Public Instruction proposes that the Board adopt regulation Sections 3088.1 and 3088.2 regarding sanctions for withholding funds to enforce

special education compliance authorized by *Education Code* Section 33031. (Reference: 20 USC Section 1413, 34 CFR 300.197 and *Education Code* Section 56845 (a) and (b)).

The purpose for adding Sections 3088.1 and 3088.2 to Title 5, California Code of Regulations, is to establish specific timelines and notice requirements for conducting a hearing which are prerequisites in both Federal and State law prior to withholding funds from local education agencies for noncompliance with special education law.

20 USC Section 1413 requires, among other things, that state education agencies monitor local education agencies to assure compliance with special education laws. 34 CFR 300.197 and *Education Code* Section 56845 (a) and (b) authorize the Superintendent to withhold state and federal funds from a local education agency after reasonable notice and opportunity for a hearing if the superintendent finds the agency out of compliance with special education laws.

Section 3088.1 specifies the required contents of a hearing notice and the timelines for conducting the hearing prior to making a decision whether to withhold funds. Section 3088.2 specifies when funds shall be withheld if the hearing officer concludes that the local education agency has not presented sufficient proof of compliance or mitigating circumstances precluding compliance. This section also stipulates that the superintendent may apportion state and federal funds previously withheld from the local education agency when it is determined that substantial progress toward compliance with special education laws has been made.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code Section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

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

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

Adoption of these regulations will not:

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

Significant effect on housing costs: None.

Effect on small businesses: There is no effect on small businesses because any funds withheld for non-compliance with special education laws are primarily spent on services and not specific equipment, materials and supplies.

CONSIDERATION OF ALTERNATIVES

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

The State Board 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.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Dennis Kelleher, Ed.D., Staff Liaison Consultant
California State Advisory Commission on
Special Education
California Department of Education
1430 N Street, Room 2401
E-mail: dkellehe@cde.ca.gov
Sacramento, CA 95814
Telephone: (916) 327-0842

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her

office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

**AVAILABILITY OF DOCUMENTS ON
THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>.

**REASONABLE ACCOMMODATION FOR
ANY INDIVIDUAL WITH A DISABILITY**

Pursuant to the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990*, any individual with a disability who requires reasonable accommodation to attend or participate in a meeting or function of the California State Board of Education (SBE), may request assistance by contacting Stacy Michel, Special Education Office, 1430 N Street, Sacramento, CA, 95814; telephone, (916) 445-4613; fax, (916) 327-3516.

**TITLE 8. DIVISION OF
WORKERS' COMPENSATION**

DEPARTMENT OF INDUSTRIAL RELATIONS

NOTICE OF RULEMAKING AFTER
EMERGENCY ADOPTION

MEDICAL AND MEDICAL-LEGAL
INITIAL LIEN FILING FEES

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in the Court Administrator (as that office is currently vacant pending an appointment by the Governor) and acting pursuant to the authority vested in the Court Administrator by Labor Code Section 4903.05 has adopted a regulation on an emergency basis to implement the provisions of Labor Code Section 4903.05 which took effect on January 1, 2004.

The regulation adopted is Subchapter 1.9 of Chapter 4.5 of Title 8 of the California Code of Regulations, Section 10250. The regulation sets forth the process and manner under which the Court Administrator will collect the \$100 dollar initial lien filing fee required of medical providers and medical-legal lien claimants.

The emergency regulation became effective on January 1, 2004 and will remain in effect for a period of 120 days from January 1, 2004. The purpose of this rulemaking is to adopt the emergency regulation on a permanent basis.

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: Thursday March 11, 2004
Time: 10:00 a.m.
Place: Auditorium
The Governor Hiram Johnson
State Office Building
455 Golden Gate Avenue
San Francisco, California 94102

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or any other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by

dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Court Administrator by Labor Code Section 4903.05.

Reference is to Labor Code Sections 4903.05 and 5307.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Labor Code Section 4903.05 requires medical providers and medical lien claimants who use the judicial services of the Workers' Compensation Appeals Board to contribute to the funding of the workers' compensation program through the payment of a \$100 filing fee for each initial medical or medical-legal lien filed in a workers' compensation case.

The proposed regulation sets forth the manner and procedure for the collection of the medical provider and medical legal lien claimant initial lien filing fees required by Labor Code Section 4903.05.

The regulation provides the procedures for collection of the filing fee where the lien is filed in writing or in an electronic format; where the lien is filed in a case with no application yet on file; and, where a single lien claimant files liens in multiple cases at the same time.

The regulation informs the regulated public that the Workers' Compensation Appeals Board will not order or enforce payment of any medical treatment or medical-legal lien filed on or after the effective date of the regulation without prior payment of the filing fee required by Labor Code Section 4903.05.

The regulation also informs the regulated public that where the attorney for the employee or dependent or any assignee of the lien claimant files the initial medical or medical-legal lien, that filing shall be deemed to have been made by an agent for the medical provider or medical-legal lien claimant and payment of the filing fee required by Labor Code Section

4903.05 shall be required of the filing party as if the lien had been filed directly by the medical provider or medical-legal lien claimant.

For purposes of clarity, each reference in the emergency regulation to "the effective date of these regulations" is being changed to refer to the actual effective date of the emergency regulation, January 1, 2004.

Finally, a non-substantive change without regulatory effect is being made to correct a typographical error in the emergency regulation. An incorrect Zip Code was given for electronic format lien filers to mail their payments to.

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. The requirement to pay the filing fee is a statutory mandate. The regulation only provides the procedures to be used for collection of the fee.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California, (2) create new businesses or eliminate existing businesses within the State of California, or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: Every medical provider or medical-legal lien claimant subject to the regulation will have to pay a \$100 filing fee with each initial lien filed. The fee is a statutory mandate. The regulation, however, provides that once a single filing fee is paid, no additional fee will be required in any related case. (The proposed regulation provides that a case will be deemed related if the case alleges injury to the same or substantially same body parts.)

There will be no initial start-up costs to comply with the proposed regulation. The total annual ongoing costs to any medical provider or medical-legal lien claimant will depend on the total number of initial liens filed in any given year.

In addition, Labor Code Section 4603.2, as amended effective January 1, 2004, provides that if any contested amount of a medical or medical-legal billing is determined payable by the Workers' Compensation Appeals board, the defendant shall be ordered to reimburse the provider for any initial lien filing fee paid pursuant to Labor Code Section 4903.05.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: There will be administrative costs to implement the regulation. These costs will be addressed through the normal budget process.
- Local Mandate: None. The proposed regulation will not impose any new mandated programs or increased service levels on any local agency or school district. The proposed regulation does not apply to any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed regulation does not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None. The proposed regulation does not apply to any local agency or school district.

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulation may affect small businesses. The regulation exempts interpreters and copy services from the fee requirement because the Administrative Director determined that in many cases a \$100 filing fee would be grossly disproportionate to the total amount of the lien (often under \$50). Many interpreters and some copy services are either small businesses or sole proprietors.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATION

A pre-adoption workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulation, because the issue addressed is not so complex that it cannot easily be reviewed during the comment period. The Administrative Director, however, held an informal workshop, prior to the emergency adoption of the regulation, with a representative group of interested parties.

In addition, the text of the proposed regulation was made available for pre-adoption public comment through the Division's Internet message board (the DWC Forums).

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulation have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below or a copy will be provided upon written request.

As of the date of this notice, the rulemaking file consists of the emergency adoption documents (the Finding of Emergency and Informative Digest and the text of the regulation as adopted, in strikeout/underline format), this Notice, the Initial Statement of Reasons, and the Form 399. In addition, the Notice, Initial Statement of Reasons, and text of regulation may be accessed and downloaded from the Department of Industrial Relations' Internet site at www.dir.ca.gov

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing. If you provide a written comment, it will not be necessary to present your comment as oral testimony at the public hearing.

Any person may submit written comments on the proposed regulation, prior to the public hearing to:

Ms. Marcela Reyes,
Regulations Coordinator
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@hq.dir.ca.gov

Unless submitted prior to or at the public hearing, all written comments must be received by the agency contact person, no later than 5:00 p.m. on March 11, 2004. Equal weight will be accorded to oral and written materials.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Administrative Director will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: dwcrules@hq.dir.ca.gov

The Administrative Director will also accept written comments transmitted by facsimile provided they are directed to the attention of Marcela Reyes and sent to the following facsimile number: (415) 703-4720.

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

**AVAILABILITY OF RULEMAKING FILE
AND LOCATION WHERE RULEMAKING
FILE MAY BE INSPECTED**

Any interested person may inspect a copy or direct questions about the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file.

The rulemaking file, including the Initial Statement of Reasons, the complete text of the proposed regulation and any documents relied upon in this rulemaking may be inspected during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding public holidays) at the following location:

Division of Workers' Compensation
455 Golden Gate Avenue, Ninth Floor
San Francisco, California 94102

**AVAILABILITY OF RULEMAKING
DOCUMENTS ON THE INTERNET**

Documents concerning this proceeding are available on the Division's website: www.dir.ca.gov. To access them, click on the "Proposed Regulations—Rulemaking" link and scroll down the list of rulemaking proceedings to find the "Lien Filing Fees" rulemaking link.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulation, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be directed to the contact person. The contact person is:

Ms. Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the contact person is (415) 703-4600.

**BACK-UP CONTACT PERSON / CONTACT
PERSON FOR SUBSTANTIVE QUESTIONS**

To obtain responses to questions regarding the substance of the proposed regulation, or in the event the contact person is unavailable, inquiries should be directed to: James M. Robbins, Industrial Relations Counsel, at the same address and telephone number as noted above for the contact person.

**AVAILABILITY OF CHANGES FOLLOWING
PUBLIC HEARING**

If the Administrative Director makes changes to the proposed regulation as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulation is adopted. The modified text will be made available on the Division's website: www.dir.ca.gov and may be located by following the direction provided above.

**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 contact person named in this notice or may be accessed on the Division's website: www.dir.ca.gov by following the directions provided above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted on a permanent basis, the proposed regulation will remain in effect at Title 8, California Code of Regulations, Section 10250.

**TITLE 8. DIVISION OF
WORKERS' COMPENSATION**

DEPARTMENT OF INDUSTRIAL RELATIONS

**NOTICE OF PROPOSED RULEMAKING
(Adoption of Emergency Regulations)**

**Subject Matter of Regulations: Workers'
Compensation—Official Medical Fee
Schedule—Services Rendered
After January 1, 2004**

**CALIFORNIA CODE OF REGULATIONS
SECTIONS 9789.10–9789.110**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code Sections 59, 129, 129.5, 133, 5307.1, 5307.3, and 5318 proposes to adopt the proposed regulations described below after considering all

comments, objections, and recommendations regarding the proposed action. The below sections were adopted as emergency regulations and became effective January 2, 2004.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt Article 5.3 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, commencing with Section 9789.10:

- Section 9789.10 Physician Services—Definition
- Section 9789.11 Physician Services Rendered After January 1, 2004
- Section 9789.20 General Information for Inpatient Hospital Fee Schedule—Discharge after January 1, 2004
- Section 9789.21 Definitions for Inpatient Hospital Fee Schedule
- Section 9789.22 Payment of Inpatient Hospital Services
- Section 9789.23 Hospital Cost to Charge Ratios, Hospital Specific Outlier Factors, and Hospital Composite Factors
- Section 9789.24 Diagnostic Related Groups, Relative Weights, Geometric Mean Length of Stay
- Section 9789.30 Hospital Outpatient Departments and Ambulatory Surgical Centers—Definitions
- Section 9789.31 Hospital Outpatient Departments and Ambulatory Surgical Centers—Adoption of Standards
- Section 9789.32 Outpatient Hospital Department and Ambulatory Surgical Center Fee Schedule—Applicability
- Section 9789.33 Hospital Outpatient Departments and Ambulatory Surgical Facilities Fee Schedule—Determination of Maximum Reasonable Fee
- Section 9789.34 Table A
- Section 9789.35 Table B
- Section 9789.36 Update of Rules to Reflect Changes in the Medicare Payment System
- Section 9789.37 DWC Form 15 Election for High Cost Outlier
- Section 9789.38 Appendix X
- Section 9789.40 Pharmacy
- Section 9789.50 Pathology and Laboratory
- Section 9789.60 Durable Medical Equipment, Prosthetics, Orthotics, Supplies

- Section 9789.70 Ambulance Services
- Section 9789.80 Skilled Nursing Facility [Reserved]
- Section 9789.90 Home Health Care [Reserved]
- Section 9789.100 Outpatient Renal Dialysis [Reserved]
- Section 9789.110 Update of Rules to Reflect Changes in the Medicare Payment System

PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, oral or in writing, with respect to the subjects noted above, on the following dates:

- Date: March 11, 2004**
- Time: 10:00 am to 5:00 PM or conclusion of business**
- Place: Gov. Hiram W. Johnson
State Office Building, Auditorium
455 Golden Gate Avenue
San Francisco, California 94102**

The State Office Building and its Auditorium are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Adel Serafino, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require that, any persons who make oral comments at the hearings also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m.**, on **March 11, 2004**. The Department of Industrial Relations, Division of Workers' Compensation will consider only comments received at the Department of Industrial Relations, Division of Workers' Compensa-

tion by that time. Equal weight will be accorded to oral comments presented at the hearing and written materials.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (415) 703-4720. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Reyes must receive all written comments no later than 5:00 p.m. on March 11, 2004.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code Sections 127, 133, 4603.5, 5307.1, 5307.3, 5307.6, and 5318.

