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PROPOSED ACTION ON REGULATIONS

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

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PROPOSED ACTION ON REGULATIONS

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture propose to amend Section 3558, subsection (a), of the regulations in Title 3 of the California Code of Regulations pertaining to Insects Which May Be Imported or Shipped Within California Without a Permit.

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

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before April 5, 2004.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of the California Food and Agricultural Code which he is directed or authorized to administer or enforce and prevent the spread of injurious pests (Food and Agricultural Code, Sections 407). Existing law provides that the Secretary may make and enforce such regulations as he deems necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any quarantine line which is established and proclaimed pursuant to this division (Food and Agricultural Code Section 5302). Existing law also establishes, except for certain exemptions, that it is unlawful for any person to willfully import into, or ship or transport within, the state any live insect or any pest as such, unless the shipment or transportation and subsequent use and handling is authorized prior to shipment under written permit and the regulations of the Secretary or the United States Department of Agriculture (Food and Agricultural Code Section 6305).

The proposed amendment of Section 3558(a) would identify additional types of beneficial or useful insects that do not require a permit authorized by the Secretary or the United States Department of Agriculture to move into or within the State. The effect of the proposed amendment is to remove the requirement for persons to obtain a permit from the Secretary or the United States Department of Agriculture for the additional listed beneficial or useful insects; thus reducing an unnecessary regulatory burden upon such persons moving such insects. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3558 does not impose a mandate on local agencies or school districts. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

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

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

ASSESSMENT

The Department has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department amended Section 3558, subsection (a) pursuant to the authority vested by Sections 407 and 5302 of the Food and Agricultural Code of California.

REFERENCE

The Department amended Section 3558, subsection (a) to implement, interpret and make specific Section 6305 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov.

In his absence, you may contact Kris Peeples at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

statement of reasons will be available upon request. Requests should be directed to the contact named herein.

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

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department), pursuant to rulemaking authority granted by Section 407, Food and Agricultural Code (FAC), in order to implement, interpret, and make specific Sections 404, 55722.5 and 56382.5 of the Food and Agricultural Code; and Section 6250 et seq. and 15376 of the Government Code, proposes to amend Section 703.3 in Title 3, Chapter 2.2, California Code of Regulations relating to formal alternative dispute resolutions in the Market Enforcement Branch (MEB).

PUBLIC HEARING

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

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, addressed to Agatha d'Esterhazy, Department of Food and Agriculture, Market Enforcement Branch, 1220 N Street, Sacramento, CA 95814, no later than 5:00 p.m., April 14, 2004. Written comments may also be sent to Agatha d'Esterhazy via electronic mail at ADesterhazy@cdfa.ca.gov; or via FAX (916) 341-6551.

CONTACT PERSON

Inquiries concerning this action may be directed to Agatha d'Esterhazy at (916) 341-6276.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Authority and Reference: FAC Section 407 authorizes the Department to amend the regulations as proposed. The regulations would implement, interpret, or make specific Sections 404, 55722.5, and 56382.5, Food and Agricultural Code; and Sections 6250 et seq. and 15376, Government Code.

The Department adopted regulations several years ago to implement SB 1198, which became effective January 1, 1998. These regulations included a process by which the MEB could refer unsettled cases between growers and licensed handlers, upon request of the parties involved, to the American Arbitration Association (AAA) for dispute resolution. Since these regulations were promulgated, however, it has become evident that going through the AAA process is very time consuming and costly, and the disputing parties do not want to bear this burden. They prefer the choice to go other places for resolution. This proposed regulation would give them the opportunity to do so.

**DISCLOSURES REGARDING THE
PROPOSED ACTION**

CDFA has made the following initial determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accord with Government Code Section 17500—17630: None
- Other non-discretionary cost or savings imposed on local agencies: None
- Cost or savings in federal funding to the state: None
- Significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states: None
- CDFA 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

SMALL BUSINESS DETERMINATION

CDFA has determined that the proposed regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSON

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

Agatha d'Esterhazy
Market Enforcement Branch
Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814
Telephone: (916) 341-6276

The same person may also be contacted to request 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.

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

CDFA will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. The text of proposed regulations and initial statement of reasons are also available on the Internet, at www.cdfa.ca.gov/pendingregs. When the final statement of reasons has been prepared, it will also be available at this website. 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 Agatha d'Esterhazy at the address or phone number listed above.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

After considering all timely and relevant comments received, the CDFA may adopt the proposed regulations substantially as described in this notice. If CDFA 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 CDFA adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Agatha

d'Esterhazy at the address indicated above. CDFA 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 Agatha d'Esterhazy at the above address.

**AVAILABILITY OF DOCUMENTS
ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, Initial Statement of Reasons, and the text of the proposed regulations in underline and strikeout can be accessed through the Department's website at www.cdca.ca.gov/pendingregs.

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

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3700, subsection (c), of the regulations in Title 3 of the California Code of Regulations pertaining to Oak Mortality Disease Control as an emergency action that was effective on January 5, 2004. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than May 5, 2004.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture may certify that there was compliance with provisions of Section 11346.1 of the Government Code within 120 days of the emergency regulation.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before April 5, 2004.

**INFORMATIVE DIGEST//POLICY
STATEMENT OVERVIEW**

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry in California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law also provides that the Secretary may establish, maintain, and enforce such regulations, as he

deems necessary, to prevent the spread of pests to protect California's agricultural industry (Food and Agricultural Code Section 5322).

The amendment of Section 3700(c) established that leaves of *Sasanqua camellia*, *Camellia sasanqua*; plants and plant parts (except seed) of *Mariessii-doublefile Viburnum*, *Viburnum plicatum* var. *tomentosum*; leaves and stems of Brouwer's beauty andromeda, *Pieris floribunda x japonica*, forest flame andromeda, *Pieris formosa x japonica*, variegated and flaming silver andromeda, *Pieris japonica*, and witch hazel, *Hamamelis virginiana*, are included as regulated articles and commodities. The effect of the amendment is to establish the authority for the State to regulate the movement of these new hosts or potential carriers of the disease from the regulated area to prevent the artificial spread of the disease caused by *Phytophthora ramorum*. There is no existing, comparable federal regulation or statute regarding intrastate movement of regulated articles and commodities.

**COST TO LOCAL AGENCIES AND
SCHOOL DISTRICTS**

The Department of Food and Agriculture has determined that Section 3700 does not impose a new mandate on local agencies or school districts. There is an on going mandate created by the original adoption of this regulation. However, the amendment of this regulation, adding new articles and commodities covered, does not impose a new mandate on the local agencies. These local agencies are enforcing an ongoing mandate not impacted by the regulatory action. Therefore, no additional reimbursement is required for Section 3700(c) under Section 17561 of the Government Code.

The Department has also determined that the amended regulation will involve no additional costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will not affect housing costs.

EFFECT ON BUSINESSES

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

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

ASSESSMENT

The Department has made an assessment that the proposed amendments to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department amended Section 3700, subsection (c) pursuant to the authority vested by Sections 407, 5321 and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department amended Section 3700, subsection (c) to implement, interpret and make specific Sections 24.5, 5321 and 5322 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov.

In his absence, you may contact Kris Peeples at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 240, 1050 and 7360 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205, 206, 240, 713, 1050, 1055 and 7360, of said Code, proposes to amend Section 1.18, Title 14, California Code of Regulations, relating to Bay-Delta Sport Fishing Enhancement Stamp.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

During its December 3, 2003 meeting the Commission adopted emergency regulations that defined and clarified the geographic range for the Bay-Delta Sport Fishing Enhancement Stamp that conformed with the area identified in recently enacted legislation. The regulation required expedited action under emergency authority of the Commission to enable Title 14 regulations to be effective when the enacted legislation was to take effect on January 1, 2004. The regulations adopted by the Commission under emergency authority are effective for 120 days. The Department is now

proposing that the regulations adopted as an emergency action be made permanent with additional clarification of area boundaries for San Francisco Bay and San Pablo Bay.

The Department is proposing to clarify the geographic range of San Francisco Bay and San Pablo Bay by indicating they include all tidal waters, sloughs, canals and forebays within the area east of Highway 101, south of Highway 37, west of Highway 29, west of Interstates 80 and 880, and north of Highway 237 including the Napa River below the Trancas bridge in Napa, Sonoma Creek below the Highway 121 bridge, and the Petaluma River east of Highway 101. The inclusion of specific landmarks that identify boundaries where the Bay Delta Fisheries Enhancement Stamp is required will eliminate confusion of the vague boundaries in current regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in City Council Chambers, 777 Cypress Avenue, Redding, California on Friday, March 5, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California on Friday, April 2, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before March 26, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than April 22, 2004, at the teleconference hearing in Sacramento, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Tracy L. Reed at the preceding address or phone number. Dr. Ed Pert, Department of Fish and Game, phone (916) 445-3616 has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

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

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

IMPACT OF REGULATORY ACTION

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This action clarifies geographic boundaries of a fishing stamp required by legislation and places no additional economic burden on California businesses.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

- (c) Cost Impacts on a Representative Private Person or Business:

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

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

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

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, of the Fish and Game Code and to implement, interpret or make specific Sections 200, 205, 206, 215 and 316.5, of said Code, proposes to amend subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, relating to the Klamath-Trinity River System.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Hook Size Change for Anadromous Waters of the Klamath River System: Current regulations in subsection (b)(91.1)(A)2. of Section 7.50 define Special Fishing Methods Restrictions for all anadromous waters of the Klamath River below Iron Gate Dam. These requirements restrict the use of single barbless hooks having a gap between the point and shank greater than $\frac{5}{8}$ inch; or, any multiple barbless hooks having a gap between the point and shank greater than $\frac{1}{2}$ inch. For clarification and in the interest of consistency, the Department is recommending language from Section 2.10, Hook and Weight Restriction

be substituted to subsection (b)(91.1)(A)2. of Section 7.50. This recommendation would define “Gap” and “Shank”, restrict the use of any multiple hooks with a gap greater than $\frac{3}{4}$ inch or any hook with a shank longer than 2 inches, and restrict the use of any multiple hook or more than one single hook on non-buoyant lures exceeding one ounce. This recommendation will make fishing gear restrictions for all anadromous waters of the Klamath River system consistent with statewide restrictions for river and streams.

Quota Adjustment: Under current regulations in subsection (b)(91.1)(C), the allowable Chinook salmon harvest in the Klamath River system is based on spawning run-size predictions and spawning escapement goals. The harvest and the distribution of the catch are regulated by seasons, daily and weekly bag and possession limits, and area quotas and allocations.

Annual adjustment of the quota is necessary to meet natural and hatchery escapement needs for Klamath River fall-run Chinook salmon stocks, while providing equitable harvest opportunities for ocean (sport and commercial) and river (sport and tribal) users. The total river system recreational harvest of fall-run Chinook salmon is currently regulated by a quota. In 2003, the share, or impact quota, for the Klamath River basin allowable sport catch was 10,800 adult fish (26 percent of the total allowable harvest by non-tribal fisheries, including ocean-commercial, ocean-recreational and recreational-river fisheries).

Projections of the abundance of adult Klamath River fall-run Chinook salmon in the 2004 season are not yet available from the PFMC. However, preliminary examination of data available to Department staff suggests that the predicted 2004 adult fall-run Chinook salmon run will be greater than the 2003 run. Consequently, the Department is suggesting that the Commission consider a 2004 quota for the river-recreational fishery larger than that of last year, and for notice requirements, within a range of 5,000–21,000 adult Chinook salmon. The Commission also will consider modifying the share of the allowable catch allocated to the river recreational fishery (which was 26 percent in 2003). Adjustment of this share is included in the recommended 5,000–21,000 range of the quota. As in prior years, the river recreational fishing quota would be split evenly between fisheries above and below the boundary separating the Klamath River system sub-quota areas (see proposed boundary change below).

Change in Sub-Quota Boundary: The Department is recommending that the physical landmark designating the lower and upper sub-quota area for the Klamath River Basin be changed from Coon Creek Falls to the Highway 96 bridge at Weitchpec. The boundary is used to divide evenly the impact quota for adult fall-run Chinook salmon harvest into two sub-quota areas within the Klamath River Basin. There are two Coon Creek tributaries to the Klamath River. One enters the Klamath River 6 miles below the Highway 96 bridge at Weitchpec and the second enters the Klamath River approximately 8 miles upstream from the Highway 96 bridge. The Department receives several inquiries from anglers requesting additional information or clarification pertaining to which Coon Creek the regulations refer to. The Highway 96 bridge at Weitchpec is more identifiable and eliminates the confusion between the two Coon Creek tributaries. All regulatory language referencing Coon Creek Falls shall be changed to the Highway 96 bridge at Weitchpec. There will be no harvest impacts to anglers since the Klamath River Basin impact quota for fall-run Chinook salmon does not change.

Closures to Modify Allocations: Currently, the annual recreational impact quota is split evenly, with 50 percent of the quota allocated to the Klamath River below the Highway 96 bridge at Weitchpec (proposed boundary) and 50 percent to the remainder of the Klamath River Basin above the Highway 96 bridge at Weitchpec, including the Trinity River. Proposed regulations define three sub-quota areas above the Highway 96 bridge at Weitchpec. The three quotas ensure equitable harvest of adult fall-run Chinook in the upper Klamath and Trinity rivers.

The 2004 quota to be recommended by the PFMC is not currently known; however, it is expected to be larger than that established for the 2003 season. All closures for adult Chinook salmon will be designed to maximize and distribute the harvest of adult fall-run Chinook salmon while managing the fishery within the impact quota.