Reference is to Labor Code Sections 139.2, 4061, 4061.5, 4062, 4600, 4603.2, 4620, 4621, 4622, 4625, 4628, 4650, 5307.1, 5307.6, 5318, and 5402.

INFORMATIVE DIGEST AND POLICY OVERVIEW

Section 5307.1 of the Labor Code, as amended by Senate Bill 228, requires the Administrative Director to adopt and revise periodically an official medical fee schedule that establishes, except for physician services, the reasonable maximum fees paid for all medical services rendered in workers' compensation cases. Except for physician services, all fees in the adopted schedule must be in accordance with the fee-related structure and rules of the relevant Medicare (administered by the Center for Medicare & Medicaid Services of the United States Department of Health and Human Services) and Medi-Cal payment systems.

Beginning January 1, 2004, and continuing until the above Medicare-based fee schedule is adopted, the maximum reasonable fees for medical services (except for physician services) must be 120 percent of the estimated aggregate fees prescribed in the relevant Medicare payment system for the same class of services. Services paid at this rate include, but are not limited to, hospital inpatient services and services performed in an ambulatory surgical center or hospital outpatient department. The maximum reasonable fee for pharmacy and drug services that are not otherwise covered by a Medicare fee schedule payment for

facility services must be 100 percent of the fees prescribed in the relevant Medi-Cal payment system. Fees for medical services and pharmacy services and drugs shall be adjusted to conform to any relevant change in the Medicare and Medi-Cal payment systems.

For the Calendar Years 2004 and 2005 the maximum reimbursable fees set forth in the existing Official Medical Fee Schedule for physician services must be reduced by five (5) percent. The Administrative Director has the discretion to reduce individual medical procedures (reflected in the Fee Schedule by separate CPT codes) by amounts different than five percent, but in no event shall a procedure be reduced to an amount that is less than that paid by the current Medicare payment system for the same procedure.

Prior to the adoption of the Medicare-based fee schedule, for any treatment, facility use, product, or service not covered by a Medicare payment system, including acupuncture services, or for a pharmacy service or drug not covered by a Medi-Cal payment system, the maximum reasonable fee must not exceed the fee specified in the existing Official Medical Fee Schedule.

The Administrative Director now proposes to adopt administrative regulations governing payment under the Official Medical Fee Schedule for medical services rendered after January 1, 2004. These proposed regulations implement, interpret, and make specific Section 5307.1 of the Labor Code as follows:

1. Section 9789.10

This section provides definitions for key terms relating to physician services rendered after January 1, 2004 to ensure that their meaning will be clear to the regulated public. The key terms include:

- (a) "Basic value" is defined to identify the value unit for an anesthesia procedure that used to determine the maximum reimbursable fee for a service involving the administration of anesthesia.
- (b) "CMS" is defined to identify the Center for Medicare & Medicaid Services of the United States Department of Health and Human Services.
- (c) "Conversion factor," or "CF," is defined to clarify the factor that is multiplied by the listed relative value unit of each individual procedure code in the Official Medical Fee Schedule to determine the maximum reimbursable physician fee. The conversion factor is necessary to calculate the 5% reduction in fees for physician services rendered after January 1, 2004, as mandated by Labor Code § 5307.1(k) and implemented by Section 9789.11.

- (d) “CPT®” is defined to identify the licensed procedure coding system created by the American Medical Association and utilized in the Official Medical Fee Schedule.
- (e) “Medicare rate” is defined as the Calendar Year 2004 physician fee schedule established by CMS. As mandated by amended Labor Code § 5307.1(k), the Medicare rate is used as the base by which the 5% reduction in physician fees will be determined.
- (f) “Modifying units” is defined to identify the anesthesia modifiers and qualifying circumstances that are used to determine the maximum reimbursable fee for a service involving the administration of anesthesia.
- (g) “Official Medical Fee Schedule” is defined to identify the maximum reimbursable fees for all medical services, goods, and treatment rendered after January 1, 2004. The Official Medical Fee Schedule consists of proposed Article 5.1 of Chapter 4.5, Title 8, California Code of Regulations (commencing with Section 9789.10).
- (h) “Official Medical Fee Schedule 2003” (or “OMFS 2003”) is defined to identify the maximum reimbursable fees for all medical services, goods, and treatment rendered before January 1, 2004. The Official Medical Fee Schedule 2003 was adopted pursuant to Labor Code § 5307.1, in effect on December 31, 2003.
- (i) “Percent reduction calculation” is defined to clarify the factor that is to be used for the purpose of applying the percentage reduction in fees for physician services rendered after January 1, 2004, as mandated by amended Labor Code § 5307.1(k) (effective January 1, 2004) and implemented by Section 9789.11.
- (j) “Physician services” is defined to identify the medical treatment procedures whose maximum reimbursable fees, set forth in the Official Medical Fee Schedule 2003, are subject to the 5% reduction mandated by Labor Code § 5307.1(k) and implemented by Section 9789.11.
- (k) “RVU” is defined to identify the relative value unit for a particular procedure, set forth in the Official Medical Fee Schedule 2003, which is used to determine the maximum reimbursable fee for a physician service.
- (l) “Time value” is defined to identify the unit of time indicating the duration of an anesthesia procedure, set forth in the Official Medical Fee Schedule 2003, which is used to determine the maximum reimbursable fee for a service involving the administration of anesthesia.

2. Section 9789.11

This section sets forth the formula for determining the maximum reimbursable fees for physician services rendered after January 1, 2004. Amended Labor Code § 5307.1(k) requires that such fees, set forth in the Official Medical Fee Schedule 2003, be reduced by 5%. However, the Administrative Director has the discretion to adjust individual procedure codes by different amounts, provided that no resulting fee drops below the current Medicare rate for the same procedure.

- (a) This subdivision provides that, except for the “General Information and Instructions” section, the ground rules set forth in the Official Medical Fee Schedule 2003 are applicable to physician services rendered after January 1, 2004. A new “General Information and Instructions” section is incorporated by reference.
- (b) This subdivision establishes that for physician services rendered after January 1, 2004, the maximum reimbursable fees for each procedure set forth in the Official Medical Fee Schedule 2003 shall be reduced up to 5%, except for procedures that are reimbursed at or below the current Medicare rate.
- (c) For the convenience of the regulated public, this subdivision consists of a table, “Table A—OMFS Physician Services Fees for Services Rendered after January 1, 2004,” incorporated by reference, setting forth each individual procedure code, its corresponding relative value, conversion factor, assigned percent reduction calculation (between 0 and 5.0%), and maximum reimbursable fee.

NOTE: On January 7, 2004, subsequent to the approval of the OMFS Emergency Regulations, the Centers for Medicare and Medicaid Services issued an interim final rule implementing the provisions of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. 108-173. The Act required changes to the relative value units that will result in increases in Medicare payments for physician fee schedule services for Calendar Year 2004. The interim final rule, found at 69 Federal Register No. 4, pages 1084 through 1267, applies this mandate. The Division recognizes that CMS’ changes to the relative value units may affect the Division’s computation of the percent reduction calculation set forth in “Table A—OMFS Physician Services Fees for Services Rendered after January 1, 2004.” The Division will review its estimation of the 2004 Medicare rates, taking into consideration the new relative value units, and correct the percent reduction calculations as necessary. Any corrections will be available prior to the March 11, 2004 public hearing.

- (d) This subdivision sets forth the formulas for determining the 5% reduction in maximum reimbursable fees for physician and anesthesia services. For physician services, the relative value unit for each procedure code is multiplied by the applicable conversion factor, which is then multiplied by the assigned percent reduction calculation (between 0 and 5%) to produce the maximum reimbursement fee before the application of the OMFS 2003 ground rules. For anesthesia services, the base unit for each procedure is added to a modifying unit (if any) and time value, and then multiplied by the conversion factor $\times 95\%$.
- (e) This subdivision identifies the physician service procedure codes in the Pathology and Laboratory section of the OMFS 2003 that will be subject to the 5% reduction in maximum reimbursable fees required by amended Labor Code § 5307.1 and implemented by Section 9789.11.

3. Section 9789.20

This regulation sets forth that the Inpatient Hospital Fee Schedule applies to services with a date of discharge after January 1, 2004, that the schedule will be adjusted to conform to relevant changes in the Medicare payment schedule no later than 60 days after the effective date of those changes, and that updates will be posted on the Division’s website.

4. Section 9789.21

Amended Labor Code § 5301.7 provides that all fees by a hospital for inpatient services shall be in accordance with the fee-related structure and rules of the relevant Medicare payment systems and that the maximum reasonable fees shall be 120 percent of the estimated aggregate fees prescribed in the Medicare payment system before the application of the inflation factor set forth in the statute. This regulation sets forth the definitions of terms used in the inpatient fee schedule regulations and the formulas needed in order to determine the maximum payment for medical services. The definition of “Composite factor” in Subdivision (d)(3) has been amended to reflect the changes that have been made to Section 9789.23 since the adoption of the emergency regulations.

5. Section 9789.22

Amended Labor Code 5301.7 provides that all fees by a hospital for inpatient services shall be in accordance with the fee-related structure and rules of the relevant Medicare payment systems and that the maximum reasonable fees shall be 120 percent of the estimated aggregate fees prescribed in the Medicare payment system before the application of the inflation factor set forth in the statute. This regulation provides

the basic procedures for the payment of inpatient services: the formula to determine the maximum payment for inpatient medical services, the requirement for health facilities to provide specific information in their bills to allow payers to determine the maximum payment, the formula for cost outlier cases, an exception for implantable hardware, a new technology pass-through, a modified factor for sole community hospitals, an explanation of how payment for transfers will be calculated, exemptions for certain types of hospitals, and the procedure for a request for redetermination.

6. Section 9789.23

This section is a table that provides the Medical Provider Number, the hospital name, the Inpatient Hospital Operating Cost to Charge Ratio, Capital Cost to Charge Ratio, Total Cost to Charge Ratio, Hospital Specific Outlier, and Composite Factors. These factors are used to determine the amount of the outliers, to determine if the provider is entitled to an outlier, and to determine the maximum payment for inpatient medical services. The cost to charge ratios have been added to the table since the adoption of the emergency regulations at the request of the public. This table replaces the prior Section 9789.23 which instead had columns entitled “provider,” hospital name,” “composite factor,” “adjusted composite factor,” and “hospital specific outlier factor.”

7. Section 9789.24

This section is a table that provides the DRGs (diagnosis related groups), relative weights and geometric length of stay. These factors are used in the formula to determine the maximum payment for inpatient medical services.

8. Section 9789.30

This section provides definitions for key terms relating to medical services provided by hospital outpatient departments and ambulatory surgical centers after January 1, 2004. The key terms include:

- (a) “Adjusted Conversion Factor” is defined to identify CMS’ conversion factor for 2003 of $52.151 \times$ the market basket inflation factor of $1.034 \times (0.4 + (0.6 \times \text{wage index}))$.
- (b) “Ambulatory Payment Classifications (APC)” is defined to identify the list of ambulatory payment classifications of hospital outpatient services used by Centers for Medicare & Medicaid Services (CMS).
- (c) “Ambulatory Surgical Center (ASC)” is defined to identify any surgical clinic as defined in the California Health and Safety Code Section 1204 (b)(1), any ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. § 1395

- et seq.) of the federal Social Security Act, or any surgical clinic accredited by an accrediting agency as approved by the Licensing Division of the Medical Board of California pursuant to Health and Safety Code Sections 1248.15 and 1248.4.
- (d) “Annual Utilization Report of Specialty Clinics” is defined to identify the Annual Utilization Report of Clinics which is filed by February 15 of each year with the Office of Statewide Health Planning and Development by the ASCs as required by Section 127285 and Section 1216 of the Health and Safety Code.
- (e) “APC Payment Rate” is defined to identify CMS’ hospital outpatient prospective payment system rate for Calendar Year 2004 as set forth in the Federal Register on November 7, 2003, Volume 68, No. 216, Addendum B, pages 63488 through 63655.
- (f) “APC Relative Weight” is defined to identify CMS’ APC relative weight as set forth in CMS’ hospital outpatient prospective payment system for the Calendar Year 2004 as set forth in the Federal Register on November 7, 2003, Volume 68, No. 216, Addendum B, pages 63488 through 63655.
- (g) “CMS” is defined to identify the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services.
- (h) “Cost to Charge Ratio for ASC” is defined as the ratio of the facility’s total operating costs to total gross charges during the preceding calendar year.
- (i) “Cost to Charge Ratio for Hospital Outpatient Department” is defined to identify the hospital cost-to-charge ratio used by the Medicare fiscal intermediary to determine high cost outlier payments.
- (j) “HCPCS” is defined to identify CMS’ Healthcare Common Procedure Coding System, which describes products, supplies, procedures and health professional services and includes, the American Medical Association’s (AMA’s) Physician “*Current Procedural Terminology*” Fourth Edition, (CPT-4) codes, alphanumeric codes, and related modifiers.
- (k) “HCPCS Level I Codes” is defined to identify the AMA’s CPT-4 codes and modifiers for professional services and procedures.
- (l) “HCPCS Level II Codes” is defined to identify the national alphanumeric codes and modifiers maintained by CMS for health care products and supplies, as well as some codes for professional services not included in the AMA’s CPT-4.
- (m) “Health Facility” is defined to identify any facility as defined in Section 1250 of the Health and Safety Code.
- (n) “Hospital Outpatient Department” is defined to identify any hospital outpatient department as defined in the California Health and Safety Code Section 1250 and any hospital outpatient department that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. SEC. 1395 et seq.) of the federal Social Security Act.
- (o) “Hospital Outpatient Department Services” is defined to refer to services furnished by any health facility as defined in the California Health and Safety Code Section 1250 and any hospital that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. SEC. 1395 et seq.) of the federal Social Security Act to a patient who has not been admitted as an inpatient but who is registered as an outpatient in the records of the hospital.
- (p) “Market Basket Inflation Factor” is defined to identify the market basket percentage increase determined by CMS for FY 2004, 3.4%, as set forth in the Federal Register on August 1, 2003, Volume 68, at page 45346.
- (q) “Outpatient Prospective Payment System (OPPS)” is defined to identify Medicare’s payment system for outpatient services at hospitals. These outpatient services are classified according to a list of ambulatory payment classifications (APCs).
- (r) “Total Gross Charges” is defined as the facility’s total usual and customary charges to patients, and third-party payers before reductions for contractual allowances, bad debts, courtesy allowances and charity care.
- (s) “Total Operating Costs” is defined as the direct cost incurred in providing care to patients. Included in operating cost are: salaries and wages, rent or mortgage, employee benefits, supplies, equipment purchase and maintenance, professional fees, advertising, overhead, etc. It does not include start up costs.
- (t) “Wage Index” is defined to identify CMS’ wage index for urban, rural and hospitals that are reclassified as described in CMS’ 2004 Hospital Outpatient Prospective Payment System (HOPPS), adopted for the Calendar Year 2004, published in the Federal Register on November 7, 2003, Volume 68, No. 216, Addenda H through J, pages 63682 through 63690.
- (u) “Workers’ Compensation Multiplier” means the 120% Medicare multiplier required by

Labor Code § 5307.1, or the 122% multiplier that includes an extra 2% reimbursement for high cost outlier cases.

9. Section 9789.31

In this section the Administrative Director adopts and incorporates by reference the following standards:

- (a) In this subdivision the Administrative Director incorporates by reference, the Centers for Medicare & Medicaid Services (CMS) 2004 Hospital Outpatient Prospective Payment System (HOPPS), adopted for the Calendar Year 2004, published in the Federal Register on November 7, 2003, Volume 68, No. 216, Addenda A through J, pages 63478 through 63690 as follows:
 - (1) Addendum A, "List of Ambulatory Payment Classifications (APCs) with Status Indicators, Relative Weights, Payment Rates, and Copayment Amounts Calendar Year 2004."
 - (2) Addendum B, "Payment Status by HCPCS Code and Related Information Calendar Year 2004."
 - (3) Addendum D1, "Payment Status Indicators for Hospital Outpatient Prospective Payment System."
 - (4) Addendum D2, "Code Conditions."
 - (5) Addendum E, "CPT Codes Which Would Be Paid Only As Inpatient Procedures."
 - (6) Addendum H, "Wage Index For Urban Areas."
 - (7) Addendum I, "Wage Index For Rural Areas."
 - (8) Addendum J, "Wage Index For Hospitals That Are Reclassified."
- (b) In this subdivision the Administrative Director incorporates by reference the American Medical Associations' Physician "Current Procedural Terminology," 2004 Edition.
- (c) In this subdivision the Administrative Director incorporates by reference CMS' 2004 Alphanumeric "Healthcare Common Procedure Coding System (HCPCS)."

10. Section 9789.32

This Section sets forth the applicability of the hospital outpatient department and surgical center fee schedule.

- (a) This subdivision provides that Sections 9789.30 through 9789.38 are applicable to the maximum allowable fees for emergency room visits and surgical procedures rendered after January 1, 2004. The subdivision defines emergency room

visits based on CPT codes 99281-99285 and surgical procedures based on CPT codes 10040-69990. The subdivision further provides that a facility fee is payable only for the specified emergency room and surgical codes and for supplies, drugs, devices, blood products and biologicals that are an integral part of the emergency room visit or surgical procedure. Subparts (a)(1) through (a)(3) set forth when a supply, drug, device, blood product and biological are considered an integral part of an emergency room visit or surgical procedure. The first sentence of subdivision (a) of proposed Section 9789.32 has been corrected to reflect the proper proposed sections referenced as Sections 9789.30 through 9789.38.

- (b) This subdivision provides that Sections 9789.30 through 9789.38 apply to any hospital outpatient department as defined in the California Health and Safety Code Section 1250 and any hospital outpatient department that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. § 1395 et seq.) of the federal Social Security Act and any ASC as defined in the California Health and Safety Code Section 1204(b)(1), any ambulatory surgical center that is certified to participate in the Medicare program under Title XVIII (42 U.S.C. § 1395 et seq.) of the federal Social Security Act, and any surgical clinic accredited by an accrediting agency as approved by the Licensing Division of the Medical Board of California pursuant to Health and Safety Code Sections 1248.15 and 1248.4, performing procedures and services on an outpatient basis. The first sentence of subdivision (b) of proposed Section 9789.32 has been corrected to reflect the proper proposed sections referenced as Sections 9789.30 through 9789.38.
- (c) This subdivision provides that the maximum allowable fees for services and supplies furnished by hospitals and ambulatory surgical centers that do not meet the requirements in Section 9789.33(a) for a facility fee payment will be determined pursuant to subparts (c)(1) through (c)(7).
- (d) This subdivision provides that only hospitals may charge or collect a facility fee for emergency room visits. It further provides that only hospitals and ambulatory surgical centers as defined in Section 9789.30(c) and Section 9789.30(m) may charge or collect a facility fee for surgical services provided on an outpatient basis.

- (e) This subdivision provides that hospital outpatient departments and ambulatory surgical centers will not be reimbursed for procedures on the inpatient only list, Addendum E, except that pre-authorized services rendered are payable at the pre-negotiated fee arrangement. The subdivision further provides that the pre-authorization must be provided by an authorized agent of the claims administrator to the provider, and the fee agreement and pre-authorization must be memorialized in writing prior to performing the medical services.
- (f) This subdivision provides that critical access hospitals and hospitals that are excluded from acute PPS are exempt from this fee schedule.

11. Section 9789.33

This section sets forth the formulas for maximum allowable payment for services rendered after January 1, 2004 by hospital outpatient departments and ambulatory surgical centers.

- (a) This subdivision provides the formula to determine the maximum allowable payment for outpatient facility fees for hospital emergency room services or for surgical services performed after January 1, 2004 at a hospital outpatient department or at an ambulatory surgical center. This subdivision further provides that a 1.22 factor shall be used in lieu of an additional payment for high cost outlier cases.
- (1) This subpart provides that the formula to determine the maximum allowable payment for outpatient facility fees for hospital emergency room services or for surgical services performed after January 1, 2004 at a hospital outpatient department or at an ambulatory surgical center for procedures with codes with status code indicators "S", "T" or "V" is: $(APC \text{ relative weight} \times \$52.151) \times (.40 + .60 \times \text{applicable wage index}) \times \text{inflation factor of } 1.034 \times 1.22$.
- (A) This subpart provides that Table A in Section 9789.34 contains an "adjusted conversion factor" which incorporates the standard conversion factor, wage index and inflation factor. It further provides that the maximum payment for ASCs and non-listed hospitals can be determined using the following formula: $APC \text{ relative weight} \times \text{adjusted conversion factor} \times 1.22$.
- (B) This subpart provides that Table B in Section 9789.35 contains an "adjusted conversion factor" which incorporates the standard conversion factor, wage index and inflation factor. It further provides that the maximum payment for the listed hospitals

- can be determined using the following formula: $APC \text{ relative weight} \times \text{adjusted conversion factor} \times 1.22$.
- (2) This subpart provides that the formula to determine the maximum reasonable fee for procedure codes for drugs and biologicals with status code indicator "G" is $APC \text{ payment rate} \times 1.22$.
- (3) This subpart provides that the formula to determine the maximum reasonable fee for procedure codes with status code indicator "H" is $\text{documented paid costs, net of discounts and rebates, plus } 10\%$.
- (4) This subpart provides that the formula to determine the maximum reasonable fee for procedure codes for drugs and biologicals with status code indicator "K" is $APC \text{ payment rate} \times 1.22$.
- (b) This subdivision provides for an alternative payment methodology in lieu of the maximum allowable fees set forth under subdivision (a).
- (1) This subpart provides that the standard payment formulas pursuant to the alternative payment methodology in lieu of the maximum allowable fees set forth under subdivision (a).
 - (A) This subpart provides that the formula to determine the maximum allowable payment pursuant to the alternative payment methodology in lieu of the maximum allowable fees set forth under subdivision (a) for procedure codes with status code indicators "S", "T" or "V" is: $(APC \text{ relative weight} \times \$52.151) \times (.40 + .60 \times \text{applicable wage index}) \times \text{inflation factor of } 1.034 \times 1.20$.
 - (B) This subpart provides that the formula to determine the maximum allowable payment pursuant to the alternative payment methodology in lieu of the maximum allowable fees set forth under subdivision (a) for procedure codes for drugs and biologicals with status code indicator "G" is $APC \text{ payment rate} \times 1.20$.
 - (C) This subpart provides that the formula to determine the maximum allowable payment pursuant to the alternative payment methodology in lieu of the maximum allowable fees set forth under subdivision (a) for procedure codes with status code indicator "H" is $\text{documented paid costs, net of discounts and rebates, plus } 10\%$.
 - (D) This subpart provides that the formula to determine the maximum allowable payment pursuant to the alternative payment methodology in lieu of the maximum

allowable fees set forth under subdivision (a) for procedure codes for drugs and biologicals with status code indicator “K” is APC payment rate \times 1.20.