The current quota system requires the Department to monitor angler harvest of adult Chinook in each sub-quota area on a real-time basis. Due to likely funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the upper Klamath River above the Highway 96 bridge at Weitchpec and the Trinity River above Willow Creek for the 2004 season. Instead, the following recommendations are based on data analysis and management experiences from previous years that estimate harvest in the upper reaches of the Klamath River Basin relative to known harvest in the lower Klamath River.

1. Klamath River Main Stem—Allowable Fishing Season from the Highway 96 bridge at Weitchpec to 3,500 feet below Iron Gate Dam:

The Department has reviewed all available Klamath Chinook harvest and run-timing data for the Klamath River from several previous years. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the upper river. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

2. Upper Trinity River Main Stem—Allowable Fishing Season from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat:

The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the upper Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

3. Lower Trinity River Main Stem—Allowable Fishing Season from Hawkins Bar Bridge (Road to Denny) Downstream to the Mouth of the Trinity:

The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the lower Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

Increase in Daily Bag Limit, Weekly Bag Limit and Possession Limit: The 2004 quota to be recommended by the PFMC is not currently known; however, it is expected to be higher than that

established for the 2003 season. Consequently, the Department is recommending an increase in daily bag, weekly bag, and possession limits for the 2004 Klamath River sport fishery.

The Department is recommending that the Commission consider the following Klamath River recreational fishery changes to reflect an increase in the Klamath River basin impact quota:

1. **Increase in Daily Bag Limit:** The daily bag limit, as specified in the current regulation, is three king salmon (Chinook salmon), but no more than one adult king salmon over 22 inches total length, and one hatchery trout or hatchery steelhead or brown trout. The Department is proposing that the Commission modify the king salmon daily bag limit to a total of three king salmon, but no more than two king salmon over 22 inches total length and one hatchery trout, or one hatchery steelhead or one brown trout.
2. **Increase the Weekly Bag Limit:** The current regulation specifies that no more than four king salmon over 22 inches total length may be retained in any seven consecutive days. The Department is proposing that the Commission increase the weekly bag limit to six king salmon over 22 inches total length in any seven consecutive days.
3. **Modify Possession Limit:** The current regulation specifies that no more than 12 king salmon may be possessed, of which no more than four may be over 22 inches total length. The Department is proposing that the Commission modify the possession limit to 12 king salmon may be possessed, of which no more than six may be over 22 inches total length.

Options to Open the New River to Angling: The Department supports maintaining the closure of the New River and other Trinity River summer steelhead holding tributaries. Plentiful angling opportunity exists to fish for wild summer steelhead in their migratory corridor of the main-stem Trinity river downstream of their summer holding habitat. This is consistent with the Department's policy to allow fishing for sensitive stocks only in migratory areas and not in holding areas.

The Department recognizes that substantial increases in returns of summer steelhead have occurred on the New River over the past three years, but is still concerned with highly variable returns between years and lack of adequate personnel resources to conduct necessary angler-impact monitoring.

The Commission has received written and oral testimony from members of the public recommending New River be opened to angling. At the December 5,

2003 Commission meeting, the Department was asked to develop options which would allow limited angling opportunities in the New River

Summer steelhead enter the New River starting in April and over summer in deep pools until the first rains in late fall . A 1991 study found that many summer steelhead within the main-stem New River once within a pool remain in that same pool for up to seven months. These fish are extremely vulnerable and could possibly be stressed repeatedly if angling were allowed throughout the entire season. Subsequently, the Department has developed two options which would promote summer steelhead conservation while providing some amount of angling opportunities in the New River.

New River Option 1:

Open the New River to fishing from the Saturday preceding Memorial Day to July 15 and September 15 to November 15, from the confluence of Slide and Virgin Creeks downstream to the confluence with the Trinity River. Only artificial lures with barbless hooks, with a zero bag limit would apply.

The Department has several concerns with this option. Mainly, it fails to adequately protect juvenile out-migrants and adult summer steelhead. The earlier of the two open season proposed by Option 1 (Saturday after Memorial Day—July 15) does not afford the protection needed for out-migrating smolts, which peak in May and continue out-migrating through July. In addition, studies have documented that mortality due to stress associated with catch and release fishing increase as water temperatures approach 70 degrees F. Water quality studies on New River have documented water temperatures meeting or exceeding 70 degrees F during early June and extending throughout the summer. The Department does not support this option due to the potential mortality of out-migrating smolts and the increased catch and release mortality to adult summer steelhead associated with elevated water temperatures.

New River Option 2:

Open the New River to fishing from September 15 through November 15, immediately downstream of the confluence pool of Slide and Virgin Creeks downstream to the confluence with the Trinity River. Only artificial lures with barbless hooks, with a zero bag limit would apply.

Option 2 is a possible compromise between proposed Option 1 and the current status quo (complete closure to fishing). Option 2 would not allow angling in the earlier part of the season (Saturday preceding Memorial Day through July 15) in order to protect summer steelhead and downstream migrating smolts. The Department is concerned that

elevated water temperatures during June through July 15 would result in increased catch and release mortality of adult summer steelhead.

Option 2 also proposes a slightly different open area than Option 1. Historically, the confluence pool of Virgin and Slide Creek with the New River was never open to angling. Option 2 proposes opening the area downstream of the confluence pool, but not including the confluence pool. This pool requires additional protection necessary because of its propensity to congregate large numbers of steelhead. The entire main-stem of the New River would be open to angling, while protecting those fish that are holding in the upstream most pool in the main-stem system.

New River Option 3:

Allow fishing in the main-stem New River from the mouth upstream to the confluence of the East Fork from September 15 through November 15. Gear would be restricted to artificial lures with barbless hooks (no bait), and a zero bag would apply.

The upper most reaches of the New River (upstream of the confluence of the East Fork) contain approximately 30 percent of the adult summer steelhead holding pools. This area is extremely remote and very difficult to monitor. Because of the uncertainty and the potential negative impacts to adult summer steelhead that may occur from excessive angling, an option which maintains some protected areas would be beneficial. The Department considers this option the most conservative of the three options presented but does not afford the maximum protection for summer steelhead found in current regulations. This option would be consistent with the regulations that were in place prior to 1999 when the FGC adopted a complete angling closure on New River.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in City Council Chambers, 777 Cypress Avenue, Redding, California on Friday, March 5, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California on Friday, April 2, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before March 26, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than April 2, 2004, at the hearing in Sacramento, CA. All written comments must include the true name and mailing address of the commentator.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rule-making file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Tracy L. Reed at the preceding address or phone number. Dr. Ed Pert, Department of Fish and Game, phone (916) 445-3616 has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

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

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

IMPACT OF REGULATORY ACTION

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

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

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by sections 200, 202, 203, 203.1, 331, 332, 1050,

1572, 3452, 3453, 4005, 4009.5, 4751, 4902 and 10502 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 203, 203.1, 207, 331, 332, 460, 713, 1050, 1570–1572, 1801, 3452, 3453, 3800, 3950, 3951, 4005, 4009.5, 4330–4333, 4336, 4751, 4756, 4800–4805, 4902, 10500 and 10502 of said Code, has open to public review its regulations in Division 1, Title 14, California Code of Regulations, Part 2, Chapter 1, General Provisions and Definitions; Chapter 2, Resident Small Game; Chapter 3, Big Game; Chapter 4, Depredation; Chapter 5, Furbearing Mammals; and Chapter 6, Nongame Animals.

Pursuant to the provisions of sections 203 and 203.1 of the Fish and Game Code, the Fish and Game Commission will consider populations, habitat, food supplies, the welfare of individual animals, and other pertinent facts and testimony in adopting season, bag and possession limits, and areas of take, and prescribe the manner and means of taking as part of the 2004–2007 Mammal Hunting and Trapping Regulations.

At the Fish and Game Commission’s meeting on February 6, 2004, the Department of Fish and Game made the following recommendations for changes relative to game mammal, furbearer and nongame mammal regulations for the 2004–2007 seasons: proposes to amend sections 251, 353, 354, 360, 361, 362, 363, 364, 365, 465, 465.5, 467, 475, 478 and 601, and add sections 458.1, 459, 459.1, 450.2, 465.6 and 468, Title 14, California Code of Regulations, to make tag quota changes, clarifications, and urgency changes for the 2004–2007 Mammal Hunting and Trapping Regulations.

INFORMATIVE DIGESTS/POLICY STATEMENT OVERVIEW

Amend Section 251, Title 14, CCR, Re: Use of Aircraft to Take Game

Subsection 251 (a) currently states, in general terms, that aircraft may not be used to pursue, drive, herd, or take birds and mammals. However, the section does not adequately address the issue of “fair chase” as it relates to use of aircraft for hunting big game. Information indicates aircraft such as ultra-light personal aircraft have been used to locate or attempt to locate deer and bighorn sheep. The location of big game can then be used to actively hunt the targeted animal. Nevada, Arizona and Utah already have regulations addressing this problem. This methodology may place targeted animal(s) in a situation that is

beyond traditional fair chase. Aircraft could establish the location of big game when traditional fair chase methods may fail. This puts additional pressure on targeted animals and constituents using traditional hunting methods could be placed at a disadvantage. Use of aircraft to pursue big game could discredit the sport of hunting. The amendment would further restrict the use of aircraft as it pertains to the take of big game by disallowing the locating of big game by aircraft 48 hours before until 48 hours after a big game hunting season. The amendment also addresses advances in technology by restricting the use of imaging satellite information and software/equipment which could hack /utilize Department telemetry frequencies with the possible result of locating big game mammals wearing Department telemetry equipment.

**Amend Section 353, Title 14, CCR,
Re: Methods Authorized for Taking Big Game**

The existing regulations provide for methods to be used to take big game. In recent years, new technology has resulted in new types of muzzleloading rifles, types of muzzleloading powders and advanced sighting methods. The existing regulations do not clearly address these new technologies including advances in muzzleloading rifle types, ignition sources, powders, and advanced sighting devices . This has caused difficulty for hunters and law enforcement personnel when trying to determine lawful and illegal methods of taking big game. The proposed regulation change clarifies the new types of muzzleloading rifles, types of muzzleloading powders and advanced sighting methods which are legal for taking big game. The proposed change will reduce confusion by hunters and law enforcement personnel who need clear definitions of which of the new technologies are legal and which are not for the purpose of taking big game.

The Department has received numerous requests from disabled hunters to allow the use of cross bows and/or other devices to assist in drawing and holding the bow string (for example, mouth-tab, body-brace, and draw-loc) during the archery only and additional archery hunt seasons as a reasonable accommodation under the Americans with Disabilities Act of 1990 (ADA). Based on information currently available, the Department does not believe that allowing use of cross bows or the other devices identified above for accommodation purposes during the archery only and additional hunt archery seasons will cause any fundamental changes to the operation of the Department's Wildlife Programs. The proposed regulation change would allow disabled archers that have, and can provide upon request by law enforcement personnel, written medical documentation attesting to their inability to use conventional archery equipment to use

a cross-bow and/or the other devices identified above during the archery only season and/or during the special archery hunts.

**Amend Section 354, Title 14, CCR,
Re: Archery Equipment and Crossbow Regulations**

The proposed regulation change eliminates the conflict between subsection 353(g) and 354(h) by making an exception in 354(h) to allow the use of a muzzleloading rifle during hunts designated as muzzleloading rifle/archery hunts. The existing regulations specify that archers may not possess a firearm while hunting in the field during any archery season, or while hunting during a general season under the provisions of an archery only tag. While subsection 354(g) specifies that hunters who possess a muzzleloading rifle/archery tag may possess a muzzleloading rifle. The proposed change will eliminate this conflict in regulations and reduce confusion by hunters and law enforcement personnel.

The Department has received numerous requests from disabled hunters to allow the use of cross bows and/or other devices to assist in drawing and holding the bow string (for example, mouth-tab, body-brace, and draw-loc) under the conditions of an archery tag, archery season, or general season as a reasonable accommodation under the Americans with Disabilities Act of 1990 (ADA). Based on information currently available, the Department does not believe that allowing use of cross bows or the other devices identified above for accommodation purposes during the archery only and additional hunt archery seasons will cause any fundamental changes to the operation of the Department's Wildlife Programs. The proposed regulation change would allow disabled archers that have, and can provide upon request by law enforcement personnel, written medical documentation attesting to their inability to use conventional archery equipment to use a cross-bow and/or the other devices identified above during the archery only season and/or during the special archery hunts.

**Amend Subsection 360(a), Title 14, CCR,
Re: Deer: A, B, C and D Zone Hunts**

Existing regulations provide an area description, season and tag quota for Zone A. However, under current Deer Assessment Unit (DAU) management strategies, Zone A is divided into two distinct DAUs: the south A Zone (DAU 1-Unit 110) and the north A Zone (DAU 2-Unit 160). For management purposes, it is necessary to split Zone A along DAU boundaries, to allow for the more effective collection of harvest and herd data. The proposal will split Zone A into two distinct units; the Zone A-South Unit 110 and Zone A-North Unit 160, and provide clarification of season

and valid hunting areas. Hunters will still purchase a single A Zone tag, however they will need to indicate the appropriate unit in which the deer was harvested. The tag will be valid in both units and no reduction in hunter opportunity will occur.

Some minor editorial changes are necessary for consistency in subsection numbering, spelling, grammar, and clarification.

Existing regulations provide for the number of license tags available for the A, B, C, and D Zones. This regulatory proposal changes the number of tags for all existing zones to a series of ranges presented in the following table. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and overwinter adult survival, final tag quotas may fall below the proposed range.

Deer: A, B, C, and D Zone Hunts Tag Allocations		
Zone	Current	Proposed
A	65,000	30,000–65,000
B	55,500	35,000–65,000
C	11,000	8,000–20,000
D3–5	33,000	30,000–40,000
D-6	10,000	6,000–16,000
D-7	9,000	4,000–10,000
D-8	8,000	5,000–10,000
D-9	2,000	1,000–2,500
D-10	700	400–800
D-11	5,500	2,500–6,000
D-12	950	100–1,500
D-13	4,000	2,000–5,000
D-14	3,000	2,000–3,500
D-15	1,500	500–2,000
D-16	3,000	1,000–3,500
D-17	500	100–800
D-19	1,500	500–2,000

**Amend Subsection 360(b), Title 14, CCR,
Re: Deer: X Zone Hunts**

Some minor editorial changes are necessary for consistency in subsection numbering, spelling, grammar, and clarification.

Existing regulations provide for the number of hunting tags for the X zones. The proposal changes the number of tags for all existing zones to a series of ranges presented in the following table. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can

have an adverse effect on herd recruitment and overwinter adult survival, final tag quotas may fall below the proposed range.

Deer: § 360(b) X-Zone Hunts Tag Allocations		
Zone	Current	Proposed
X-1	2,555	1,000–6,000
X-2	120	50–500
X-3a	255	150–1,500
X-3b	850	200–3,000
X-4	420	100–1,500
X-5a	90	50–300
X-5b	125	50–800
X-6a	325	100–1,200
X-6b	330	100–1,200
X-7a	165	50–600
X-7b	105	10–200
X-8	430	100–750
X-9a	770	100–1,200
X-9b	300	100–600
X-9c	650	100–1,000
X-10	400	200–600
X-12	760	100–1,500

**Amend Subsection 360(c), Title 14, CCR,
Re: Deer: Additional Hunts**

Existing regulations for Additional Hunt G-10 (Camp Pendleton Either-Sex Deer Hunt) provide for hunting on Saturdays and Sundays for ten consecutive weekends. In certain years, the ten weekend season concludes prior to the Thanksgiving Day holiday weekend due to calendar shifts, resulting in a reduction of hunter opportunity. In addition, certain federal holidays occur on weekdays when the base is normally closed and additional hunter opportunity is lost. The proposal would modify the season to specifically include: the Columbus Day and Veterans Day holidays, the day after Thanksgiving, and permit hunting to occur through the Sunday following Thanksgiving Day, therefore providing an increase in hunter opportunity as requested by the Base, while maintaining consistency with existing deer herd management plan recommendations.

Existing regulations for Additional Hunt G-13 (San Diego Antlerless Deer Hunt) provide for a sixteen day season beginning the fourth Saturday in October. The Department has received numerous requests from the local public to increase opportunity on this hunt by extending the season length. The proposal would add seven days to the end of the current season, therefore meeting a specific public demand for additional hunting opportunity, while maintaining consistency with existing deer herd management plan recommendations.

Existing regulations provide for a general deer hunting season, including area description, season, bag and possession limit, and number of tags for hunting deer during the general season in Zone X-9a (Section

360 (b)(13)(A-D), title 14, CCR). Deer residing in Zone X-9a are from two different herds, the Casa Diablo Deer Herd and the Round Valley Deer Herd (formerly Buttermilk and Sherwin Grade Deer Herds). These two herds differ drastically with regard to herd distribution and the proportion of bucks available during the general hunting season. This condition has resulted in a disproportionately higher hunter effort and increased buck harvest, and buck ratios below objectives on the Casa Diablo herd, while the converse exists on the Round Valley herd. The proposal creates a new additional hunt, G-39 (Round Valley Late Season Buck Hunt). The area description would be the same as those described for additional hunt J-12. The season would begin the fourth Saturday in October and continue for sixteen consecutive days. The bag and possession limit would be one buck, forked horn or better, per tag with a tag quota range of 5-150 tags. The creation of this hunt would meet an expressed public demand for additional late season buck hunting opportunity and be consistent with existing deer herd management plan recommendations by providing a more equitably distribution of hunter effort and buck harvest within the Zone X-9a deer herds.

Existing regulations provide deer hunting area descriptions, seasons, bag and possession limits, and number of tags for Zone C-4. The zone currently provides limited special junior deer hunting opportunity. The proposal creates a new additional hunt, J-21

(East Tehama Junior Either-Sex Deer Hunt). The area would include the Tehama County portion of Zone C-4. The season would begin the third Saturday in September (Zone C-4 opening) and continue 44 consecutive days (close with Hunt G-1). The bag and possession limit would be one, either-sex deer with a recommended tag quota range of 20-80 tags. Special conditions would be: junior license holders only may apply, and junior hunters must be accompanied by an adult chaperon, 18 years of age or older. This proposal would meet an expressed public demand for increasing hunting opportunity for young hunters, maintain appropriate harvest levels in the Zone C-4 deer herds, and be consistent with existing deer herd management plan recommendations.

Some minor editorial changes are necessary for consistency in subsection numbering, spelling, grammar, and clarification.

Existing regulations provide for the number of hunting tags for the additional hunts. The proposal changes the number of tags for existing hunts to a series of ranges presented in the following table. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and overwinter adult survival, final tag quotas may fall below the proposed range.

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Deer: § 360(c) Additional Hunts					
Tag Allocations					
Hunt	Current	Proposed	Hunt	Current	Proposed
G-1	3,500	500–5,000	M-11	20	20–200
G-3	25	5–50	MA-1	150	20–150
G-6	50	25–100	MA-3	150	20–150
G-7	20 Military *	20 Military *	J-1	25	10–25
G-8	30 Military * 30 Public	10–80 Military * and Public	J-3	15	15–30
G-9	15 Military * 15 Public	15 Military * 15 Public	J-4	15	15–50
G-10	300 Military *	100–480 Military *	J-7	15	10–30
G-11	500 Military * and DOD **	500 Military * and DOD **	J-8	15	10–20
G-12	30	25–75	J-9	5	5–10
G-13	300	50–300	J-10	10 Military * 30 Public	10–80 Military * and Public
G-19	35	10–65	J-11	40	10–50
G-21	25	25–100	J-12	10	10–20
G-37	25	25–50	J-13	40	25–100
G-38	300	50–300	J-14	30	15–75
G-39	New	5–150	J-15	10	5–30
M-3	60	20–75	J-16	75	10–75
M-4	5	5–50	J-17	25	5–25
M-5	10	5–50	J-18	75	10–75
M-6	80	25–100	J-19	25	10–40
M-7	150	50–150	J-20	20	5–20
M-8	10	5–75	J-21	New	20–80
M-9	5	5–100			

* Specific numbers of tags are provided for military hunts through a system which restricts hunter access to desired levels and ensures biologically conservative hunting programs.

** DOD = Department of Defense

Amend Section 361 Title 14, CCR, Re: Archery Deer Hunting

Existing regulations provide for an archery deer season in Zone A. Proposed changes (Item #1) in subsection 360(a)(1)(A–D) require the modification of existing archery hunting in Zone A in order to maintain consistency. The proposal modifies the area description and season and will maintain consistency with proposed changes (Item #1) identified in subsection 360(a)(1)(A–D), thus preventing confusion and possible violations.

Existing regulations provide for an archery deer season in all zones throughout the state, however the month was inadvertently omitted for Zone D-12 season description. The proposal would update the Zone D-12 archery season for clarification by specifying that the season beginning occur in October, thus eliminating any confusion and possible violations.

Existing regulations for Hunt A-1 (C Zones Archery Only Hunt) provide for three separate opening dates: the second Saturday in August in Zones C-2 and C-3, the third Saturday in August in Zone C-1, and the last Saturday in August in Zone C-4. Archery deer hunting in the C Zones was consolidated under the Hunt A-1 tag in 2002 in order to simplify the regulations and give hunters additional opportunity to hunt throughout the C Zones. However, the consolidation into a common opening date was omitted. The proposal would modify the season beginning in Zones C-2, C-3 and C-4 to the third Saturday in August, thus aligning all C Zone opening dates. This would complete the simplification process which was initiated in 2002 and bring the opening date into conformance with the adjacent B, D and X Zone archery season opening dates.

Existing regulations for Area-Specific Archery Hunt A-22 provides for a split season, in which the second half reopens the first Saturday in December and extends through December 31. In 2002, the season was shortened from a season end date of January 31 to December 31. The purpose of this change was to account for administrative procedures and data collection associated with the preparation of the Environmental Document. This action resulted in a decrease in season length by approximately one month, which significantly reduced hunter opportunity. The proposal would add two weeks to the beginning of the second half of the season by reopening the season on the third Saturday in November, thereby meeting a specific public demand for increased hunter opportunity, consistent with the goals and recommendations within the individual deer herd management plans.

Some minor editorial changes are also necessary for consistency in subsection numbering, spelling, grammar, and clarification.

Existing regulations provide for the number of hunting tags for existing area-specific archery hunts. The proposal changes the number of tags for existing hunts to a series of ranges presented in the following table. These ranges are necessary, as the final number of tags cannot be determined until spring herd data are collected in March/April. Because severe winter conditions can have an adverse effect on herd recruitment and overwinter adult survival, final tag quotas may fall below the proposed range.

Archery Deer Hunting: § 361		
Tag Allocations		
Hunt Number (and Title)	Current	Proposed
A-1 (C Zone Archery Only Tag)	2,500	150–3,000
A-3 (Zone X-1 Archery)	240	50–1,000
A-4 (Zone X-2 Archery)	15	10–200
A-5 (Zone X-3a Archery)	20	10–300
A-6 (Zone X-3b Archery)	65	25–400
A-7 (Zone X-4 Archery)	75	25–400
A-8 (Zone X-5a Archery)	50	15–100
A-9 (Zone X-5b Archery)	15	10–100
A-11 (Zone X-6a Archery)	130	25–300
A-12 (Zone X-6b Archery)	75	25–200
A-13 (Zone X-7a Archery)	20	10–200
A-14 (Zone X-7b Archery)	15	10–100
A-15 (Zone X-8 Archery)	70	25–200
A-16 (Zone X-9a Archery)	195	50–750
A-17 (Zone X-9b Archery)	300	50–600
A-18 (Zone X-9c Archery)	350	50–500
A-19 (Zone X-10 Archery)	120	25–200
A-20 (Zone X-12 Archery)	190	25–500
A-21 (Anderson Flat Archery Buck Hunt)	25	25–100
A-22 (San Diego Archery Either-Sex Deer Hunt)	1,000	100–1,000
A-24 (Monterey Archery Either-Sex Deer Hunt)	100	25–200
A-25 (Lake Sonoma Archery Either-Sex Deer Hunt)	25	20–75
A-26 (Bass Hill Archery Buck Hunt)	25	10–100
A-27 (Devil’s Garden Archery Buck Hunt)	5	5–75
A-30 (Covelo Archery Buck Hunt)	40	20–100
A-31 (Los Angeles Archery Either-Sex Deer Hunt)	1,000	200–2,000
A-32 (Ventura/Los Angeles Archery Late Season Either-Sex Deer Hunt)	250	50–300

Amend Section 362 Title 14, CCR, Re: Nelson Bighorn Sheep

Existing regulations provide for limited hunting of Nelson bighorn rams in six hunt zones. The proposed change adjusts the number of tags based on annual bighorn sheep population surveys conducted by the Department. The following proposed range of tag numbers was determined using the procedure described in Fish and Game Code Section 4902:

HUNT ZONE	NUMBER OF TAGS
Zone 1—Marble Mountains	2-4
Zone 2—Kelso Peak/Old Dad Mountains	2-4
Zone 3—Clark/Kingston Mountain Ranges	0-2
Zone 4—Orocopia Mountains	0-2
Zone 5—San Geronio Wilderness	0-2
Zone 6—Sheep Hole Mountains	0-2
Open Zone Fund-Raising Tags	0-2
TOTAL	4-18

The final number of tags allocated for each of the six hunt zones will be based on the results of the Department's 2003 estimate of the bighorn sheep population in each zone. Tags are proposed to be allocated to allow the take of less than 15 percent of the mature rams estimated in each zone. While no tag

quota is proposed for some hunting zones, those areas remain available for the hunter who purchases the Open Zone Fund-Raising Tag.

Amend Section 363 Title 14, CCR, Re: Pronghorn Antelope

Existing regulations provide for the number of pronghorn antelope hunting tags for each hunt zone. This proposed regulatory action provides tag allocation ranges for most hunt zones, pending final tag quota determinations based on winter survey results expected by March of 2004. The final tag quotas will provide for adequate hunting opportunities while allowing for a biologically appropriate harvest of bucks and does in specific populations. The proposed tag allocation ranges are as set forth below.