- (2) This subpart provides that the additional payment formula for a high cost outlier case pursuant to the alternative payment methodology in lieu of the maximum allowable fees set forth under subdivision (a) is [(Facility charges \times cost-to-charge ratio)—standard payment \times 2.6] \times .50.
- (3) This subpart provides that in determining the additional payment, the facility’s charges and standard payment for devices with status code indicator “H” shall be excluded from the computation.
- (c) This subdivision sets forth the requirements which must be met in order to qualify for the alternative payment methodology.
 - (1) This subpart provides that the facility that is seeking reimbursement for high cost outlier cases is required to file a DWC Form 15 “Election for High Cost Outlier,” contained in Section 9789.37. The completed form must be filed before March 1 of each year. The election becomes effective on April 1 of the same year and remains effective for a one-year period.
 - (2) This subpart provides that if the facility does not file a timely election satisfying the requirements set forth in this subdivision and Section 9789.37, payment is determined under subdivision (a).
 - (3) This subpart provides that if a hospital does not participate under Medicare, the maximum allowable fees applicable are determined under subdivision (a).
 - (4) This subpart requires that the cost-to-charge ratio applicable to a hospital participating in the Medicare program are determined based on the hospital’s cost-to-charge used by the Medicare fiscal intermediary to determine high cost outlier payments under 42 C.F.R. § 419.43(d), which is incorporated by reference and contained in Section 9789.38—Appendix X. This subpart further provides that the cost-to-charge ratio being used by the intermediary for services furnished on February 15 of the year the election is filed is to be included on the hospital’s election form.
 - (5) This subpart provides that the cost-to-charge ratio applicable to an ambulatory surgery center is the ratio of the facility’s total operating costs to total gross charges during the preceding calendar year. The facility’s election form as contained in Section 9789.37 must include a completed Annual Utilization Report of Specialty Clinics filed with Office of Statewide Health Planning and Development (OSHPD) for the preceding calendar year, which is incorporated by reference. The facility’s election form shall further include the facility’s total operating costs during the preceding calendar year, the facility’s total gross charges during the preceding calendar year, and a certification under penalty of perjury signed by the Chief Executive Officer and a Certified Public Accountant, as to the accuracy of the information. Upon request from the Administrative Director, an independent audit may be conducted at the expense of the ASC. (Note: While ASCs may not typically file Annual Utilization Report of Specialty Clinics with OSHPD, any ASC applying for the alternative payment methodology must file the equivalent, subject to audit by the Division of Workers’ Compensation.) A copy of the Annual Utilization Report of Specialty Clinics may be obtained at OSHPD’s website or upon request to the Administrative Director.
 - (6) This subpart provides that before April 1 of each year the AD will post a listing of those facilities that have elected to be paid under this paragraph and the facility-specific cost-to-charge ratio that shall be used to determine additional fees allowable for high cost outlier cases. The subpart further provides that the list shall be posted on the Division of Workers’ Compensation or is available upon request to the Administrative Director.
- (d) This subdivision provides that the OPPS rules (42 C.F.R. § 419.44 and Status Indicators in Addendum A) regarding reimbursement for multiple procedures are incorporated by reference as set forth in Section 9789.38—Appendix X.
- (e) This subdivision provides that the OPPS rules in 42 CFR §§ 419.62, 419.64, and 419.66 regarding transitional pass-through payments for innovative medical devices, drugs and biologicals are incorporated by reference, as contained in Section 9789.38—Appendix X, except that payment for these items is made pursuant to subdivisions (a) or (b) as applicable.

- (f) This subdivision provides that the payment determined under subdivisions (a) and (b) include reimbursement for all of the included cost items specified in 42 CFR § 419.2(b), which is incorporated by reference, as contained in Section 9789.38 Appendix X. This subdivision further provides that all of the cost items specified in 42 C.F.R. § 419.2(c)1–6 are included in the maximum allowable payment rate and are incorporated by reference as contained in Section 9789.38 Appendix X.
- (g) This subdivision provides that the maximum allowable fees are determined without regard to the provisions in 42 C.F.R. § 419.70 as contained in Section 9789.38—Appendix X.

12. Section 9789.34

This Section contains Table A, setting forth the “adjusted conversion factor,” which incorporates the standard conversion factor for payment of facility fees provided by the ambulatory surgical centers and non-listed hospitals. The table lists the MSA Code, the urban and rural areas, the counties, the applicable wage index, and the “adjusted conversion factor” before the California Workers’ Compensation adjustment factor for payment of facility fees provided by the ambulatory surgical centers and non-listed hospitals. The “adjusted conversion factor” is based on the following formula: $\$52.151 \times (.40 + .60 \times \text{applicable wage index}) \times \text{inflation factor of } 1.034$. The regulated public will be able to use the table to obtain the appropriate “adjusted conversion factor.” The “adjusted conversion factor” is required in order to calculate the maximum allowable facility fee payment for facility fee services provided by the ambulatory surgical centers and non-listed hospitals based on the applicable formula pursuant to proposed Section 9789.33, subdivisions (a) or (b).

13. Section 9789.35

This Section contains Table B, setting forth the “adjusted conversion factor,” which incorporates the standard conversion factor for payment of facility fees provided by hospital outpatient departments. The table lists the provider number, the name of the hospital, the operating wage index, and the “adjusted conversion factor” before the California Workers’ Compensation adjustment factor for payment of facility fees provided by the hospital outpatient departments. The “adjusted conversion factor” is based on the following formula: $\$52.151 \times (.40 + .60 \times \text{applicable wage index}) \times \text{inflation factor of } 1.034$. The regulated public will be able to use the table to obtain the appropriate “adjusted conversion factor.” The “adjusted conversion factor” is required in order to calculate the maximum allowable facility fee payment for facility

fee services provided by the ambulatory surgical centers based on the applicable formula pursuant to proposed Section 9789.33, subdivisions (a) or (b).

14. Section 9789.36

This Section provides that Sections 9789.30 through 9789.38 will be adjusted to conform to any relevant changes in the Medicare payment system as required by law. It further provides that the Administrative Director will determine the effective date of the change and issue an order informing the public of the change and the effective date, and the order will be posted on the Division’s Internet Website.

15. Section 9789.37

This Section sets forth the form which will be used when electing to participate in the alternative payment methodology for high cost outlier cases under Section 9789.33(b) in lieu of the maximum allowable fees set forth pursuant to Section 9789.33(a). The facility electing to elect the high cost outlier payment methodology must file this form with the Administrative Director by March 1 of each year providing the requested information. The hospital outpatient departments must include in the form the cost-to-charge ratio being used by the Medicare fiscal intermediary to determine high cost outlier payments. The ASCs shall include in the form the facility’s total operating costs during the preceding calendar year, the facility’s total gross charges for the preceding calendar year. The facility’s election form shall further include a completed Annual Utilization Report of Specialty Clinics filed with Office of Statewide Health Planning and Development (OSHPD) for the preceding calendar year, which is incorporated by reference. (Note: While ASCs may not typically file Annual Utilization Report of Specialty Clinics with OSHPD, any ASC applying for the alternative payment methodology must file the equivalent, subject to audit by the Division of Workers’ Compensation.) A copy of the Annual Utilization Report of Specialty Clinics may be obtained at OSHPD’s website or upon request to the Administrative Director. The facility’s election form shall further include a certification under penalty of perjury signed by the Chief Executive Officer and a Certified Public Accountant, as to the accuracy of the information and attachment(s). Upon request from the Administrative Director, an independent audit may be conducted at the expense of the ASC.

16. Section 9789.38

This Section sets forth the Medicare federal regulations which have been incorporated by reference and/or referred to in the outpatient fee schedule regulations in numerical order.

17. Section 9789.40

This section provides that the fees for pharmacy services rendered after January 1, 2004 will be paid at 100% of the fees prescribed in the relevant Medi-Cal payment system. The Division will provide the means by which providers and payers can access current and past Medi-Cal rates.

18. Section 9789.50

This section provides that the maximum reimbursable fee for pathology and laboratory services rendered after January 1, 2004 shall not exceed 120% of the rate for the same procedure code in the CMS' Clinical Diagnostic Laboratory Fee Schedule applicable to California. The section identifies specific codes in the Special Services and Reports section of the OMFS 2003 that are eliminated based on the change to the CMS fee schedule.

19. Section 9789.60

This section provides that for services, equipment, or good provided after January 1, 2004, the maximum reimbursable fee for durable medical equipment, supplies and materials, Orthotics, prosthetics, and miscellaneous supplies and services shall not exceed 120% of the rate for the same procedure code in the CMS' Durable Medical Equipment, Prosthetics/Orthotics, and Supplies (DMEPOS) Fee Schedule, applicable to California and as updated in the October 2003 quarterly update. The section identifies specific codes in the Special Services and Reports section of the OMFS 2003 that are eliminated based on the change to the CMS fee schedule.

20. Section 9789.70

This section provides that the maximum reimbursable fee for ambulance services rendered after January 1, 2004 shall not exceed 120% of the applicable fee set forth in CMS' Ambulance Fee Schedule, applicable to California.

21. Section 9789.80

This section is reserved for future rulemaking regarding the maximum reimbursable fees for skilled nursing facilities.

22. Section 9789.90

This section is reserved for future rulemaking regarding the maximum reimbursable fees for home health care.

23. Section 9789.100

This section is reserved for future rulemaking regarding the maximum reimbursable fees for outpatient renal dialysis.

24. Section 9789.110

Pursuant to amended Labor Code § 5307.1(g), this section provides that the OMFS shall be adjusted to reflect any relevant changes in the Medicare and Medi-Cal payment systems. The Administrative Director shall determine the effect date of the change and issue an order informing the public of the change and the effective date. Any order issued by the Administrative Director under this section must be posted on the Division of Workers' Compensation Internet Website.

**STATE MANDATED LOCAL COSTS;
REIMBURSEMENT**

The Administrative Director has determined that the proposed regulations will not impose any new mandated program on local agencies and school districts. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payers by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payers, both public and private, and not uniquely to local governments.

**DETERMINATION OF DISCRETIONARY COSTS
ON LOCAL AGENCIES**

The proposed regulations may impose discretionary costs on local agencies and school districts. Any such costs, however, will be non-discretionary because the requirement that every employer comply with the requirements of California's workers' compensation laws is a statutory obligation. Furthermore, any such costs are non-reimbursable because the requirement for employers and payers to comply with California's workers' compensation laws is not unique to local agencies or school districts and applies to all employers and payers alike, public and private, including the State of California.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations may impose costs on State agencies to the extent that the State is an employer, and to the extent that the State may be a provider of medical services. (State government accounts for about 3% of the occupational injuries and illnesses.) Any such costs are, however, are non-reimbursable since the requirement on an employer to comply with California's workers' compensation laws is not unique to State agencies and applies to all employers and payers alike, public and private.

COST OR SAVINGS IN FEDERAL
FUNDING TO STATE

The proposed regulations will not affect any federal funding.

SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESS

The Administrative Director has concluded that the amended regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON
REPRESENTATIVE PRIVATE PERSONS OR
DIRECTLY AFFECTED BUSINESSES

The Administrative Director has determined that the amended regulations will not have a significant adverse economic impact on representative private persons or directly affected businesses. The entities directly affected by the regulations, which govern payments for medical services provided to injured workers after January 1, 2004 include: (1) health care providers, including but not limited to physicians, pharmacists, inpatient and outpatient facilities, who bill for procedures covered under the Official Medical Fee Schedule; (2) employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (3) private insurance companies which are authorized to transact workers' compensation insurance in California; and (4) third party administrators which are retained to administer claims on behalf of self-insured employers or insurers.

ECONOMIC IMPACT ON SMALL BUSINESSES

The economic impact on small business is primarily due not to the regulations but to the legislative enactments that link medical bill reimbursements to specific outside payment systems, such as Medicare and Medi-Cal. The regulations are to clarify legislative mandates to adopt Medicare and Medi-Cal fee schedules. Small self-insureds and third party claims administrators will have small initial costs for revising and updating computer systems, average cost per business being \$1000. Physicians offices may have to purchase updated OMFS groundrules for medical fee schedules; current version of schedule costs \$38. Businesses can download copies of pricing or ways to determine pricing for specific services from DWC website.

ASSESSMENT OF EFFECTS ON JOB
AND/OR BUSINESS CREATION,
ELIMINATION OR EXPANSION

The Administrative Director has determined that the proposed regulations will likely have no net effect on

the creation or elimination of existing jobs/businesses within California, or affect the expansion of current California businesses.

IMPACT ON HOUSING COSTS

The proposed regulations will have no effect on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Administrative Director invites interested persons to present statement or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

AVAILABILITY OF INITIAL STATEMENT OF
REASONS, TEXT OF PROPOSED
REGULATIONS, RULEMAKING FILE AND
DOCUMENTS SUPPORTING THE
RULEMAKING FILE / INTERNET ACCESS

An Initial Statement of Reasons and the text of the proposed regulations in plain English have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations, and the Form 399. Also included are documents incorporated by reference, and studies and documents relied upon in drafting the proposed regulations.

In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 455 Golden Gate Avenue, 9th Floor, San Francisco, California, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
E-mail: mreyes@dir.ca.gov

The telephone number of the contact person is (415) 703-4600.

**BACKUP CONTACT/PERSON CONTACT
PERSON FOR SUBSTANTIVE QUESTIONS**

In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact persons:

Jackie Schauer (jschauer@dir.ca.gov)
George Parisotto (gparisotto@dir.ca.gov)
Destie Overpeck (doverpeck@dir.ca.gov)
Minerva Krohn (mkrohn@dir.ca.gov)
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The telephone number of the backup contact persons is (415) 703-4600.

**AVAILABILITY OF CHANGES FOLLOWING
PUBLIC HEARING**

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly indicated will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

**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 contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations as amended will appear in Article 5.3 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations, commencing with Section 9789.10.

**TITLE 14. CALIFORNIA
INTEGRATED WASTE
MANAGEMENT BOARD**

NOTICE OF PROPOSED RULEMAKING

DIVISION 7

**CHAPTER 5. ENFORCEMENT OF SOLID
WASTE STANDARDS AND
ADMINISTRATION OF SOLID
WASTE FACILITIES PERMITS;
LOAN GUARANTEES**

**ARTICLE 2.1 LEA CERTIFICATION
REQUIREMENTS**

PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board (Board) proposes to amend Title 14, California Code of Regulations, Division 7, Chapter 5, Section 18072. The proposed regulations modify section 18072(d) to allow existing local enforcement agencies (LEA) whose jurisdictional population grows beyond 50,000 persons, but not to exceed 80,000 persons, to continue utilizing the LEA's workload to determine the level of staff needed.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. The written comment period for this rulemaking ends at 5:00 p.m. on March 8, 2004. The Board will also accept written comments during the public hearing described below. Please submit your written comments to:

Jo Segovia
Integrated Waste Management Specialist
California Integrated Waste Management Board
Permitting and Enforcement Division
LEA Program Assistance and Evaluation Section
P.O. Box 4025
Sacramento, CA 95812-4025
FAX: (916) 341-6389
e-mail: jsegovia@ciwmb.ca.gov

PUBLIC HEARING

Board staff will conduct a public hearing at the Joe Serna, Jr. Cal/EPA Building, 2nd Floor Central Valley Auditorium, 1001 I Street, Sacramento, CA on April 13, 2004. The hearing will begin at 9:30 a.m. on April 13, 2004, and conclude after all testimony is given. The Board requests that persons who make oral

comments at the hearing also submit a written copy of their testimony at the hearing. The Central Valley Auditorium is wheelchair accessible.

INFORMATIVE DIGEST

The Integrated Waste Management Act (Act) [AB 939 (Sher), Stats. 1989, c. 1095] and Public Resources Code (PRC) Section 40000 et seq., provides for the protection of public health and safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC Section 40502 requires the Board to adopt rules and regulations to implement this Act. PRC Section 43200 provides authority for these regulations. The purpose of the proposed regulations is merely to allow existing local enforcement agencies (LEA) whose jurisdictional population grows beyond 50,000 persons, but does not exceed 80,000 persons, to continue utilizing the LEA's workload to determine the level of staff needed, which modifies existing section 18072(d).

PLAIN ENGLISH REQUIREMENTS

The proposed final regulations were prepared 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 final regulations are considered non-technical and were written to be easily understood by those parties that will use them. They are administrative in nature and apply to the Board's internal management of the LEA program. They provide clear program guidance to Board staff, the LEAs, and local governing bodies.

POLICY STATEMENT OVERVIEW

The proposed regulations provide guidance for the Board's LEA program established under the Act. They provide guidance to Board staff, the LEAs, and local governing bodies. The proposed regulations postpone requiring a full time LEA staff until the jurisdiction population grows beyond 80,000 persons.

AUTHORITY AND REFERENCES

PRC Section 43200 provides authority for these regulations. The purpose of the proposed regulations is to implement, interpret, and make specific PRC Section 43200.

FEDERAL LAW OR REGULATIONS MANDATE

The proposed regulations are not mandated by federal law or regulations.

LOCAL MANDATE AND FISCAL DETERMINATIONS

Board staff has determined that the proposed regulations do not impose: 1) a mandate on local public agencies or school districts; 2) significant costs or savings to any state agency; 3) costs to any local

agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

Board staff made an initial determination that the proposed regulations will not have a significant effect on housing costs.

EFFECT ON BUSINESSES

Board staff made an initial determination that the proposed regulations 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.

EFFECT ON SMALL BUSINESSES

The proposed regulations only address Board actions over LEAs. LEAs are local county or city public agencies. As such these regulations will not affect small business in that no small business is required to comply with the regulations, none is required to enforce the regulations, and none derives a benefit nor incurs a detriment from the enforcement of the regulations.

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

Board staff has determined that the proposed regulatory action will not affect: 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 California; or 3) the expansion of businesses currently doing business with the state.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

Board staff is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations. The proposed regulations clarify existing law and impose no new impacts.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be directed to:

Jo Segovia
Integrated Waste Management Specialist
California Integrated Waste Management Board
Permitting and Enforcement Division
LEA Program Assistance and Evaluation Section
P.O. Box 4025
Sacramento, CA 95812-4025
(916) 341-6377
FAX: (916) 341-6389
e-mail: jsegovia@ciwmb.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

Gabe Aboushanab
Supervising Integrated Waste Management Specialist
California Integrated Waste Management Board
Permitting and Enforcement Division
LEA Program Assistance and Evaluation Section
P.O. Box 4025
Sacramento, CA 95812-4025
(916) 341-6379
FAX: (916)341-6389
e-mail: gabousha@ciwmb.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file, and all information upon which the proposed regulations are based, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Jo Segovia at the address, e-mail, or telephone number listed above. For more timely access to the proposed text of the regulations, and in the interest of waste prevention, interested parties are encouraged to access the Board's website at <http://www.ciwmb.ca.gov/Rulemaking/LEAStaffing>.

Additionally, the Final Statement of Reasons will be available at the above listed Internet address or you may call the contact person named above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the proposed text, it will make the modified text—with changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for the modified text should be made to the contact person. The Board will mail any modified text to all persons who testify at a public hearing if one is held; all persons who submit written comments at a public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 15. DEPARTMENT OF CORRECTIONS

DIVISION 3, CRIME PREVENTION AND CORRECTIONS

NOTICE IS HEREBY GIVEN that the Director of the Department of Corrections (CDC), pursuant to rulemaking authority granted by Penal Code (PC) Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend sections 3000, 3005, 3044, 3062, 3313, 3314, 3315, 3323, and 3376 in the California Code of Regulations (CCR), Title 15, Division 3 relating to work/training incentive groups, rule violations and classification committees.

PUBLIC HEARING

Date and Time: **March 17, 2004**
9:00 a.m.–10:00 a.m.
Place: Department of Water Resources Auditorium
1416 Ninth Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close **March 17, 2004 at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections, Regulation and Policy

Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)322-3842; or by e-mail at RPMB@executive.corr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

**Rick Grenz, Chief,
Regulation and Policy Management Branch
Department of Corrections
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 322-9702**

In the event the contact person is unavailable, inquires should be directed to the following back-up person:

**R. Marshall
Regulation and Policy Management Branch
Telephone (916) 322-9702**

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

**Lynn Rader
Institutions Division
Telephone (916) 322-0621.**

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency:
Savings of approximately \$23.7 million in the current State Fiscal Year.
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations 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.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.corr.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days

before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW:**

PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of inmates.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

PC Section 5058.3 authorizes the Director to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340.

This action will incorporate into the Director's Rules amended provisions governing inmate work/training incentive groups, rule violations and classification committees in order to implement the Bridging Education Program.

The Fiscal Year 2003/2004 Budget Act directs the CDC to provide education programming for day-for-day credit eligible inmates, pursuant to PC Section 2933, in Reception Centers (RC) and expand the existing education programs within the General Population (GP) at the institutions. As a result, we are incorporating modifications to provide expanded educational opportunities to those eligible inmates within the GP and undergoing RC processing, as well as, the priority assignment of inmates eligible to receive day-for-day credits under PC Section 2933, all of which will be implemented by January 1, 2004.

The CDC plans to implement bridging education programs focusing on education assessment, anger management, cognitive based re-entry orientation, and life skills, along with individual training plans. This will enhance the Department's ability to provide educational opportunities to inmates in RCs and GPs within the institutions; there are currently no educational programs provided in the RCs.

These proposed regulations are necessary in order to update the regulations related to inmate work/training and incentive groups, along with discipline, so that the inmates will be able to be properly prioritized and placed in the appropriate work groups based on their behavior and participation in the program. In addition, as a result of the discontinuance of the CDC 191, Inmate Timecard, it has been determined that these regulation changes related to inmate discipline are necessary in order to more effectively deal with

inmates who fail to comply with program expectations and/or work performance standards.

The CDC has determined that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons, than the action proposed.

GENERAL PUBLIC INTEREST

AIR RESOURCES BOARD

NOTICE OF POSTPONEMENT

**NOTICE OF PUBLIC HEARING TO CONSIDER
ADOPTION OF HEAVY-DUTY VEHICLE IDLING
EMISSION REDUCTION REQUIREMENTS**

By notice dated November 25, 2003, and published in the December 5, 2003, California Notice Register, Register 2003, No. 49-Z, the Air Resources Board (the Board or ARB) announced it would conduct a public hearing to consider adoption of amendments to the California regulations for 2007 and subsequent model year new heavy-duty diesel engines and vehicles.

PLEASE BE ADVISED that the hearing on this matter has been postponed until further notice. The ARB will send an additional hearing notice stating the new date and location, once determined. The comment period will remain open and comments may continue to be mailed to the following address.

Postal mail is to be sent to:

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Electronic mail is to be sent to:

hdivdle@listserv.arb.ca.gov.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928.

**DEPARTMENT OF
HEALTH SERVICES**

Notice is hereby given that the Drug Use Review (DUR) Board will conduct a public meeting on Tuesday, February 3, 2004 in the Department of Health Services' 1500 Capitol Avenue, Room 71.3003 Manzanita (Common), Sacramento, CA 95814.

AGENDA

1. DUR Drug Information/Alert Incidence Updates
2. DUR Projects and Disease Management—
Overview and Update

3. Development of Target Drug List by Therapeutic Category
4. Operational Issues
5. Miscellaneous Topics

Speaker Request Forms will be available at the meeting or may be obtained by contacting:

Electronic Data Systems
 3215 Prospect Park Drive
 Rancho Cordova, CA 95670.
 Attention: Jude Simon-Leack, Pharm.D. and MSW.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF INTENT TO CERTIFY HAZARDOUS WASTE ENVIRONMENTAL TECHNOLOGY

The California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) intends to certify the following company's hazardous waste environmental technology:

INFICON[®], INC. HAPSITE[®] Portable Gas Chromatograph Mass Spectrometer, a Field and Laboratory Instrument for the Measurement of Volatile Organic Compounds.

California Health and Safety Code section 25200.1.5 authorizes DTSC to certify the performance of hazardous waste environmental technologies. Hazardous waste environmental technologies are certified pursuant to regulations found in Title 22 of the California Code of Regulations (CCR 22), Chapter 46, section 68000. Only technologies that are determined not to pose a significant potential hazard to the public health and safety or to the environment when used under specified operating conditions may be certified. The purpose of the certification program is to provide an in-depth, independent review of technologies to facilitate regulatory and end-user acceptance and to promote and foster growth of California's environmental technology industry.

DTSC makes no express or implied warranties as to the performance of the manufacturer's product or equipment. The end-user is solely responsible for complying with the applicable federal, state, and local regulatory requirements. Certification does not limit DTSC's authority to require additional measures for protection of the public health and the environment.

By accepting certification, the manufacturer assumes, for the duration of certification, responsibility for maintaining the quality of the manufactured equipment and materials at a level equal or better than was provided to obtain certification and agrees to be subject to quality monitoring by DTSC as required by the statute under which certification is granted.

DTSC's proposed decision to certify is subject to public review and comment. Written comments must be submitted to DTSC no later than 30 days after publication of this Notice. All comments will be considered and appropriate changes will be made prior to publishing DTSC's final decision.

An Evaluation Report supporting the Department's proposed decision is available for review at the Hazardous Materials Laboratory and can be emailed upon request to Dr. Ruth Chang (see below) or can be obtained from DTSC web site

(<http://www.dtsc.ca.gov/ScienceTechnology/index.html>)

Comments should be mailed within 30 days of this notice to:

California Environmental Protection Agency, Department of Toxic Substances Control, Hazardous Materials Laboratory, 700 Heinz Avenue, Berkeley CA 94710-2737, Attn.: Dr. Ruth R. Chang (510) 540-2651, rchang@dtsc.ca.gov.

A description of the technology to be certified, the proposed certification statement, and the certification limitations for the technology of the company listed above follow. This is a proposed certification decision for public comment and not the final certification.

AB 2060 CERTIFICATION PROGRAM FOR HAZARDOUS WASTE ENVIRONMENTAL TECHNOLOGIES TECHNOLOGY CERTIFICATION

Technology:

HAPSITE[®] Portable Gas Chromatograph Mass Spectrometer, a Field and Laboratory Instrument for the Measurement of Volatile Organic Compounds.