§ 363 Pronghorn Antelope Proposed Tag Allocation—2004						
Hunt Area	Archery-Only Season		General Season			
			Period 1		Period 2	
	Buck	Doe	Buck	Doe	Buck	Doe
Zone 1—Mount Dome	1-10	0-3	3-60	0-20	0	0
Zone 2—Clear Lake	1-10	0-3	20-80	0-25	0	0
Zone 3—Likely Tables	2-20	0-7	25-150	0-50	25-130	0-50
Zone 4—Lassen	2-20	0-7	25-150	0-50	25-150	0-50
Zone 5—Big Valley	1-15	0-5	3-150	0-50	0	0
Zone 6—Surprise Valley	1-10	0	3-25	0-7	0	0
Big Valley Junior Hunt	N/A		1-15 Either-Sex		0	
Lassen Junior Hunt	N/A		1-15 Either-Sex		0	
Surprise Valley Junior Hunt	N/A		1-4 Either-Sex		0	
Fund-Raising Hunt	N/A		1-10 Buck			

Existing regulations specify that the Ash Creek Junior Pronghorn Antelope Hunt occurs on land owned and managed by the Department of Fish and Game as the Ash Creek Wildlife Area, during the first four days of the general season for pronghorn antelope in Zone 5—Big Valley. The proposal expands geographic boundaries beyond Ash Creek Wildlife Area to all of Zone 5—Big Valley, extends the season to nine days to correspond with the general season for pronghorn antelope in Zone 5—Big Valley, and renames the hunt as the Big Valley Junior Pronghorn Antelope Hunt to more accurately reflect the hunt area. Ash Creek Wildlife Area continues to be available exclusively for junior hunters.

Existing regulations specify that the Honey Lake Junior Pronghorn Antelope Hunt occurs within a portion of Lassen County (the Honey Lake Valley), and on land owned and managed by the Department of Fish and Game as the Fleming and Dakin units of Honey Lake Wildlife Area, during the first four days of the general season for pronghorn antelope in Zone 4—Lassen. The proposal expands geographic boundaries to all of Zone 4—Lassen, extends the season to

nine days to correspond with the Period One general season for pronghorn antelope in Zone 4—Lassen, and renames the hunt as the Lassen Junior Pronghorn Antelope Hunt to more accurately reflect the hunt area. Honey Lake Wildlife Area continues to be available exclusively for junior hunters, on Saturdays and Sundays during the hunt season.

Existing regulations do not provide pronghorn antelope tags for Zone 6—Surprise Valley exclusively for junior hunters. The proposed regulatory change establishes the Surprise Valley Junior Pronghorn Antelope Hunt, with boundaries and season dates coinciding with those of Zone 6—Surprise Valley. With a range of 1-4 either-sex tags, the hunt will not adversely affect pronghorn populations or current hunt success rates within the zone. The proposed regulation change provides additional opportunity for junior hunters; currently the demand for junior pronghorn antelope tags proportionately exceeds demand for general season tags. The proposed junior hunt opens on the Saturday following the third Wednesday in August and continues for nine consecutive days.

Additionally, other minor editorial changes are also proposed for clarity and consistency of the regulations.

Amend Section 364 Title 14, CCR, Re: Elk

Existing regulations specify elk license tag quotas for each hunt. It is necessary to adjust quotas periodically, in response to dynamic environmental and biological conditions. This proposed amendment makes the following specific changes in license tag quotas: Increase the quota for the Siskiyou Roosevelt Elk Hunt from 25 either-sex tags to 15 antlerless and 15 either-sex tags; Reduce the quota for the Klamath Roosevelt Elk Hunt from 15 antlerless and 15 bull tags to 10 antlerless and 10 bull tags; Reduce the archery only quota for the Northeastern California Rocky Mountain Elk Hunt from 7 either-sex to 5 either-sex tags; Reduce the archery only quota for the Owens Valley Tule Elk Hunt from 7 either-sex to 5 either-sex tags; Change the quota for the Fort Hunter Liggett Tule Elk Hunt from 20 antlerless and 14 bull tags to 40 antlerless tags (10 of them designated archery only), 6 either-sex tags (designated archery only) and 14 bull tags. Periodic quota changes are necessary to maintain hunting quality in accordance with management goals and objectives.

Existing regulations specify boundaries for the Siskiyou Roosevelt and Northeastern California Rocky Mountain Elk hunts. The proposed change expands the Siskiyou zone eastward and concomitantly reduces the Northeastern zone. Expansion of the Siskiyou zone is warranted; elk wintering in the Siskiyou hunt area often move across the existing boundary into the area proposed for inclusion within the Siskiyou zone. Adjustment of boundaries will improve hunting opportunities and facilitate increasing the quota for the Siskiyou hunt. The proposed amendment will have minimal effect on hunt opportunity within the Northeastern California zone because this zone is large and the greatest concentrations of elk occur within eastern portions that are unaffected by the boundary adjustment.

Existing regulations specify boundaries for the Big Lagoon Roosevelt Elk Hunt. Non-substantive changes are proposed to simplify and clarify the boundary description.

Existing regulations specify boundaries for the La Panza Tule Elk Hunt. The proposal expands the La Panza boundary, consistent with the natural range expansion of tule elk which has occurred since this hunt was established in 1993. The proposal is necessary to improve hunter opportunity and is consistent with management objectives for tule elk in the area.

Existing regulations make no provision for public tule elk hunting in the Owens Valley west of US Highway 395. The proposal will establish the West

Tinemaha Zone on the west side of Highway 395 near Tinemaha Reservoir, and designates a total of 6 bull and 6 antlerless tags (designated archery only and evenly distributed among three hunt periods), valid for both the Tinemaha and West Tinemaha zones. Establishing a new tule elk hunt zone in the Owens Valley will provide additional elk hunting opportunities and is consistent with statewide management objectives for tule elk.

Existing regulations do not provide for public tule elk hunting in Colusa and Glenn counties near East Park Reservoir. The proposal will establish a new tule elk hunt in the vicinity of East Park Reservoir, with a total of two bull and two antlerless elk tags divided among three hunt periods in September. The proposal will provide additional elk hunting opportunities, consistent with the statewide management objectives for tule elk.

Existing regulations specify season dates for two hunt periods for the Fort Hunter Liggett Tule Elk Hunt. The proposed change will move the opening dates for Period One to the fourth Wednesday in November, and Period Two to the Wednesday after the second Saturday in December. Length of these hunt periods remains unchanged at 5 consecutive days. The proposal establishes season dates for Period Three, which will open on the last Wednesday in December and continue for 5 consecutive days. The proposal also establishes an Archery Only Season on weekends (Saturdays and Sundays) and the Labor Day Holiday in September. Significantly increasing the tag quota for the Fort Hunter Liggett Tule Elk Hunt requires modifying season dates for existing hunt periods, and establishing two additional hunt periods to meet hunter demand.

Minor editorial changes are proposed to improve clarity and consistency of the regulations. Specifically, the amendment updates the year to 2004, and makes other minor changes to reduce redundancy.

Amend Section 365 Title 14, CCR, Re: Bear

The existing regulations of subsection 365 (a)(5) (a-e), Title 14, California Code of Regulations) provide bear hunting areas, seasons, bag and possession limits, number of permits and special conditions, if any exist, for the Southeastern Sierra zone. Currently, according to Section 365(5) of the Fish and Game Code, bear hunting in the Southeastern Sierra zone is not allowed east of Highway 395. Hunters have expressed an interest in having the area east of Highway 395 in Mono county deer zones X-12 and X-9a added to the Southeastern Sierra bear hunt zone. In an effort to meet this specific demand for increased opportunity and expanded hunting area access, while assuring that bear harvest levels meet approved bear

harvest objectives, the proposal incorporates these areas into the Southeastern Sierra area zone description.

The Department conducted a mail-in survey of deer hunters in zones X-12 and X-9a during the 2002 season. Within these two zones, hunters reported observing 159 individual adult bear, 30 individual bear cubs, and 18 reports of sign west of Highway 395. In comparison, to the east of Highway 395, hunter observations included 93 individual adult bear, 28 individual bear cubs, and 75 reports of bear sign. Although these do not reflect actual numbers of bears in the two areas, they do indicate that bear populations on the east and west side of Highway 395 are quite similar in terms of relative abundance.

Amend Sections 465, 465.5, 467, 475 and 478; and Add Sections 458.1, 459, 459.1, 459.2, 465.6 and 468, Title 14, CCR, Re: Trapping Furbearers and Nongame Mammals

Under current regulations (Sections 460, 461, 462, 463, 464, 465, 465.5, 466, 467, 472, 473, 474, 475, 478, 478.1, and 479 Title 14, CCR), furbearing and nongame mammals may be taken for recreation and commerce in fur and for other purposes under a Department-issued trapping license, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify furbearing and nongame mammal seasons, areas, bag, and possession limits of take; methods of take; use of traps; hours of take; and requirements for trapping statements or reports.

The proposed regulatory changes will establish separate licensing, trap use, and annual reporting requirements for two separate groups of trappers: 1) Those that trap for purposes of recreation or commerce in fur; and 2) Those that trap for purposes other than for recreation or commerce in fur (nuisance wildlife control operator (NWCO) industry providing trapping services for profit). The following is a summary of the changes proposed by amending sections 465, 465.5, 467, 475, and 478, and adding sections 458.1, 459, 459.1, 459.2, 465.6, and 468, Title 14, CCR:

- establish a separate section regarding leg-hold trap use, requirements, specifications, exceptions and restrictions;
- require those that trap for purposes of recreation or commerce in fur procure a Class 1 Trapping License;
- require those that trap for purposes other than for recreation or commerce in fur (nuisance wildlife control operator (NWCO) industry providing trapping services for profit) procure a Class 2 Trapping License;

- require holders of both class 1 and class 2 trapping licenses to provide annual trapping statements or reports accounting for total furbearing or nongame mammals taken;
- authorize trap use by Class 1 Licensees according to the following:
 - traps are defined to include cage and box traps, nets, suitcase-type live beaver traps, and common rat and mouse traps and other devices designed to confine animals;
 - language is added that specifically exempts common rat and mouse traps from the trap number requirement, and;
 - use of captive bolt is added to shooting as a means of dispatch;
- authorize trap use by Class 2 Licensees according to the following:
 - traps are defined to include Conibear-type traps, snares, dead-falls, cage traps and other devices designed to confine, hold, grasp, grip, clamp or crush animals' bodies or body parts;
 - nuisance wildlife is defined as affected mammals trapped in towns or cities or removed from atop, within, or under buildings or structures or otherwise taken or trapped because of injury to property;
 - affected mammals are specifically defined to include: badger, beaver, gray fox, mink, muskrat, raccoon, bobcat, coyote, opossum, spotted skunk, striped skunk, long-tailed weasel, short-tailed weasel, and bats;
 - make it unlawful for any person to buy, sell, barter, or otherwise exchange for profit, or to offer to buy, sell, barter, or otherwise exchange for profit, the raw fur, as defined by Section 4005 of the Fish and Game Code, of any furbearing mammal or nongame mammal that was trapped in this state by a person providing trapping services for profit;
 - require traps to be numbered and add language that specifically exempts common rat and mouse traps;
 - authorize the design, specifications, placement, and use of Conibear-type traps, snares, cage and box traps, nets, suitcase-type live beaver traps and common rat and mouse traps;
 - require that all trapped furbearers and nongame mammals be immediately killed or released, with some exceptions. Unless released, trapped animals shall be killed by:
 - shooting or captive bolt;
 - carbon dioxide;
 - any method of euthanasia approved by the American Veterinary Medical Association's

guidelines under Appendix 2—“Acceptable Agents and Methods of Euthanasia by species;”

- require traps to be visited at least once daily by the owner of the traps or his/her designee carrying written authorization. All trapped animals shall be removed each time traps are checked;
- prohibit Conibear-type trap with a jaw spread greater than five inches (5”) from being used in any dryland set. When a Conibear-type trap is used in a dry-land application, it may only be set as a “cubby-type” set to exclude non target mammals or in a burrow if recessed six inches (6”) within the burrow to reduce non-target catches;
- Conibear-type traps with jaw openings larger than 5” X 5” may only be used in sets where the trap is wholly or partially submerged in water. When trapping beaver with Conibear-type traps, the trap shall have extra clamping bars or an equivalent thereof;
- all snares shall be set in sites cleared of brush or objects that could cause entanglement within the radius of the set device. It shall be unlawful to set or maintain a cable restraining and or snare within 30 feet of bait placed in a manner or position so that it may be seen by any soaring bird. As used in this subdivision, “bait” includes any bait composed of mammal, bird, or fish flesh, fur, hide, entrails, or feathers;
- snare cables shall be constructed of steel, galvanized steel, or stainless steel with diameters not less than 3/32 inch;
 - when spring mechanisms are used in conjunction with foot-snare design, the mechanism shall include a pan tension device such that non-target animals will not be captured in the snare;
 - except as provided below, only those non-lethal neck snares, such as the Collarum Canine Restraining Device, or neck snares consisting of properly installed end swivels, stops and breakaway locks may be used when attempting to capture coyotes or foxes. Any other neck snare set for this purpose and not conforming to this standard shall be considered an illegal set;
 - when trapping coyotes with neck snares, a lock shall be placed to prevent the cable from tightening down less than eleven inches (11”) in circumference around the trapped animal;
 - when trapping foxes with neck snares, a lock shall be placed to prevent the cable from tightening down less than eight inches (8”) in circumference around the trapped animal;
 - lethal neck snares may be used to take beaver and muskrats provided the snares have at least one-half the snare loop submerged in water;
- breakaway locks are not required on lethal neck snares set for beaver;
- prohibit the use of Conibear-type traps, snares, except those totally submerged, and deadfall traps in areas identified by the U. S. Geological Survey 7.5 Minute Quadrangle Map System to protect Sierra Nevada red fox and San Joaquin kit fox;
- establish penalties for violation of provisions that includes fines ranging from three hundred dollars (\$300) to two thousand dollars (\$2,000), imprisonment in the county jail for not more than one year, or both that fine and imprisonment;
- establish conditions of confinement, transportation, and release of nuisance wildlife with progeny;
- allow up to two hours that nuisance wildlife without progeny may be transported before being euthanized;
- in circumstances when the progeny of nuisance wildlife is not present and release is not an option, class 2 licensees must euthanize nuisance wildlife within two hours after leaving the affected property;
- prohibit the relocation of nuisance wildlife without Department of Fish and Game authorization;
- establish additional conditions for relocating nuisance wildlife, and;
- prohibit bats from being trapped.