Manufacturer:

INFICON[®], Inc.,
 Two Technology Place,
 East Syracuse, NY 13057,
 Tel. 800-223-0633,
<http://www.INFICON.com>

Technology Description

HAPSITE technology is based on the principle of quadrupole GC/MS, using high-energy electron impact ionization. The sample components are separated by a gas chromatograph (GC) column and passed into a mass spectrometer (MS) via a membrane interface. The selective membrane is permeable for volatile organic compounds (VOCs), but excludes inorganic constituents, such as nitrogen gas, from the MS. Compound identifications are based on matching ion spectra in the National Institute for Standards and Technology (NIST) library. The HAPSITE is designed to analyze volatile organics in a gas phase. In

conjunction with a headspace equilibrium sampling accessory, the instrument has the capability to detect the chemical equilibrium concentration in the vapor phase to measure VOCs from liquid and solid samples. The technique applies to chemicals typically with molecular weights of 45 to 300 amu, and with boiling points approximately from -50°C to $+180^{\circ}\text{C}$. The internal standard gas is used as mass calibrator for compound identification and quantitation. The HAPSITE system is lightweight, completely self-contained and portable for field applications. In the field-portable mode, with a hand control unit, the analysis can be performed at the sampling point for emergency response. In the transportable mode, the HAPSITE mounted on a service module can be operated in a van for on-site analysis. In the stationary mode, the HAPSITE can be set up as laboratory equipment by using the carrier gas from a high-pressure cylinder. The instrument is loaded with software for automatic instrument calibration and with methods for sampling and analysis. The analytical procedures for air (including vapor and gas), water, and soil analysis are established by INFICON for environmental applications.

Certification Statement

Under the authority of section 25200.1.5 of the California Health and Safety Code, the Department hereby certifies the HAPSITE Portable Gas Chromatograph-Mass Spectrometer manufactured by INFICON, Inc, as a Field and Laboratory Technology for the measurement of volatile organic compounds in environmental media. According to the standard operating procedures established by the manufacturer, the HAPSITE system is capable of measuring most of the compounds listed under EPA Method 8260B in air, water, soil and soil gas.

The HAPSITE Practical Quantitation Limits (PQLs) are compound and matrix specific. INFICON defines the Practical Quantitation Limit as the lower bound of the calibration range and represents a peak-to-peak signal to noise ratio of 10:1. For those chemicals specified by INFICON, the HAPSITE Practical Quantitation Limits are 5 to 20 $\mu\text{g/L}$ for water analysis, 0.2 to 0.5 ppmv for vapor phase analysis, and 10 to 40 $\mu\text{g/kg}$ for soil analysis. Under normal environmental conditions, the relative standard deviation (RSD) of replicate analysis is expected to be $\leq 20\%$ and the recoveries expected to be $\pm 25\%$ of the spiked values over the instrument calibration range. With an established 5-point calibration curve and appropriate quality control and quality assurance (QA/QC) program, the groundwater data obtained from HAPSITE analysis are comparable to that of EPA Method 8260B.

The air QC study and the soil gas analysis of VOC contaminated sites indicated the HAPSITE data were well correlated to that of EPA Method TO-14 and Method TO-15. Relative to laboratory methods, GC and GC/MS, the HAPSITE has greater dynamic range to analyze samples up to ppm or percent level without over-saturating the instrument. For soil analysis, the HAPSITE reported values obtained from proficiency testing for the high and low level soil were within the acceptable limits established by Resource Technology Corporation (RTC), the proficiency test sample provider approved by the National Voluntary Laboratory Accreditation Program (NVLAP). However, due to the heterogeneity of environmental soil, the applications of HAPSITE on soil analysis based on equilibrium sampling warrants further investigations that analyze a wide range of VOCs in different soil types at various concentration levels. The HAPSITE measurement system has been demonstrated to be a viable cost effective technology to support site characterization, cleanup and remediation activities.

The HAPSITE is specifically designed for field use to withstand harsh environmental conditions; it is rugged and easy-to-use. With the advantages of fast on-site analysis, the INFICON HAPSITE significantly improves the sample turnaround time to generate data in a timely manner for the protection of public health and the environment.

Limitations of Certification

The Department makes no express or implied warranties as to the performance of the manufacturer's product or equipment. The Department has not conducted all the bench or field tests to confirm the manufacturer's performance data. Nor does the Department warrant that the manufacturer's product or equipment is free from any defects in workmanship or material caused by negligence, misuse, accident, or other causes.

The Department believes, however, that the manufacturer's product or equipment can achieve performance levels set out in this Certification. Said belief is based on a review of the data submitted by the manufacturer and other information, and is based on the use of the product in accordance with the manufacturer's specifications.

This certification is subject to the regulations found in Title 22 of the California Code of Regulations (CCR 22), Chapter 46, section 68000, which include the duration of the Certification, the continued monitoring and oversight requirements, and the procedures for certification amendments and decertification.

By accepting this Certification, the manufacturer assumes for the duration of the Certification, responsibility for maintaining the quality of the manufactured materials and equipment at a level equal or better than

was provided to obtain this Certification and agrees to be subject to quality monitoring by the Department as required by the law under which this Certification is granted.

Specific Conditions

INFICON shall follow their established QA/QC program to ensure that the materials used in manufacturing and the quality of instrument meet the standards certified under ISO-9001.

INFICON shall maintain their standards for ensuring that users receive appropriate training in operation and maintenance of the instrument. For environmental applications, the method detection limit or quantitation limit, precision, and bias of the HAPSITE technology must be evaluated to ensure meeting the project-specific requirements. The surrogate compounds must be added to the environmental medium to evaluate the matrix effects and to validate the instrument performance. The analysis of blank samples must be performed as necessary to minimize cross-contamination. The quality control samples must be included in the operation as specified in the quality assurance project plan.

Through updates of user guides, the manufacturer shall inform the user of environmental and experimental parameters which potentially affect the performance of the system, as they become known to the manufacturer.

Users should follow the manufacturer's instructions for installation, operation, and maintenance of the instrument. Users should develop and follow a plan in accordance with their facility's quality management system for validating the system at appropriate intervals according to the guidance set for the HAPSITE system.

Basis for Certification

The proposed certification of this technology is based on a comprehensive evaluation conducted by the Hazardous Materials Laboratory (HML) in the California Department of Toxic Substances Control. HML reviewed instrument performance data submitted by the INFICON and field data generated by independent third parties. In addition, HML participated in independent studies evaluating the system's performance in air and soil analyses. HML staff also contacted end users to obtain additional information on performance and reliability. An evaluation report prepared by HML provides details of the evaluation.

Recommended Applications

The INFICON HAPSITE Portable Gas Chromatograph-Mass Spectrometer is intended for the measurement of volatile organic compounds in the field and in the laboratory. The HAPSITE technology operating in accordance with conditions established by

the manufacturer can serve as a viable alternative for the measurement of volatile organic compounds in the environment. Applications include: (1) long term environmental monitoring of the chlorinated and aromatic hydrocarbons in air, water and soil; (2) detection and identification of toxic chemicals and hazardous materials released from industrial incidents; (3) fast on-site analysis to expedite site cleanup activities and to increase the number of sample analyses of a site to reduce data uncertainty.

Regulatory Implications

DTSC's certification does not change the regulatory status of field and laboratory measurements for volatile organic compounds in air, water, and soil matrices. This certification is intended, however, to facilitate and encourage the acceptance of this technology where a project's data quality objectives can be met by its use. To this end, regulatory programs are encouraged to consider the Department's findings regarding this technology, depending on each program's objectives and constraint. State-regulated facilities may contact state permitting officers regarding the use of the technology for the analysis of volatile organic compounds in the field and laboratory. Other local and state government permitting authorities may take this certification under consideration when making their permitting decisions. Project managers may consider using this technology where its use can contribute to the project and its data quality objectives.

Duration of Certification

Unless amended or revoked for cause, this certification will remain in effect for three years from the date of issuance.

MEDICAL BOARD OF CALIFORNIA

**NOTICE: CHANGE OF HEARING LOCATION
REQUIRED DISCLOSURE LANGUAGE—
16 CCR 1355.35**

The Medical Board of California is announcing a change of location for the hearing on the proposed rulemaking file regarding "Required Disclosure Language." The original notice was published in the California Regulatory Notice Register on December 5, 2003, OAL File #Z-03-1125-10, concerning Title 16, Section 1355.35. The date and time of the hearing have **not** been changed.

The hearing is now scheduled as follows:

- Location: California State Capitol, Room 444
Sacramento, CA 95814
- Date: January 30, 2004
- Time: 10:00 a.m.

For questions about this rulemaking file, please contact:

Name: Kevin A. Schunke
Address: Medical Board of California
1434 Howe Avenue, Suite 92
Sacramento, CA 95825
Telephone No.: (916) 263-2368
Fax No.: (916) 263-2387
E-Mail Address: kschunke@medbd.ca.gov

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

NOTICE TO INTERESTED PARTIES

**NOTICE OF PUBLIC COMMENT PERIOD ON
TOXIC AIR CONTAMINANTS PROGRAM—
PROPOSAL FOR THE ADOPTION OF A UNIT
RISK FACTOR FOR NAPHTHALENE**

The Office of Environmental Health Hazard Assessment (OEHHA) is releasing a draft document describing a unit risk factor for estimating cancer risk associated with inhalation of naphthalene, to solicit public comment. This draft document has been developed by OEHHA for use in implementing the programs for Toxic Air Contaminants (Health and Safety Code Section 39650 et seq.) and Air Toxics Hot Spots (Health and Safety Code Section 44300 et seq.).

Naphthalene, a widespread atmospheric contaminant, is a constituent of various fuels and other hydrocarbon mixtures, and is also emitted by various combustion processes. It is suspected of causing cancer and other adverse health impacts. Naphthalene is a toxic air contaminant (TAC) identified by the ARB in 1993 pursuant to Health and Safety Code Section 39657(b). In addition to its identification as a TAC as a single substance, it also meets the definition of Polycyclic Organic Material (POM), a category separately identified as a TAC by Health and Safety Code Section 39657(b).

OEHHA proposes a unit risk for use in estimating the lifetime cancer risk associated with inhalation exposures to naphthalene, based on the results of recent studies by the National Toxicology Program. A document has been prepared which describes toxicity data on naphthalene, and the derivation of the unit risk factor. This is in the form of a toxicity summary to be included as an addendum to the *Air Toxics Hot Spots Program Risk Assessment Guideline, Part II: Technical Support Document for Describing Available Cancer Potency Factors*, along with additional background and supporting material. We are seeking comments on this document, including its clarity, and the appropriateness of the methodology and data on

which the unit risk is based. Following this public comment period, the document and any comments received, along with OEHHA's response to these comments, will undergo review by the state's Scientific Review Panel on Toxic Air Contaminants.

The draft document on naphthalene becomes available on the OEHHA Home Page at <http://www.oehha.ca.gov> on **January 23, 2004**. **The availability of the document on this site will commence a 45-day public review period that will end on March 8, 2004.**

A public workshop will be held at 10.00 am–1.00 p.m. on Tuesday, February 17, 2004 in Oakland. Location information is as follows:

Rooms 2, 3, and 4
Elihu Harris Building
1515 Clay St., 2nd Floor
Oakland, CA 94612

Please direct any inquiries concerning technical matters or availability of this document to Dr. Andrew G. Salmon at (510) 622-3191 or <mailto:asalmon@oehha.ca.gov>.

Please direct your comments, in writing, regarding the document to:

Dr. Andrew G. Salmon
Chief, Air Toxicology and Risk Assessment Unit
Office of Environmental Health Hazard Assessment
1515 Clay St., 16th Floor
Oakland, CA 94612.

Information about dates and agenda for meetings of the Scientific Review Panel can be obtained from the ARB web page at <http://www.arb.ca.gov/srp/srp.htm>.

DECISION NOT TO PROCEED

MEDICAL BOARD OF CALIFORNIA

**NOTICE OF DECISION NOT TO PROCEED
WITH RULEMAKING ACTION
ETHICS COURSE REQUIREMENTS—
16 CCR 1358.1**

The Medical Board of California has decided, pursuant to Executive Order S-02-03, not to proceed with its rulemaking action described in the Notice published in the California Regulatory Notice Register on December 5, 2003, OAL File # Z-03-1125-09, regarding Title 16, Section 1358.1 [Ethics Course Requirements].

<p>SUMMARY OF REGULATORY ACTIONS</p>

**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.

**CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD**

Administrative Civil Penalties for Non-Compliance with the RPPC Law

This Certificate of Compliance adopts administrative civil penalties for violations of the Rigid Plastic Packaging Container (RPPC) Act. (Previous OAL file # 03-0521-02E)

Title 14
California Code of Regulations
ADOPT: 17946, 17949
Filed 01/12/04
Effective 01/12/04
Agency Contact:
Deborah Borzelleri (916) 255-2194

DEPARTMENT OF CORRECTIONS

Work/Training Incentive Groups, Rule Violations . . .

This regulatory action taken by operational necessity amends regulations concerning day for day credit for reception centers.