**Amend Section 601, Title 14, CCR,
Re: Enhancement and Management of Fish and
Wildlife and their Habitat on Private Lands**

Existing regulation in subsection 601(b)(1) describes the application procedure and required elements for an Initial Application. Procedures and required elements for 5 Year Renewal and Annual Renewal Applications are not identified. Additionally, species-specific Department policies regarding the operation of Private Land Management (PLM)’s are not identified on the existing application forms. The proposed regulatory action identifies each application form with an approved Department form number. Each application form identifies procedures and required elements to process the application as well as applicable species-specific Department policies for PLM operations.

Existing regulation in subsection 601 (a)(6) requires full payment of tag/seal fees by March 1. Renewal applicants that do not meet this requirement are placed on COD status, requiring payment of fees for tags/seals at time of delivery. Cash on Delivery (COD) [License Agent] account require additional staff time

to monitor and maintain. The proposed regulatory action establishes a 10% late payment fee if tags are not paid for by the March 1 date. Late payment fees will be used to defray Department costs associated with establishing and maintaining COD accounts.

This proposed amendment also includes minor editorial changes to correct errors, improve clarity, and reduce redundancy. Specifically, subsection 601(a) is modified to identify the Fish and Game Commission as the licensing authority for PLM areas, not the department as currently described. Subsection 601(b)(4) is modified to reflect that an application fee is for the purpose of reviewing management plans prior to department approval, and that payment of the fee does not constitute acceptance into the program.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the City Council Chambers, City Hall, 777 Cypress Avenue, Redding, CA, on March 5, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. Written comments may also be submitted to the Fish and Game Commission office at the address given below.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA, on April 2, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested that all written comments be submitted on or before April 6, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov. All correspondence, including E-mail, must include the true name and mailing address of the commenter.

NOTICE IS FURTHER GIVEN that any person interested may be present at a hearing relevant to this action to be held at a teleconference meeting in the Resources Building Room 1320 Conference Room, 1416 Ninth Street, Sacramento, CA, on April 22, 2004, at 10:00 a.m., to consider adoption of the proposed Mammal Hunting and Trapping Regulations for the 2004–2007 seasons. Additional testimony on the proposed regulations may be received if substantive changes result from the April 2, 2004 meeting or if regulatory alternatives are under consideration.

Draft environmental documents associated with the proposed regulatory actions are made available for comment commencing January 30, 2004. Oral or written comments relevant to these documents will be received at the March 5, 2004, meeting in Redding. Written comments on these documents may be submitted to the Commission office (address given herein) until 5:00 p.m., March 16, 2004. Draft environmental documents are available for review at the Commission office and at the Department of Fish

and Game's headquarters office (same address as Commission). Copies of the documents are also available for review at the Department offices in Redding, Rancho Cordova, Yountville, Fresno, Bishop, Eureka, Menlo Park, Monterey, Chino and San Diego. **NO WRITTEN COMMENTS ON THE DRAFT ENVIRONMENTAL DOCUMENTS WILL BE ACCEPTED AFTER 5:00 P.M. ON MARCH 16, 2004.** The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Jon Snellstrom at the preceding phone number. John Carlson, (916) 445-3555, Branch Chief, Wildlife Programs Branch, has been designated to respond to questions on the substance of the proposed regulations. Copies of the initial statement of reason, including the regulatory language, may be obtained from the above address. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

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

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

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following

initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

Section 251, Use of Aircraft to Take Game

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This regulation centers around a particular method of pursuit of big game but does not affect the basic ability to hunt big game.

Section 353, Methods Authorized for Taking Big Game

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Because the proposed change clarifies the regulation, it is economically neutral.

Section 354, Archery Equipment and Crossbow Regulations

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Because the proposed change clarifies the regulation, it is economically neutral.

Subsection 360(a), Deer: A, B, C, and D Zone Hunts

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action adjusts tag quotas for existing hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

Subsection 360(b), Deer: X-Zone Hunts

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action adjusts tag quotas for existing hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

Subsection 360(c), Deer: Additional Hunts

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

existing hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

Section 361, Archery Deer Hunting

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action adjusts tag quotas for existing hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

Section 362, Nelson Bighorn Sheep

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Because the proposed change clarifies the regulation, it is economically neutral.

Section 363, Pronghorn Antelope

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

Section 364, Elk

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action adjusts tag quotas for existing hunts, adjusts hunt boundaries, and establishes new hunts. Given the number of tags available and the area over which they are distributed, these proposals are economically neutral to business.

Section 365, Bear

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Because the proposed change clarifies the regulation, it is economically neutral.

Sections 458.1, 459, 459.1, 459.2, 465, 465.5, 465.6, 467, 475 and 478, Trapping Furbearers and Nongame Mammals

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Although each applicant will incur a nominal cost for license fee, this impact will be minor given the lucrative profit potential generated by this business statewide.

Section 601, Enhancement and Management of Fish and Wildlife and their Habitat on Private Lands

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed action provides pertinent information regarding Private Lands Wildlife Habitat Enhancement and Management (PLM) operations on the application form, establishes a 10% late fee for the payment of tags/seals to account for additional Department costs in tracking Cash on Delivery (COD) license agents accounts, and makes minor editorial changes. Given the nature of the changes, the number of tags available, and the area over which they are distributed, these proposals are economically neutral to business.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:
The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

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

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 220, 240, 2084 and 7891 of the Fish and Game Code and to implement, interpret or make specific Sections 200, 202, 205 and 2084, of said Code, proposes to amend Section 27.80, Title 14, California Code of Regulations, relating to Ocean Salmon Sport Fishing.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean fishing regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan.

The PFMC is expected to adopt regulation recommendations, similar to recent years, for the recreational ocean salmon fisheries in Federal waters (3 to 200 miles offshore) off the states of Washington, Oregon, and California for 2003. The various alternatives the PFMC will examine in the process of adopting the management options on March 12, 2004, for public review may include:

1. the minimum size of salmon that may be retained;
2. the number of rods anglers may use (e.g., one, two, or unlimited);
3. the type of bait and/or terminal gear that may be used (e.g., amount of weight, hook type, and type of bait or no bait);
4. the number of salmon that may be retained per angler-day or period of days;
5. the definition of catch limits to allow for combined boat limits versus individual angler limits;
6. the allowable fishing dates and areas; and
7. the overall number of salmon that may be harvested, by species and area.

The final regulation recommendations will be made by the PFMC on April 9, 2004. Upon approval of the PFMC's management recommendations by the Secretary of Commerce, the State must move in a timely manner to conform its ocean sport fishing regulations for salmon in State waters (0 to 3 miles offshore) to those agreed upon by the PFMC; otherwise preemption of State regulatory authority by the Secretary of Commerce may occur.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in City Council Chambers, 777 Cypress Avenue, Redding, California on Friday, March 5, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California on Friday, April 2, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before March 26, 2004 at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than April 2, 2004, at the hearing in Sacramento, CA. All written comments must include the true name and mailing address of the commentor.

No oral comments will be accepted by the Commission after its hearing on April 2, 2004. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but they must be received no later than 5:00 p.m. on Monday, April 12, 2004. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Robert R. Treanor or Tracy L. Reed at the preceding address or phone number. Ms. Patricia Wolf, Department of Fish and Game, phone (562) 342-7108 has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full

compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

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

IMPACT OF REGULATORY ACTION

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:
The proposed action 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. Regulations close to the status quo are expected to be adopted.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business:
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

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

TITLE 16. BOARD OF PHARMACY

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on April 5, 2004.

Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 400 R Street, Sacramento, CA 95814 at 2:00 p.m. on April 21, 2004.

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections of the Business and Professions Code Sections 4005 and 4007 and to implement, interpret or make specific Sections 4005 and 4007 of the Business and Professions Code, the Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code Section 4005 authorizes the Board of Pharmacy to adopt regulations relating to the practice of pharmacy.

Business and Professions Code Section 4007 permits the Board of Pharmacy to adopt regulations relating to the supervision of ancillary personnel by a pharmacist.

Section 1793.3 allows a pharmacist to supervise a single unlicensed individual who can enter information into the pharmacy computer or prepare labels for dispensed prescriptions.

The proposed amendment to Section 1793.3 would permit a pharmacist to supervise that number of unlicensed individuals who enter information into the pharmacy computer or prepare labels that the pharmacist feels is appropriate. The proposed amendment also prohibits an employer from taking disciplinary action against the pharmacist for exercising their judgment regarding the number of unlicensed personnel to be employed in the pharmacy.

The Board of Pharmacy seeks to provide pharmacies greater flexibility in staffing to more effectively provide service to its customers.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

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

Impact on Jobs/New Businesses: The Board of Pharmacy has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

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

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Pharmacy has determined that the proposed regulations would not adversely affect small businesses. The Board of Pharmacy has made this determination because the proposed regulation would provide pharmacies with greater flexibility in pharmacy staffing.

CONSIDERATION OF ALTERNATIVES

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

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

**INITIAL STATEMENT OF REASONS
AND INFORMATION**

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Pharmacy at 400 R Street, Suite 4070, Sacramento, California 95814, or from the Board of Pharmacy website (www.pharmacy.ca.gov).

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name: Paul Riches
Address: 400 R Street, Suite 4070
Sacramento, CA 95814
Telephone No.: (916) 445-5014 x 4016
Fax No.: (916) 327-6308
E-Mail Address: Paul_Riches@dca.ca.gov
The backup contact person is:
Name: Virginia Herold
Address: 400 R Street, Suite 4070
Sacramento, CA 95814

Telephone No.: (916) 445-5014 x4005
Fax No.: (916) 327-6308
E-Mail Address: Virginia_Herold@dca.ca.gov

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

**TITLE 16. BOARD
OF PHARMACY**

NOTICE IS HEREBY GIVEN that the Board of Pharmacy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Pharmacy at its office not later than 5:00 p.m. on April 5, 2004.

Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 400 R Street, Sacramento, CA 95814 at 1:30 p.m. on April 21, 2004.

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 4005 of the Business and Professions Code and to implement, interpret or make specific Sections 4081, 4113, 4305, 4330, 4331 and 4332 of the Business and Professions Code the Board of Pharmacy is considering changes to Division 17 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Section 4005 of the Business and Professions Code grants the Board of Pharmacy authority to adopt regulations relating to the practice of pharmacy.

Section 4081 of the Business and Professions Code specifies that the pharmacy owner and the pharmacist-in-charge are jointly responsible for maintaining records relating to the acquisition and disposition of dangerous drugs and dangerous devices and maintaining a current inventory of dangerous drugs and dangerous devices for three years. This section also

specifies that both the pharmacy owner and the pharmacist-in-charge are jointly responsible for making these records available to authorized officers of the law.

Section 4113 of the Business and Professions Code requires each pharmacy to designate a pharmacist as "pharmacist-in-charge" and to notify the Board of Pharmacy of that designation within 30 days. This section also specifies that the pharmacist-in-charge is responsible for the pharmacy's compliance with state and federal law. This section also requires each pharmacy to notify the board within 30 days when a pharmacist ceases to be the pharmacist-in-charge.

Section 4305 of the Business and Professions Code specifies that failure to notify the Board of Pharmacy of the termination of a pharmacist-in-charge within 30 days is grounds for disciplinary action. This section also specifies a pharmacy that willfully fails to notify the board of the termination of a pharmacist-in-charge and permits the continued operation of the pharmacy without a pharmacist-in-charge is subject to summary suspension or revocation of the pharmacy license. This section also specifies that a pharmacist's failure to notify the board of their hiring or firing as pharmacist-in-charge within 30 days is grounds for disciplinary action.

Section 4330 specifies that a pharmacy that fails to designate a pharmacist-in-charge is guilty of a misdemeanor. This section also specifies that a non-pharmacist owner of a pharmacy who interferes with a pharmacist-in-charge's efforts to lawfully operate a pharmacy is guilty of a misdemeanor.

Section 1709.1 of Title 16 of the California Code of Regulations does the following:

1. Requires the pharmacist-in-charge to be employed at the pharmacy and be responsible for its daily operation.
2. Prohibits a pharmacist from acting pharmacist-in-charge at a more than one pharmacy.
3. Prohibits a pharmacist from acting as a pharmacist-in-charge in a pharmacy and a wholesaler, medical device retailer, or veterinary food-animal drug retailer.
4. Permits a pharmacy to designate an interim pharmacist-in-charge who does not work at that pharmacy.
5. Prohibits an interim pharmacist-in-charge to serve for more than 120 days.

This notice proposed to amend Section 1709.1 as follows:

1. Require a pharmacy owner to vest the pharmacist-in-charge with sufficient authority to allow the pharmacist-in-charge to comply with the law.

2. Permit a pharmacist to serve as pharmacist-in-charge at two pharmacies located within 50 miles of each other.
3. Permit a pharmacist to decline to serve as pharmacist-in-charge at a second pharmacy under specified circumstances.
4. Prohibit a pharmacy from disciplining a pharmacist who declines to serve as a pharmacist-in-charge at a second pharmacy.

The Board of Pharmacy has proposed this amendment to Section 1709.1 to further clarify the role of the pharmacist-in-charge and to permit a pharmacist to serve as pharmacist-in-charge at two pharmacies.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

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

Impact on Jobs/New Businesses: The Board of Pharmacy has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

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

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board of Pharmacy has determined that the proposed regulations would not adversely affect small businesses. The Board of Pharmacy made this determination because the proposed regulation would provide pharmacies with more flexibility when designating the pharmacist-in-charge.

CONSIDERATION OF ALTERNATIVES

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

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

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

**INITIAL STATEMENT OF REASONS
AND INFORMATION**

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Pharmacy at 400 R Street, Suite 4070, Sacramento, California 95814, or from the Board of Pharmacy website (www.pharmacy.ca.gov).

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name: Paul Riches
Address: 400 R Street, Suite 4070
Sacramento, CA 95814
Telephone No.: (916) 445-5014 x 4016
Fax No.: (916) 327-6308
E-Mail Address: Paul_Riches@dca.ca.gov

The backup contact person is:

Name: Virginia Herold
Address: 400 R Street, Suite 4070
Sacramento, CA 95814
Telephone No.: (916) 445-5014 x4005
Fax No.: (916) 327-6308
E-Mail Address: Virginia_Herold@dca.ca.gov

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

**TITLE 16. BOARD OF
REGISTERED NURSING**

**DIVISION 14. CALIFORNIA CODE
OF REGULATIONS**

NOTICE IS HEREBY GIVEN that the Board of Registered Nursing is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 400 R Street, Suite 4030, Sacramento, California, at 10:00 a.m., on April 5, 2004. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Registered Nursing at its office not later than 5:00 p.m. on April 5, 2004 or must be received by the Board of Registered Nursing at the hearing. The Board of Registered Nursing, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Section 2715 of the Business and Professions Code, and to implement, interpret or make specific Sections 2817 and 2818 of said Code, the Board of Registered Nursing is considering changes to Division 14 of Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Amend subsections 1491(1), 1491(2), 1491(3), and 1491(4) and renumber 1491(4) as 1491(7); add new subsection 1491(4) and subsections 1491(5) and 1491(6).

The regulatory proposal delineates the minimum educational standards for public health nurses. These standards are necessary to ensure that registered nurse applicants for Board of Registered Nursing issued public health nurse certificates receive sufficient theoretical content and supervised clinical experience to safely and competently provide public health nursing services. In addition to the theoretical content, the standards require a minimum of 90 hours of supervised clinical experience in a public health setting. The clinical experience must be concurrent

with or following acquisition of the theoretical knowledge and must be coordinated by a faculty member in the nursing program.

Existing law (B&P Code Section 2818) authorizes the BRN to issue public health nurse certificates to registered nurses who meet conditions and qualifications established by the Board. The education and training requirements for the public health nurse certificate are specified in CCR Section 1491 and include three methods of certification.

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The regulatory proposal affects registered nurses and nursing programs and not businesses.

Impact on Jobs/New Businesses: The Board of Registered Nursing has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board of Registered Nursing is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Nursing programs, in general, already include the theoretical content in their curricula, and based on responses to a Board survey, nursing program already require 90 or more hours of supervised clinical experience.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The proposed regulations affect registered nurses and nursing programs and would not affect small businesses.

CONSIDERATION OF ALTERNATIVES

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

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

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Alcidia Valim at 916-323-8419, 400 R Street, Suite 4030, Sacramento, California 95814.

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

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

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name: Alcidia Valim
Address: 400 R Street, Suite 4030
Sacramento, CA 95814
Phone: 916-323-8419
Fax No.: 916-327-4402
E-Mail: alcidia_valim@dca.ca.gov

The backup contact person is:

Name: Geri Nibbs, MN, RN
Address: 400 R Street, Suite 4030
Sacramento, CA 95814
Phone: 916-324-2715
Fax No.: 916-327-4402
E-Mail: geri_nibbs@dca.ca.gov

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

**TITLE 18. STATE BOARD
OF EQUALIZATION**

NOTICE IS HEREBY GIVEN

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to amend Regulation 1584, *Membership Fees*, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on April 13, 2004. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by April 13, 2004.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Current law, Revenue and Taxation Code section 6012, defines gross receipts as the total amount of the sale price of the retail sales of retailers, without any deduction on account of the cost of materials, labor cost, service cost, losses or any other expense.

Regulation 1584, *Membership Fees*, is proposed to be amended to interpret, implement and make specific Revenue and Taxation Code section 6012. Amendments are proposed to (1) add new subdivision (a)(2) to explain that when persons other than retailers make sales of memberships and the retailer's sales meet specified criteria, the gross receipts from such membership sales should be included in the taxable measure of the retailer selling tangible personal property to members and not the person selling the membership; (2) renumber former subdivisions (a)(2) and (a)(3) accordingly; and make a minor correction in new subdivision (a)(3).

**COST TO LOCAL AGENCIES
AND SCHOOL DISTRICTS**

The State Board of Equalization has determined that the proposed amendments and regulation do not impose a mandate on local agencies or school districts. Further, the Board has determined that the amendments and regulation will result in no direct or indirect cost or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization makes an initial determination that the adoption of proposed Regulation 1584 will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete in other states.

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

The proposed regulation may affect small business.

**COST IMPACT ON PRIVATE PERSON
OR BUSINESSES**

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

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Regulation 1584 and the proposed changes have no comparable federal regulations.

AUTHORITY

Section 7051, Revenue and Taxation Code.

REFERENCE

Section 6012, Revenue and Taxation Code.

CONTACT

Questions regarding the substance of the proposed regulation should be directed to Ms. Mariflor Jimenez (916) 324-2952, at 450 N Street, Sacramento, CA 95814, e-mail Mariflor.Jimenez@boe.ca.gov or MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or Ms. Karen Anderson, Contribution Disclosures Analyst, telephone (916) 327-1798, e-mail Karen.Anderson@boe.ca.gov

or by mail at State Board of Equalization, Attn: Diane Olson or Karen Anderson, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

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

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed regulation. Both of these documents and all information on which the proposal is based are available to the public upon request. The Rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed regulation are available on the Internet at the Board's web site <http://www.boe.ca.gov>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regulation. It is also available for your inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with the law, adopt the proposed regulations if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of any modified regulation will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified regulation will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified regulation for fifteen days after the date on which the modified regulation is made available to the public.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

PUBLIC INTEREST NOTICE

CESA CONSISTENCY DETERMINATION FOR 15 Repair Sites Along the KLM Pipeline, ChevronTexaco Contra Costa, San Joaquin, Stanislaus, and Merced Counties

The Department of Fish and Game ("Department") received notice on February 6, 2004 that the ChevronTexaco Pipeline Company proposes to rely on consultations between federal agencies to carry out a project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of repair of 15 sites along the Kettlemen Los Medanos (KLM) pipeline. The activities include excavating the existing pipeline to uncover the point of defect, which will impact habitat for San Joaquin kit fox and blunt-nosed leopard lizard.

The U.S. Fish and Wildlife Service, on February 2, 2004, issued to the Office of Pipeline Safety Research and Special Programs Administration a no jeopardy Federal Biological Opinion (1-1-04-F-0088) which considers the federally endangered and state threatened San Joaquin kit fox (*Vulpes macrotis mutica*) and the federally and state endangered blunt-nosed leopard lizard (*Gambelia silus*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, ChevronTexaco Company is requesting a determination on whether the Federal Biological Opinion 1-1-04-F-0088 is consistent with CESA. If the Department determines that the Federal Biological Opinion is consistent with CESA, ChevronTexaco Company will not be required to obtain an incidental take permit (Fish and Game Code Section 2081(b)) for the proposed project.

FISH AND GAME COMMISSION

NOTICE OF FINDING

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Fish and Game Code Section 2074.2, the California Fish and Game Commission (Commission), at its December 4, 2003, meeting in Sacramento, rejected the petition filed by the Center for Biological Diversity, the Santa Clara Valley Audubon Society, Defenders of Wildlife, San Bernardino Valley Audubon Society, California State Park Rangers Association and the Tri-County Conservation League to list the western burrowing owl (*Athene cunicularia hypugaea*) as an endangered or threatened species under the California Endangered Species Act, Fish and

Game Code section 2050 et seq. The Commission's decision was based on a finding that the petition did not provide sufficient information to indicate that the petitioned action may be warranted. At the December 4 meeting the Commission also announced its intention to adopt at its February 5, 2004 meeting in Long Beach a written finding and statement of reasons.

NOTICE IS ALSO GIVEN that at its February 5, 2004 formal meeting in Long Beach the Commission adopted the following formal finding and statement of the reasons for its rejection of the petition.

FINDING RELATING TO THE PETITION TO LIST THE WESTERN BURROWING OWL AS ENDANGERED OR THREATENED

LEGAL STANDARDS

A species is endangered under California Endangered Species Act, Fish and Game Code section 2050 et seq. (CESA), if it "is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease." (Fish & G. Code, § 2062.) A species is threatened under CESA if it is "not presently threatened with extinction [but] is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by [CESA]. . ." (Fish & G. Code, § 2067.) The responsibility for deciding whether a species should be listed as endangered or threatened rests with the Fish and Game Commission (Commission). (Fish & G. Code, § 2070.)

California law does not define what constitutes a "serious danger" to a species, nor does it describe what constitutes a "significant portion" of a species' range. The Commission makes the determination as to whether a species currently faces a serious danger of extinction throughout a significant portion of its range, (or for a listing as threatened whether such a future threat is likely) on a case-by-case basis after evaluating and weighing all the biological and management information before it. This approach is consistent with the process followed by federal agencies in deciding whether to list species under the federal Endangered Species Act, 16 U.S.C. § 1531 et seq.

Non-emergency listings involve a two-step process: first, the Commission "accepts" a petition to list the species, which immediately triggers regulatory protections for the species as a candidate for listing and also triggers a year-long study by the Department of Fish and Game (Department) of the species' status (Fish & G. Code, §§ 2074.2, 2074.6, and 2084);

second, the Commission considers the Department's status report and information provided by other parties and makes a final decision to formally list the species as endangered or threatened (Fish & G. Code, § 2075.5).

To be accepted by the Commission, a petition to list a species under CESA must include sufficient scientific information that the listing may be warranted. (Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subds. (d) and (e).) The petition must also include information regarding the species' population trend, range, distribution, abundance and life history; factors affecting the species' ability to survive and reproduce; the degree and immediacy of the threat to the species; the impact of existing management efforts; suggestions for future management of the species; the availability and sources of information about the species; information about the kind of habitat necessary for survival of the species; and a detailed distribution map. (Fish & G. Code, § 2072.3, Cal. Code Regs., tit. 14, § 670.1, subd. (d)(1).) In deciding whether it has sufficient information to indicate the petitioned listing may be warranted, the Commission is required to consider the petition itself, the Department of Fish and Game's written evaluation report, and other comments received about the petitioned action. (Fish & G. Code, § 2074.2.)

The requisite standard of proof to be used by the Commission in deciding whether listing may be warranted (i.e. whether to accept or reject a petition) was described in *Natural Resources Defense Council v. Fish and Game Commission* (1994) 28 Cal.App.4th 1104. In the *NRDC* case, the court determined that "the section 2074.2 phrase 'petition provides sufficient information to indicate that the petitioned action may be warranted' means that amount of information, when considered in light of the Department's written report and the comments received, that would lead a reasonable person to conclude there is a substantial possibility the requested listing could occur. . ." (*NRDC*, supra, 28 Cal.App.4th at page 1125.) This "substantial possibility" standard is more demanding than the low "reasonable possibility" or "fair argument" standard found in the California Environmental Quality Act, but is lower than the legal standard for a preliminary injunction, which would require the Commission to determine that a listing is "more likely than not" to occur. (*Ibid.*)

The *NRDC* court noted that "this 'substantial possibility' standard involves an exercise of the Commission's discretion and a weighing of evidence for and against listing, in contrast to the fair argument

standard that examines evidence on only one side of the issue. (*NRDC*, supra, 28 Cal.App.4th at page 1125.) As the Court concluded, the decision-making process involves:

“. . . a taking of evidence for and against listing in a public quasi-adjudicatory setting, a weighing of that evidence, and a Commission discretion to determine essentially a question of fact based on that evidence. This process, in other words, contemplates a meaningful opportunity to present evidence contrary to the petition and a meaningful consideration of that evidence.” (Id. at 1126.)

Therefore, in determining whether listing “may be warranted,” the Commission must consider not only the petition and the report prepared on the petition by the Department, but other evidence introduced in the proceedings. The Commission must decide this question in light of the entire record.

COMMISSION FINDING

For the reasons stated below, the Commission finds that the petition to list the western burrowing owl (*Athene cunicularia hypugaea*) as a threatened or endangered species under CESA, when considered in light of the Department’s evaluation report and all other evidence presented to the Commission, does not provide sufficient information to indicate that the petitioned action may be warranted, and that the petition must therefore be rejected.

STATEMENT OF REASONS

This statement of reasons sets forth an explanation of the basis for the Commission’s finding and its rejection of the petition to list the western burrowing owl as endangered or threatened. It is not a comprehensive review of all information considered by the Commission and for the most part does not address evidence that, while relevant to the proposed listing, was not at issue in the Commission’s decision.

1. The Commission finds that there are significant deficiencies in the available information about western burrowing owls in California, and finds that these deficiencies were not remedied by information provided by the petitioners, by the Department or through public comment.