Title 15
California Code of Regulations
ADOPT: 3000 AMEND: 3005, 3044, 3062, 3313, 3314, 3315, 3323, 3376
Filed 01/09/04
Effective 01/09/04
Agency Contact: Cassie Mraz (916) 324-6776

DEPARTMENT OF HEALTH SERVICES

Authorization of Prosthetic and Orthotic (P&O) Appliances

This filing contains the first re-adoption of emergency amendments to section 51315. The action will decrease fraudulent billing by increasing the to 90 days the time frame in which costs can accumulate. This decreases the amount of reimbursement that can be received for appliances that have not gone through the prior authorization process. Pursuant to Welfare and Institutions Code, section 14043.75, and Statutes 1999, chapter 146, section 78 the initial adoption of

these regulations and one re-adoption shall be deemed to be an emergency, exempt from review by the Office of Administrative Law, and shall remain in effect for no more than 180 days.

The filing also contains the repeal of section 51515, which is required by Welfare and Institutions Code, section 14105.21(e), and which, pursuant to Welfare and Institutions Code, section 14105.21(f) is not subject to the rulemaking provisions of the Administrative Procedure Act or to the review and approval of the Office of Administrative Law.

Title 22
California Code of Regulations
ADOPT: 51315 REPEAL: 51515
Filed 01/14/04
Effective 01/14/04
Agency Contact: Marylyn Willis (916) 657-3174

FAIR POLITICAL PRACTICES COMMISSION
Notification to Contributors of \$5000 or More

The Fair Political Practices Commission is amending section 18427.1, title 2, California Code of Regulations, which pertains to notification of contributors of \$5,000.00 or more in a calendar year.

Title 2
California Code of Regulations
AMEND: 18427.1
Filed 01/14/04
Effective 02/13/04
Agency Contact: Carla Wardlow (916) 322-5660

PUBLIC UTILITIES COMMISSION
Petitions for Rulemaking

This rulemaking action establishes procedures for petitioning the commission to adopt, amend, or repeal a regulation pursuant to Public Utilities Code, section 1708.5.

Title 20
California Code of Regulations
ADOPT: 14.7
Filed 01/14/04
Effective 02/13/04
Agency Contact: Myra Prestidge (415) 703-2629

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN SEPTEMBER 10, 2003
TO JANUARY 14, 2004**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's 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

CALIFORNIA REGULATORY NOTICE REGISTER 2004, VOLUME NO. 4-Z

Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

01/14/04 AMEND: 18427.1
12/29/03 REPEAL: Division 8, Chapter 20, Sections 41001, 41002, 41003, 41004, 41005, 41006, 41007, 41008, 41009, 41010, 41011, 41012, 41013
12/22/03 AMEND: 1859.61, 1859.105, 1859.106, 1859.141, 1859.142, 1859.145, 1859.147, 1859.148, 1859.150.1, 1859.151, 1859.152, 1859.153
12/19/03 ADOPT: 1859.70.1, 1859.71.3, 1859.78.5, 1859.78.6, 1859.78.7, 1859.93.1, 1859.120, 1859.121, 1859.122, 1859.122.1, 1859.122.2, 1859.123, 1859.124, 1859.124.1, 1859.125, 1859.125.1, 1859.126, 1859.127, 1859.128, 1859.129, 1859.130, 1859.140, 1859.141, 185
12/01/03 ADOPT: Division 8, Chapter 106, Section 59500
12/01/03 ADOPT: 22100, 22110, 22120, 22130
11/20/03
11/10/03 ADOPT: 18728.5 AMEND: 18703.3
11/03/03 ADOPT: 1859.77.3 AMEND: 1859.2, 1859.77.2
10/23/03
10/10/03 AMEND: 1859.2, 1859.20, 1859.21, 1859.74.2, 1859.74.3, 1859.74.4, 1859.75, 1859.75.1, 1859.78.3, 1859.79, 1859.81.1, 1859.83, 1859.107, 1859.145
10/10/03 ADOPT: 649.23, 649.24, 649.25, 649.26, 649.27, 649.28
10/09/03 AMEND: 1859.77.2
10/09/03 ADOPT: 1859.160, 1859.161, 1859.162, 1859.162.1, 1859.163, 1859.164, 1859.164.1, 1859.165, 1859.166, 1859.166.1, 1859.167, 1859.168, 1859.169, 1859.170, 1859.171 AMEND: 1859.2, 1859.51, 1859.103, 1859.106, 1859.145.1
10/09/03 AMEND: 1555
10/06/03 AMEND: 18320, 18321, 18361, 18370, 18419, 18420, 18703.1, 18747
10/02/03 ADOPT: 18709
10/01/03 ADOPT: 559.937.3
09/15/03 ADOPT: 18951
09/12/03 AMEND: 37000

Title 3

01/05/04 AMEND: 3700(c)
12/26/03 AMEND: 3417(b)
11/06/03 AMEND: 2303, 2309, 2311
11/06/03 AMEND: 3700 (d)

11/03/03 ADOPT: 6148, 6148.5, 6216, 6217
AMEND: 305, 6168, 6170, 6386, 6500, 6502, 6505, 6508, 6512
10/27/03 AMEND: 3423 (b)
10/27/03 AMEND: 3417(b)
10/20/03 ADOPT: 755, 755.1, 755.2, 755.3, 755.4, 755.5, 755.6, 756, 756.1, 756.2, 756.3, 757, 758, 758.1, 759 AMEND: 753.2
REPEAL: 757, 759, 759.1, 759.2, 759.3, 759.4, 795.5
10/14/03 AMEND: 3423(b)
10/06/03 AMEND: 1430.35, 1430.36
09/30/03 AMEND: 3651, 3655, 3658, 3662
09/29/03 AMEND: 3055.6(c)
09/25/03 AMEND: 3417
09/11/03 ADOPT: 6450, 6450.1, 6450.2, 6450.3, 6784 AMEND: 6000 REPEAL: 6450, 6450.1, 6450.2, 6450.3, 6784

Title 4

12/15/03 ADOPT: 12250 AMEND: 12101, 12122
11/06/03 ADOPT: 12200, 12201, 12202, 12203, 12204, 12205, 12206, 12207, 12208, 12209, 12210, 12211, 12212, 12213, 12214, 12220, 12221, 12222, 12223, 12224, 12225, 12226, 12227, 12228, 12229, 12230, 12231, 12232
10/30/03 ADOPT: 12270, 12271, 12272
10/14/03 ADOPT: 12371 AMEND: 12370
10/02/03 AMEND: 4001
09/23/03 ADOPT: 2100, 2101, 2102, 2103, 2104, 2105 AMEND: 1928
09/18/03 AMEND: 1979.1
09/16/03 AMEND: 1867

Title 5

12/29/03 ADOPT: 18074, 18074.1, 18074.2, 18074.3, 18075, 18075.1, 18075.2, 18076, 18076.1, 18076.2 AMEND: 18413, 18428 REPEAL: 18021
12/01/03 AMEND: 30950, 30953, 30954, 30958, 30959
11/21/03 AMEND: 50500
11/20/03 ADOPT: 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611
11/06/03 ADOPT: 1068, 1069, 1070, 1071, 1072, 1073, 1074
11/06/03 AMEND: 51025
11/05/03 AMEND: 53001, 53021
11/04/03 ADOPT: 15060, 15070, 15071
10/29/03 ADOPT: 13075
10/28/03 ADOPT: 11963, 11963.1, 11963.2, 11963.3, 11963.4, 11963.5, 11963.6
10/20/03 AMEND: 80020.1
09/23/03 ADOPT: 18270.5, 18280, 18281
AMEND: 18023, 18272, 18273, 18274, 18275, 18279
09/22/03 ADOPT: 40520, 40521, 40522, 40523

CALIFORNIA REGULATORY NOTICE REGISTER 2004, VOLUME NO. 4-Z

09/11/03 ADOPT: 76215 AMEND: 76000, 76010, 76120, 76130, 76200, 76210 REPEAL: 76100, 76110

Title 8

01/02/04 ADOPT: 9789.10, 9789.11, 9789.20, 9789.21, 9789.22, 9789.23, 9789.24, 9789.30, 9789.31, 9789.32, 9789.33, 9789.34, 9789.35, 9789.36, 9789.37, 9789.38, 9789.40, 9789.50, 9789.60, 9789.70, 9789.80, 9789.90, 9789.100, 9789.110

12/31/03 ADOPT: 10250

12/22/03 AMEND: 341.17

12/18/03 ADOPT: 15611 AMEND: 15600, 15601, 15601.7, 15602, 15603, 15604, 15605, 15606, 15607, 15608 REPEAL: 15610

11/20/03

11/13/03 AMEND: 32120, 32125, 32135, 32603, 32605, 32620, 32635, 32798, 32980, 61000, 61090, 31240, 61380, 61420, 61480

11/12/03 ADOPT: 15220, 15220.1, 15220.2, 15220.3, 15200.4, 15220.5, 15220.6, 15220.7, 15220.8 AMEND: 15201, 15210, 15210.1, 15210.2, 15216, 15430

10/30/03 AMEND: 4968

10/30/03 ADOPT: 3663(g), 3663(h)

10/27/03 ADOPT: 5148

10/20/03 ADOPT: 5035(c) AMEND: 5035(b)

10/16/03 AMEND: 21200

10/09/03 ADOPT: 341.17

10/06/03 AMEND: 10104, 10107.1, 10111.2

Title 9

11/18/03 ADOPT: 1840.112 AMEND: 1830.215

Title 10

01/02/04 AMEND: 2698.30, 2698.31, 2698.32, 2698.33, 2698.34, 2698.35, 2698.36, 2698.37, 2698.38, 2698.39, 2698.40, 2698.41, 2698.42 REPEAL: 2698.40, 2698.41, 2698.42, 2698.43, 2698.44, 2698.45

12/31/03 AMEND: 2318.6, 2353.1, 2354

12/31/03 AMEND: 2318.6, 2353.1

12/30/03 ADOPT: 2699.6612, 2699.6827
AMEND: 2699.6500, 2699.6600, 2699.6607, 2699.6611, 2699.6705, 2699.6715, 2699.6717, 2699.6725, 2699.6813, 2699.6815, 2699.6819

12/26/03 REPEAL: 5300, 5310, 5311, 5312, 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, 5321, 5322, 5323, 5324, 5326, 5327, 5328, 5329, 5330, 5340, 5341, 5342, 5343

12/26/03 REPEAL: 4300, 4301, 4302, 4303, 4305

12/26/03 REPEAL: 4025, 4026, 4027, 4028, 4029, 4030, 4031, 4032

12/26/03 REPEAL: 4081, 4081.1, 4081.2, 4081.3, 4081.4, 4081.5, 4081.6, 4081.7, 4081.8

12/26/03 REPEAL: 6200, 6201, 6202, 6203, 6204, 6205, 6206, 6207

12/26/03 REPEAL: 4081, 4081.1, 4081.2, 4081.3, 4081.4, 4081.5, 4081.6, 4081.7, 4081.8

12/26/03 AMEND: 4070, 4071, 4072, 4073, 4074 REPEAL: 4070, 4071, 4072, 4073, 4074

12/26/03 REPEAL: 4035, 4036, 4037, 4038

12/26/03 REPEAL: 4620

12/26/03 REPEAL: 4610, 4611, 4612, 4613, 4614, 4615, 4616, 4617, 4618, 4619

12/26/03 REPEAL: 4550, 4551, 4552, 4553

12/23/03 ADOPT: 2192.1, 2192.2, 2192.3, 2192.4, 2192.5, 2192.6, 2192.7, 2192.8, 2192.9, 2192.10, 2192.11, 2192.12

12/22/03 AMEND: 2190.05, 2190.7

12/15/03 ADOPT: 2591, 2591.1, 2591.2, 2591.3, 2591.4

11/18/03 ADOPT: 2361

11/07/03 ADOPT: 2194, 2194.1, 2194.2, 2194.3, 2194.4, 2194.5, 2194.6, 2194.7, 2194.8

10/31/03 AMEND: 260.102.14

09/11/03 ADOPT: 250.70

Title 11

01/06/04 ADOPT: 2000, 2001, 2020, 2050, 2051, 2052, 2053, 2070, 2071, 2072, 2140, 2141, 2142

12/30/03 AMEND: 1005

12/05/03 AMEND: 1002(a)(8)

12/01/03 AMEND: 51.18

11/13/03 AMEND: 1005

11/12/03 ADOPT: 994, 994.1, 994.2, 994.3, 994.4, 994.5, 994.6, 994.7, 994.8, 994.9, 994.10, 994.11, 994.12, 994.13, 994.14, 994.15, 994.16

11/10/03 AMEND: 2010, 2030, 2060 REPEAL: 2031, 2032, 2034, 2035, 2036

10/07/03 AMEND: 1004, 1005

10/01/03 ADOPT: 995

09/29/03 ADOPT: 1081(a)(34)

Title 13

01/05/04 ADOPT: 25.06, 25.07, 25.08, 25.09, 25.10, 25.11, 25.12, 25.13, 25.14, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, 25.22