In order to accept this petition, the Commission is required to determine that it has information to persuade a reasonable person that there is a substantial possibility that the western burrowing owl will be listed. As the decision in the *NRDC* case makes clear, the Commission must critically evaluate and weigh all evidence, and this process does not allow the Commission to resolve all uncertainties in favor of either the proponents or opponents of the listing. The Commission may deal with data gaps by drawing inferences based on available information or by

relying on expert opinion that the Commission finds persuasive, but in the end the petition and other information presented to the Commission must affirmatively demonstrate the species meets the criteria for protection as a candidate species.

The informational deficiencies relating to the western burrowing owl petition fall into two broad categories:

1. The petition contains a lengthy compilation of available information, but even with this information, historical data are very thin. Data from before 1991 consists of anecdotal accounts and local surveys in some areas but little information at all in other areas. While anecdotal information can be important, for example in helping identify a species’ range, it cannot be used to accurately establish abundance or population trends. Because of this deficiency, estimates of historic abundance of western burrowing owls as well as trend figures are fraught with uncertainty and, in the Commission’s view, are unreliable.
2. Current and recent data about western burrowing owl numbers and distributions are also spotty, further complicating the Commission’s task of determining the possibility that the western burrowing owl will be listed. For large parts of the state, the Commission was presented with no data or only sketchy anecdotal information about the current population and distribution of western burrowing owls. This makes it difficult to accurately estimate the abundance of western burrowing owls in the state or even short-term or intermediate trends.

These problems were not remedied to any significant measure by information that was subsequently provided by the Department or by others who submitted comments and information in response to the petition. In many cases, the comments offered by the Department and others brought the information problems and resulting uncertainties into sharper focus.

In noting these deficiencies, the Commission acknowledges that data for use in listing decisions is never complete. Historical data in particular is unavailable for many species, and a lack of historical data cannot be cured by surveys or studies at the time the petition is prepared. For those reasons, gaps in information are not necessarily fatal to a petition to list a species, provided the Commission at this point in the process can discern, despite the factual uncertainties, a substantial possibility that the species is in serious danger of extinction.

With western burrowing owls, the gaps in information are very significant. Large geographic areas of the state—including most arid areas, parts of the Sacra-

mento and San Joaquin valleys and the Modoc Plateau—are essentially data “black holes” where basic information about western burrowing owl abundance and range is lacking. The Commission was presented with no useful analysis about what use the species may make of these areas and the significance of these areas to the overall stability of western burrowing owls in California. While vast arid areas are generally assumed to be sparsely populated, this assumption would appear particularly suspect within agriculturally developed regions of the desert. This lack of information makes it difficult for the Commission to conclude there is a substantial possibility that the western burrowing owl would ultimately be listed if it were accepted as a candidate species.

2. The Commission finds that habitat loss caused by urban development is an immediate and serious threat to survival of breeding populations in coastal areas from the San Francisco Bay Area to coastal Southern California.

The petition relies heavily on data collected in surveys during 1991–1993 by DeSante et al. (1996). (Results of these surveys were also discussed in an unpublished report by DeSante and Ruhlen (1995) and in later papers). In the 1996 study, the authors reported that western burrowing owls had apparently been extirpated as a regular breeding species from Napa, Ventura and coastal San Luis Obispo counties and had abandoned “all recent breeding sites” in Marin, San Francisco, Santa Cruz counties. The same surveys located fewer than five breeding pairs in each of Sonoma, San Mateo, Santa Barbara, Orange and coastal Monterey counties, and the authors viewed these breeding populations as unlikely to persist if population trends continued in the 1990s. DeSante et al. also described the population around the north end of San Francisco, San Pablo and Suisun bays as either non-existent or a small remnant population and generally identified remaining populations of western burrowing owls along the central and southern coasts and in southern and eastern portions of the San Francisco Bay Area to be at risk because of low numbers and land development pressures. DeSante also said breeding western burrowing owls had apparently been extirpated from the Coachella Valley in Riverside County.

The petition and a subsequent letter from the petitioners identify most of the same areas as DeSante as suffering extirpations or near extirpations, with a few variations. The petitioners describe the western burrowing owl as having been extirpated from Napa, Marin, San Francisco and Santa Cruz counties; extirpated or nearly extirpated from the Coachella Valley; and nearly extirpated from the following counties or portions of counties: southwestern Solano, western Contra Costa, Sonoma, San Mateo, Monterey, coastal

San Luis Obispo, Santa Barbara, southern Ventura, southern Los Angeles, Orange, and San Diego; and extirpated or nearly extirpated from other locations in several counties. Petitioners removed several areas (Mendocino, Humboldt, western San Bernardino and western Riverside counties) from their list of areas suffering western burrowing owl extirpations, apparently because of information that came to light during the Department’s review and public comment on the petition. Reports about a small breeding population of western burrowing owls in the Coachella Valley, for example, led the petitioners to indicate western burrowing owls are “extirpated or nearly extirpated” in that area rather than clearly extirpated, as they originally asserted.

The Department provided some additional information regarding these areas. The Department stated that breeding western burrowing owls are no longer present in coastal Santa Barbara County (some may remain in the Cuyama Valley); are possibly present at a few breeding sites in Ventura County; are no longer present in Los Angeles County except for the Antelope Valley, where they may be threatened by future development; are nearing extirpation in Orange County with the exception of a nesting colony at Seal Beach Naval Weapons Station; and are present in small numbers in San Diego County, where some western burrowing owls are threatened by development but others are on habitat that the Navy is managing for the species.

Available evidence is not sufficient, in the Commission’s view, to establish that Mendocino and Humboldt counties ever supported breeding populations of western burrowing owls. The petitioners’ amended list of areas from which the western burrowing owl has been extirpated or is nearing extirpation still appears to overstate extirpation and near-extirpations in some respects, as described below. But the Commission concludes that the weight of available evidence indicates that breeding populations of western burrowing owls have already been extirpated from certain areas around the San Francisco Bay Area, central coast, and coastal Southern California, and that remaining breeding populations of the western burrowing owl in these regions are in serious danger of being extirpated because of the small number of western burrowing owls and high development pressures on western burrowing owl habitat.

3. In contrast to the decline of western burrowing owl populations in the San Francisco Bay Area and along the coastal areas of Southern California, western burrowing owl numbers in other areas of California appear to be stable or growing. Data provided in the petition and elsewhere fail to establish an overall decline in the number of western burrowing owls in the state.

The western burrowing owl surveys conducted in 1991–1993 by DeSante and others are important because they stand as the only attempt to provide a relatively comprehensive, state-wide estimate of western burrowing owl abundance and distribution. According to the study's authors, little was known about the western burrowing owl's distribution and relative abundance before their work. The study involved surveying for western burrowing owls within randomly selected blocks as well as within blocks where anecdotal information indicated there were breeding western burrowing owls in the 1980s. Although the number of individual western burrowing owls was noted, the study focused on identifying local breeding groups and comparing the number of groups to those that had been identified during the 1980s. Except for an area east of San Francisco Bay, no earlier data on western burrowing owl abundance was available, so the study used changes in the number of breeding groups to indirectly assess changes in population.

The authors identified a total of 165 breeding groups from information generated in the 1980s. While surveys found only 76 of the same groups recorded during the 1980s, additional groups were discovered during the surveys such that "there was no overall negative decline" in breeding groups, although certain regions "experienced considerable declines." The petition characterizes the DeSante reports as estimating a statewide decline in breeding population of 8 percent per year from the 1980s to the mid-1990s; the Department characterizes the estimated decline as 4–7 percent a year, not counting the Imperial Valley populations (which if considered would presumably reduce the overall decline). DeSante also reported a non-significant increase in the number of breeding pairs from 1991 to 1992 and a significant (19 percent) increase in the number of breeding pairs from 1992 to 1993. DeSante described the study's population estimate as "likely biased low," and recommended that, among other things, further surveys be conducted to locate additional nesting pairs of western burrowing owls. The Commission also received information that difficulties in detecting western burrowing owls likely result in underreporting of western burrowing owls during surveys.

The U.S. Fish and Wildlife Service, the federal agency responsible for administering the federal Endangered Species Act, Migratory Bird Treaty Act and other federal wildlife laws, has for years conducted a Breeding Bird Survey that found significant increases in relative abundance of western burrowing owls within California for the 1966–2001 period. The agency characterized the data quality as good, although as noted above, the Commission believes that available data does not provide a complete picture of western burrowing owl abun-

dance, distribution and trend in the state. Nonetheless, the Breeding Bird Survey supports a conclusion that while available information shows declines and threatened local extirpations of western burrowing owls in the coastal areas described above, it is not clear that there has been an overall decline in the state's western burrowing owl population over the past 20 or more years.

Large populations of the species exist in the Imperial Valley, the Central Valley and the Palo Verde Valley, and the Commission was presented with evidence that the number of western burrowing owls in some areas, especially the Imperial Valley and Palo Verde Valley, has increased over historic levels because of irrigated agriculture. There was also evidence that the petition underestimated western burrowing owl abundance. For example, the Palo Verde Valley, which was outside of the survey area of the DeSante study that the petition relied on, may have significantly greater western burrowing owl numbers than the petition assumes. The petition describes this area as the southern desert range where western burrowing owls occur as small, scattered populations and have historically never been common. In contrast, the Department found evidence that this area likely supports the second largest western burrowing owl core population in Southern California, estimated at 500–1000 pairs. The Commission believes it is likely that far more breeding western burrowing owls are located in the Carrizo Plain than have been documented, as some experts have suggested. It is also apparent that DeSante and the petition underestimated population and range by omitting arid areas from their calculations on the basis that populations there are assumed to be sparse. Even if the deserts are sparsely populated outside of irrigated areas, the geographic area covered by this habitat is enormous so the population there is not likely to be trivial. Furthermore, the distribution of western burrowing owls over these areas could be expected to further add to the species' stability in California.

In short, the Commission agrees with the Department that available information does not clearly establish a net decline in western burrowing owl abundance in the state. While it is possible that expansion of western burrowing owl numbers in some areas, particularly arid areas that are being irrigated for agriculture, may be offsetting in whole or in part the documented losses in coastal counties and elsewhere, the data is not sufficient to establish an increase, just as it is insufficient to document an overall decline in statewide western burrowing owl abundance.

The Commission concludes that the size and health of several of the state's largest populations of western burrowing owls, the wide geographic area of the state occupied by the western burrowing owl, and the lack

of evidence indicating an overall decline in western burrowing owl abundance within California are inconsistent with the petition's assertions that western burrowing owls face serious danger of extinction in California.

4. Apart from the high risk to western burrowing owls in coastal areas, the Commission does not believe identified threats to the species present a serious danger, individually or in the aggregate, to the western burrowing owls' survival.

Beyond the threat to western burrowing owls posed by urban development in coastal areas, the petition identifies a number of other threats to the species, none of which the Commission determines to be a serious threat to western burrowing owls in other regions of the state.

There is undoubtedly continuing loss of western burrowing owl habitat as a result of population growth and urban development, and the petition emphasizes that rapid growth rates in the Imperial Valley and southern Central Valley, where two of the largest concentrations of western burrowing owls are found, posed particularly serious threats to the species. But the Commission does not see evidence that this growth is a potential serious danger to the western burrowing owl in the foreseeable future, given the western burrowing owls' broad distribution in these regions as well as other areas of the state. For example, the Commission heard testimony that growth in the Imperial Valley was expected to consume only a fraction of 1 percent of the undeveloped land in the Imperial Valley. Impacts of urban development on western burrowing owls in the Central Valley, Imperial Valley, and other non-coastal areas of the state may be moderated by the western burrowing owls' tolerance of human encroachment, as evidenced by their continued presence at urban settings such as golf courses, parks, airports and vacant lots. Furthermore, at least some of development impacts to western burrowing owls in the San Joaquin Valley are being indirectly mitigated under CESA because western burrowing owls in many places share habitat with currently listed species such as the San Joaquin kit fox, and therefore benefit when natural lands are permanently conserved for those listed species.

The petition asserts that agricultural practices, including disking, plowing, grazing and use of agricultural chemicals, threaten the western burrowing owl. While one might reasonably expect some adverse effects on western burrowing owls from agricultural practices such as cultivation and herbicide and pesticide use, the Commission was not presented with information that would indicate agricultural practices are responsible for significantly depressing western burrowing owl numbers or otherwise endangering the species. To the contrary, the largest and most stable or

growing populations of western burrowing owls are found within areas under intensive agricultural use, including the Imperial Valley, southern San Joaquin Valley and Palo Verde Valley, suggesting that agricultural practices on balance do not seriously threaten western burrowing owls. The Department reported that while agricultural contaminants can affect western burrowing owls, recent research into western burrowing owl reproduction and survival in agricultural areas found no population-level effects on the species from pesticides. The Department of Food and Agriculture also stated that it has assessed the ecological risk from rodenticide use as "de minimus" and offered its opinion that such use would have no effect on western burrowing owl populations. The petition itself points out that grazing can have positive effects on western burrowing owl habitat by keeping grass at a level favored by western burrowing owls, while noting that some rangeland management practices may have negative effects on western burrowing owls such that the complete picture of grazing impacts are "unknown". In short, the Commission received little evidence that agriculture poses a serious danger to the western burrowing owl; in fact the weight of available evidence indicates the western burrowing owl is adaptive to agricultural settings and is generally doing better in agricultural regions than in non-agricultural settings.