12/31/03 AMEND: 550, 551.1, 551.2, 551.11, 551.12, 551.13, 551.14, 551.15, 551.16, 551.17, 552, 553.40, 555, 555.1, 556, 557, 558, 560, 561, 562, 565, 566, 570, 571, 572, 573, 574, 575, 577, 584, 585, 586, 587, 588, 589, 590, 592, 593, 593.1, 595, 598

12/23/03 ADOPT: 220.20 AMEND: 220.00, 220.02, 220.04, 220.06, 220.08, 220.12,

220.14, 220.16, 220.18, 221.00, 221.02,
221.04, 221.06, 221.08, 221.10, 221.12,
12/23/03 ADOPT: 225.48
11/04/03 AMEND: 1956.1, 1956.8, 1961, 1965,
1978, 2065,
10/30/03 AMEND: 1214
10/29/03 AMEND: 125.00, 125.02, 125.06,
125.10, 125.12, 125.14, 125.16, 125.18,
125.20, 125.22
10/16/03 AMEND: 1956.1, 1956.2, 1956.4,
1956.8, 2112
10/10/03 ADOPT: 158.00

Title 14

01/12/04 ADOPT: 17946, 17949
12/31/03 ADOPT: 4970.09 AMEND: 4970.00,
4970.01, 4970.02, 4970.03, 4970.04,
4970.05, 4970.06, 4970.07, 4970.08,
4970.10, 4970.11, 4970.12, 4970.13,
4970.14, 4970.15, 4970.16, 4970.17,
4970.18, 4970.19, 4970.20, 4970.21,
4970.21, 4970.21, 4970.22, 4970.23,
4970.2
12/30/03 ADOPT: 1.18
12/26/03 AMEND: 7.50(b)(147)
12/01/03 AMEND: 895, and 913.4, 933.44, 953.4
(Special Prescriptions)
12/01/03 AMEND: 895.1, 898(a), 914.8, [934.8,
954.8](g), 916 [936, 956](e), 916.2
[936.2, 956.2], 916.9 [936.9, 956.9],
916.11, [936.11, 956.11](b), 916.12,
[936.12, 956.12](f), 923.3, [943.3,
963.3](h), 923.9, [943.9, 963.9](g)
11/18/03 REPEAL: 895, 895.1, 913.13, 936.13,
956.13, 916.13, 936.13.1, 956.13.1,
916.13.2, 936.13.2, 956.13.2 916.13.3,
936.13.3, 956.13.3, 916.13.4, 936.13.4,
956.13.4, 916.13.5, 936.13.5, 936.13.5,
956.13.5916.13.6, 936.13.6, 956.13.6,
916.13.7, 936.13.7, 956
11/13/03 AMEND: 163, 164
11/07/03 AMEND: 52.10, 150.06, 150.16
11/03/03 AMEND: 18464, 18465
10/16/03 AMEND: 4400
10/14/03 ADOPT: 17346, 17346.1, 17346.2,
17346.3 17346.4, 17346.5, 17346.6,
17346.7, 17347, 17347.1, 17348, 17349
10/06/03 AMEND: 120.7, 190
09/26/03 AMEND: 502
09/18/03 AMEND: 180.2

Title 14, 27

12/26/03 ADOPT: 17387, 17387.1, 17387.5,
17388, 17388.1, 17388.2, 17388.3,
17388.4, 17388.5, 17389, 17390, 18223.6
AMEND: 24565, 21570

Title 15

01/09/04 ADOPT: 3000 AMEND: 3005, 3044,
3062, 3313, 3314, 3315, 3323, 3376
12/30/03 AMEND: 3044, 3092, 3138, 3190
12/02/03 AMEND: 3082(a)
12/01/03 AMEND: 3044(d) & (e)
11/07/03 AMEND: 2576, 2578, 2580
10/27/03 AMEND: 2051, 2052, 2054
10/23/03 AMEND: 3043.5, 3043.6, 3044
10/14/03 AMEND: 4941
10/14/03 AMEND: 2000, 2041, 2042, 2043, 2044

Title 16

12/29/03 AMEND: 3830
12/18/03 AMEND: 1920
11/25/03 AMEND: 1610, 1615, 1690 REPEAL:
1622
11/13/03 ADOPT: 1314.1 AMEND: 1300.4
11/12/03 AMEND: 1399.662, 1399.666, 1399.667,
1399.668
11/03/03 ADOPT: 2317, 2317.1, 2317.2, 2326.5,
2328.1
10/22/03 ADOPT: 356.1
10/16/03 AMEND: 390.2
10/16/03 ADOPT: 360
09/30/03 ADOPT: 1313.01, 1313.02, 1313.03,
1313.04, 1313.05, 1313.06
09/29/03 AMEND: 1361
09/11/03 ADOPT: 1775.1 AMEND: 1775, 1775.2,
1775.3, 1775.4 REPEAL: 1775.15, 1777,
1777.1, 1777.2, 1777.3, 1777.4, 1777.5,
1778, 1778.1, 1778.2, 1778.3

Title 17

12/05/03 ADOPT: 94166, 94167 AMEND: 94010,
94011, 94163, 94164, 94165
12/04/03 AMEND: 70600, 70601
12/02/03 AMEND: Division 2, Chapter 1', Article
5, Subchapter 3, Section 50300
10/09/03 AMEND: 50604, 50608, 54326, 54370,
56003, 56082, 57540, 58510, 58671
09/25/03 AMEND: 54001, 54010
09/23/03 ADOPT: 13676 AMEND: 13675

Title 18

12/22/03 ADOPT: 1598.1
12/04/03 REPEAL: 24348 (a)
10/29/03 AMEND: 1802
10/14/03 AMEND: 462.040, 462.240
09/16/03 ADOPT: 1620.1
09/15/03 AMEND: 462.180
09/15/03 AMEND: 1630

Title 20

01/14/04 ADOPT: 14.7
12/31/03 ADOPT: 1395, 1395.1, 1395.2, 1395.3,
1395.4, 1395.6

Title 22

01/14/04 ADOPT: 51315 REPEAL: 51515

CALIFORNIA REGULATORY NOTICE REGISTER 2004, VOLUME NO. 4-Z

12/24/03 ADOPT: 1326-3 AMEND: 1251-1, 1253(a)-1, 1326-2, 1326-4, 1326-5, 1326-6
 12/09/03 AMEND: 66262.32
 11/03/03 ADOPT: 115500, 115510, 115520 REPEAL: MPP Section 12-223.2 through .22
 10/27/03 AMEND: 4304.3 (renumber to 4304-3)
 10/22/03 AMEND: 66264.143, 66264.145, 66265.143, 66265.145
 10/16/03 ADOPT: 51510, 51510.1, 51510.2, 51510.3, 51511, 51511.5, 51511.6, 51532.3, 51535, 51535.1, 51544, 54501
 09/26/03 AMEND: 70217, 70225, 70455
 09/23/03 ADOPT: 97244, 97245, 97246, 97247, 97248, 97249, 97250 AMEND: 97045, 97210, 97211, 97212, 97213, 97215, 97241 REPEAL: 97214, 97239, 97242, 97243
 09/23/03 AMEND: 67450.42
 09/15/03 AMEND: 51509
 09/11/03 AMEND: 12901
 09/11/03 ADOPT: 64670, 64671.05, 64671.08, 64671.09, 64671.10, 64671.15, 64671.30, 64671.35, 64671.40, 64671.55, 64671.65, 64671.70, 64671.75, 64671.80, 64671.85, 64673, 64674, 64675, 64675.5, 64676, 64677, 64677.5, 64678, 64678.5, 64679, 64680, 64681, 64682, 646

Title 22, MPP

12/30/03 AMEND: 101170, 102370
 12/29/03 ADOPT: 87701.2 AMEND: 87101, 87218, 87561, 87575.1, 87577, 87578, 87691, 87701, 87701.1, 87701.2, 87702, 87702.1, 87703, 87704, 87705, 87707, 87708, 87709, 87710, 8711, 87713
 12/17/03 ADOPT: 85001(a)(2)-(4), 85001(d)(1), 85001(f)(1), 85001 (h)(1) -(4), 85001(t)(1);85075.1, 85075.2, 85075.3 AMEND: 85075.4
 12/10/03 ADOPT: 89002 AMEND: 80017, 87118, 87817, 88030, 89317, 110168, 102368
 11/18/03 ADOPT: 84065.2(a)(1)(A)(1)(A)(2), 64065.5(b)(1)(b)(2), 64065.7(d), 8400(b)(b)(1)(2)(3)(4)(), 84222(a)(5)(B)(a)(12)(a)(13), 84265(c)(1)(C)(D)(c)(4)(C)(D)(e)(e)(1), 84268.3(a)(1), 84272.1(e), 84274(c)(3), 84275(c), 84277(a)(1), 84278(g), 84278.1(g) AMEND:
 11/12/03 ADOPT: 102416.1 AMEND: 80001, 80019, 80019.1, 80019.2, 80054, 80061, 80065, 80066, 87101, 87219, 87219.1, 87454, 87565, 87566, 87801, 87819, 81819.1, 87854, 87861, 87865, 87866,

101152, 101170, 101170.1, 101170.2, 101195, 101212, 101216, 101217, 102352,
 10/27/03 ADOPT: 86000, 86001, 86005, 86009, 86010, 86018, 86020, 86022, 86023, 86024, 86028, 86030.5, 86031.5, 86036, 86044, 86044.5, 86045, 86061, 86064, 86065, 86065.2, 86065.3, 86065.4, 86065.5, 86066, 86068.1, 86068.2, 86068.3, 86068.4, 86070, 86072, 86073, 8

Title 23

01/05/04 AMEND: 3977
 12/23/03 ADOPT: 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 3833.1 AMEND: 655, 656, 676, 736, 791, 793, 812, 842, 871, 1010, 3833, 3867 REPEAL: 677
 12/22/03 AMEND: 3926
 12/18/03 ADOPT: 3927
 11/19/03 ADOPT: 3924
 10/27/03 AMEND: CCR Title 23, Division 3, Chapter 9, section 2200 & 2200.5
 09/23/03 ADOPT: 2050.6 AMEND: 2050, 2050.5, 2051, 2052, 2053, 2064, 2066, 2067
 09/11/03 ADOPT: 3989.1

Title 25

09/29/03 ADOPT: 7239, 7300.1, 8212.2, 8300, 8301, 8302, 8304, 8305, 8306, 8307, 8308, 8309, 8310, 8311, 8312, 8313, 8314, 8315, 8316 AMEND: 7204, 7234, 7301, 7302, 7303, 7304, 7305, 7306, 7307, 7308, 7310, 7311, 7312, 7313, 7314, 7315, 7318, 7319, 7320, 7321, 73
 09/29/03 ADOPT: 7715, 7716, 7717, 7718, 7719, 7720, 7721, 7722, 7723, 7724, 7725, 7726, 7727, 7728, 7729, 7730, 7731, 7732, 7733, 7734, 7735, 7736, 7737, 7738, 7739, 7740, 7741, 7742, 7743, 7744, 7745, 7746, 7747, 7748, 7749, 7750, 7751, 7752, 7753, 7754 7755, 77
 09/19/03 ADOPT: 7003 AMEND: 7000, 7002, 7004, 7005, 7006, 7008, 7012, 7016 REPEAL: 7010, 7014, 7018

Title 28

10/29/03 ADOPT: 1009
 10/27/03 AMEND: 1005
 10/20/03 AMEND: 1300.67.8
 09/23/03 ADOPT: 1300.74.72
 09/18/03 ADOPT: 1300.87
 09/16/03 AMEND: 1300.67

Title MPP

12/31/03 AMEND: 42-207, 42-215, 63-501, 63-1101

CALIFORNIA REGULATORY NOTICE REGISTER 2004, VOLUME NO. 4-Z

12/29/03 AMEND: 42-712, 42-719, 44-111
12/15/03 AMEND: 11-405.2, 11-406(f)
11/26/03 AMEND: 40-181.1,(e), 40-181.22, 42-710.6, 42-711.51, 42-721.1, 42-721.41, 44-314.1, 80-310(r), 82-812.6
10/31/03 ADOPT: 30-501, 30-502, 30-503, 30-504, 30-505, 30-506, 30-507, 30-900, 30-901, 30-902, 30-903, 30-904, 30-905, 30-906, 30-907, 30-908, 30-909, 30-910, 30-911, 30-912, 30-913, 30-914, 30-915, 30-916, 30-917, 30-918, 30-919, 30-920, 31-236 AMEND: 11-400t,
10/30/03 AMEND: 44-315, 89-201
10/28/03 AMEND: 63-503, 63-504, 63-505
09/16/03 ADOPT: 49-037 AMEND: 49-005, 49-020, 49-035, 49-040, 80-310
09/11/03 AMEND: 63-405, 63-503