The petition identified rodent control efforts, including the use of rodenticides, as a threat to the western burrowing owl. Information presented to the Commission clearly establishes the importance of ground squirrels to the continued health of western burrowing owl populations, since western burrowing owls rely heavily on burrows excavated by ground squirrels. Given the importance of ground squirrels to western burrowing owls, the Commission can conclude that eradication of ground squirrels from areas used by western burrowing owls, or even overzealous efforts to control ground squirrel populations, will harm western burrowing owls. But the Commission was not presented with evidence that ground squirrel control programs, on agricultural lands or elsewhere, have actually reduced squirrel numbers to the point that western burrowing owls are unable to find suitable burrows. Again, the stability of western burrowing owl populations in agricultural areas such as the Imperial Valley and Central Valley would suggest that rodent control programs have not seriously limited the western burrowing owls' use of agricultural lands.

Water transfers from Imperial Valley agriculture to San Diego municipal uses and possible future changes in agricultural practices were also cited in the petition as a threat to the large western burrowing owl population in the Imperial Valley. But the Commission believes the large number of western burrowing owls

in the Imperial Valley and their distribution over a very large area will mean that continued urban development and the recently approved water transfer between the Imperial Irrigation District and the San Diego County Water Authority do not pose a serious danger to the species. The pending transfer of water from Imperial Valley to San Diego will result in fallowing a small percentage of agricultural land within the region, and the Commission received evidence that fallowed agricultural land can provide habitat for the western burrowing owl. A large percentage of the state's western burrowing owls are found in the Imperial Valley and agricultural practices such as vegetation control along irrigation canals apparently supports western burrowing owls in greater numbers than would be expected in the absence of agriculture. But the Commission is not persuaded that because of this concentration of western burrowing owls in the Imperial Valley, the species is at serious risk from changes in agricultural land use practices. As stated in the Department's report, research in the 1970s showed similar demographic characteristics for Imperial Valley western burrowing owls as recent studies, suggesting stability over time. Although it is possible the future could bring widespread changes in Imperial Valley agricultural practices that could have an impact on western burrowing owls in the area, the Commission cannot anticipate what future agricultural practices will be or, of course, what those changes will mean for continued viability of the dense western burrowing owl populations in the area.

The petition discusses a number of other threats to the species, including but not limited to predation, disease, shrinking and isolated populations and vehicle strikes. The Commission has considered each of these, and has concluded that in light of all the available information, these threats do not individually or collectively pose a serious danger to the western burrowing owl's survival in California, now or in the foreseeable future. Western burrowing owls are habitat generalists that have adapted to suitable habitat in agricultural and urban settings. They respond favorably to management practices. The U.S. Fish and Wildlife Service stated in a 2003 conservation plan (as quoted by in the Department's evaluation report) that western burrowing owls in California have exhibited an "incredible tolerance for human encroachment and degradation of native habitats." The species has undoubtedly been adversely affected by some of the activities and threats identified in the petition, but there is not sufficient evidence that these impacts put the species at risk throughout significant portions of the state such that listing may be warranted.

5. After examining all the evidence presented to it, the Commission does not believe there is a substantial possibility that the San Francisco Bay

Area, central coast areas and coastal Southern California where the western burrowing owl is in greatest danger of local extinction constitute a "significant portion" of the species' range within the meaning of Fish and Game Code section 2062.

As noted above in the review of applicable legal standards, a species meets the statutory criteria for listing as endangered under CESA if it is presently "in serious danger of becoming extinct throughout all, or a significant portion, of its range. . ." (Fish & G. Code, § 2062). A species qualifies for listing as threatened if that serious danger is likely to materialize in the foreseeable future, but is not a present danger. (Fish & G. Code, § 2067). Therefore, the Commission must determine whether there is sufficient information to indicate that those areas in which the western burrowing owl is in present or future serious danger of extirpation may collectively represent a "significant portion" of the species' range.

The term is not defined by statute or regulation, nor does California case law guide this determination. Several federal courts have, however, interpreted the same term which appears in the statutory definitions of "endangered" and "threatened" species under the federal Endangered Species Act. In *Defenders of Wildlife et al. v. Norton et al.*, 258 F.3d 1136 (9th Cir. 2001), the court acknowledged that the determination as to what constitutes a significant portion of a species' range is necessarily one that must be made on a case by case basis (*id.* at 1143), and rejected the plaintiffs' argument that a projected loss of 82 percent of habitat for the flat-tailed horned lizard must constitute extinction throughout a significant portion of that species' range (*ibid.*).

. . . [I]t simply does not make sense to assume that the loss of a predetermined percentage of habitat or range would necessarily qualify a species for listing. A species with an exceptionally large historic range may continue to enjoy healthy population levels despite the loss of a substantial amount of suitable habitat. Similarly, a species with an exceptionally small historic range may quickly become endangered after the loss of even a very small percentage of suitable habitat.

(*Ibid.*) The court nonetheless went on to say that loss of the species' viability in "major geographic areas" can represent extinction throughout a significant portion of its range, ruling that the U.S. Interior Secretary failed to follow the law by not expressly considering whether the potential loss of lizard habitat on private lands would represent extinction throughout a significant portion of its range:

The Secretary necessarily has a wide degree of discretion in delineating "a significant portion of its range," since the term is not defined in the statute. But where, as here, it is on the record apparent that

the area in which the lizard is expected to survive is much smaller than its historical range, the Secretary must at least explain her conclusion that the area in which the species can no longer live is not a "significant portion of its range."

(*Id.* at 1145). In a similar case involving a federal decision to list the Canada lynx as "threatened" instead of "endangered," a district court again ruled against the government for not more fully explaining its "counterintuitive" determination that the potential extirpation of lynx from three of the four regions where it historically occurred in the contiguous states would not represent an extinction throughout a significant portion of its range. (*Defenders of Wildlife et al. v. Norton et al.*, 239 F.Supp.2d 9 (D.D.C. 2002).)

The petition calculated that breeding populations of western burrowing owls have been extirpated or nearly extirpated from *at least* 36.3 percent of the species' historic range in California, with extirpations covering 10.2 percent of the historic range and western burrowing owls on an additional 26.1 percent of the range "trending toward" extirpation. During the review period, the petitioners reduced their initial estimate by nearly 40 percent to say the species had been extirpated or nearly extirpated from 22 percent of its historic range in the state. Even this revised figure exaggerates the actual area of western burrowing owl habitat from which the western burrowing owl has been extirpated or is in serious danger of becoming extirpated. First, the petition overstates the areas of suitable habitat within the regions where the western burrowing owl has been extirpated or is threatened with extirpation. For example, the petition included all of Santa Clara and Monterey counties as lost habitat for the species despite the fact these counties have mountain and forest habitats that are not suitable for the western burrowing owl. The downward revision in the petitioners' estimates has reduced the magnitude of these errors, but not eliminated them.

In addition, as noted above, the petition also underreports the species' current range in California by omitting arid areas of the state from range calculations, which has the effect of greatly inflating the petition's estimate of the proportion of the range that has been lost or may be lost in the foreseeable future. The petition explained that these arid areas (which account for about 40 percent of the western burrowing owl's range in the state, according to the Department) were not computed as western burrowing owl habitat because "the species has never been common" in these areas. Of course, to say an area is sparsely populated by a species is not the same as saying that it is not habitat or is outside the range of the species, but that is just what the petition appears to be saying. If adjustments were made for these inaccuracies, the percentage of the western burrowing

owl's historic range in California that has been or may be lost in the foreseeable future would be significantly less than is claimed by petitioners.

Regardless of the percentage of range that may be lost in the foreseeable future, other factors are relevant to determining whether the potential losses represent a "significant portion" of the species' range in California. On this point, the Commission finds insufficient information and evidence at this time to support the contention that the areas in which the western burrowing owl has experienced the most significant declines constitute a significant portion of its range in California. No evidence was presented that the western burrowing owl populations that are in the areas most likely to experience local extinctions are genetically different from inland western burrowing owl populations that are healthy and stable. Such genetic differences would certainly make it more likely that a particular portion of the range would be significant. Similarly, the Commission was presented with no evidence that western burrowing owls breeding in imperiled coastal habitat are important to continued viability of western burrowing owls elsewhere. For example, no evidence is available that western burrowing owls reared in the threatened areas are breeding elsewhere in the state and helping to sustain or increase other populations. To the contrary, evidence suggests that many of the coastal regions where western burrowing owls are now most at risk have historically supported smaller, less dense populations than some of the areas farther inland.

The Commission also notes that the western burrowing owl's plight in these coastal areas is not significantly different than the plight of many other species of wildlife found in these areas. No species does well when its habitat is paved over. As California continues to grow, wildlife habitat will be lost to urban development. Listing may be warranted for some of the affected species, but where, as with the western burrowing owl, there is no evidence that incremental loss of habitat is creating serious danger of broader extinctions, the Commission is unable to find there is a substantial possibility that the species will be listed.

The Commission concludes that there is insufficient information and evidence at this time to support a contention that the coastal areas identified above where western burrowing owls have been extirpated or are most in danger of being extirpated represent a significant portion of the range in California. In reaching this conclusion, the Commission does not suggest there is no value in working to ensure that western burrowing owls and other species are maintained and conserved over as much of their historic ranges as possible. But the goal of conservation of

these animals does not allow the Commission to extend the protections of CESA when the legal standard for acceptance of a petition has not been met.

CONCLUSION

In summary, the Commission has weighed all the scientific and general evidence in the petition, the Department's evaluation report, and written and oral comments received from the public, and, based upon that weighing of the evidence, has determined that the petition provides insufficient evidence to indicate that the petitioned action may be warranted. As a result, the Commission cannot determine that the petitioned listing under CESA of western burrowing owl may be warranted, and concludes that, based on all the relevant and available information, there is not a substantial possibility that the western burrowing owl will be listed at the end of a one-year status review and candidacy period. Therefore, the petition is rejected.

**RULEMAKING PETITION
DECISIONS**

BOARD OF PRISON TERMS

California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 2, Board of Prison Terms

PETITIONER

Bradley Hart's petition was received by the Board of Prison Terms (Board) on January 8, 2004.

AUTHORITY

Under authority established in Penal Code (PC) Sections (§§) 3041, 3052 and 5076.2, the Board may prescribe and amend regulations for the administration of parole.

CONTACT PERSON

Please direct any inquiries regarding this action to Lori Manieri, Regulations Coordinator, Board of Prison Terms, by mail at 1515 "K" Street, Sixth Floor, Sacramento, CA 95814, by telephone at (916) 445-5277, by telefax at (916) 322-3475, or by E-mail to: "regcomment@bpt.ca.gov".

AVAILABILITY OF PETITION

The petition for amendment of the regulations is available upon request directed to the Board's contact person.

SUMMARY OF PETITION

The petition submitted to the Board pursuant to Government Code section § 11340.6 declares that existing Code of Regulations (CCR) § 2870, is unclear and inconsistent with the treaties governing the transfer of foreign prisoners to their countries of origin to serve their California prison sentences.

BOARD DECISION

Government Code section 12012.1 identifies California's authority to transfer prisoners to their countries of origin, "upon the application of a person under the jurisdiction of the Department of Corrections, the Department of the Youth Authority, and the State Department of Health Services."

Penal Code § 2912(b)(1) states, in part, that "The Board of Prison Terms shall actively encourage each eligible undocumented felon to apply for return to his or her country of origin as provided in federal treaties. . . ."

The Board's regulations (CCR § 2870) implement such policy while ensuring that the goals of the Treaty have been met. Pursuant to CCR § 2870, the chairperson will consider whether to approve or disapprove a prisoner's transfer after determining the specific factors set forth in the Treaty.

The prisoner's contentions are without merit. The United States has entered into several transfer treaty agreements based upon the Inter-American Convention on Serving Criminal Sentences Abroad (Treaty), negotiated between the Countries and the United States Department of State. The actual transfer responsibility is administered by the Department of Justice, Office of Enforcement Operations.

There are three basic criteria that must be satisfied before any prisoner can be transferred: 1) prisoners may only be transferred to and from those countries with which the United States has a treaty; 2) both the sending country and the receiving country must agree to the transfer; and 3) the prisoner must give his consent to the transfer. Each transfer request is given individual consideration based upon those criteria, in addition to the specific factors set forth in Article V, § 6 of the Treaty, which states that in making a decision on a transfer, the states parties may consider, *among other factors*:

- "(1) The possibility of contributing to the person's social rehabilitation; the gravity of the offense; the criminal record of the sentenced person; the state of health of the sentenced person; and the family, social, or other ties the sentenced person may have in the sentencing state and the receiving state."

The Board's regulations (CCR § 2870) include all of the express factors stated in the Treaty (Article V, § 6) when considering a prisoner for transfer, in

addition to any discretionary factors to be considered prior to a transfer agreement.

Based on the foregoing, the petition's contentions that the Board's regulations (CCR § 2870) do not follow the terms of the Treaty are without merit, and thus, the petition is denied.

DEPARTMENT OF CONSERVATION

February 2, 2004

Ms. Danielle Carrington
Recycling Services Centers
P.O. Box 464
Mira Loma, CA 91752

Dear Ms. Carrington:

Thank you for your letter dated January 15, 2004, regarding your request (petition) to amend regulations relating to the Beverage Container Recycling Program. The Department of Conservation, Division of Recycling (DOR) appreciates the interest and concern you have expressed in this petition. The issues you raised in your letter are of immediate interest to California's beverage container recycling program and I believe the remedy you have suggested is a step in the right direction.

Pursuant to Government Code Sections 11340.6 and 11340.7 of the California Administrative Procedure Act, your letter as a petition to amend DOR regulations is accepted. I agree that the recycling center receipting requirement regulations should be amended to conform to recent changes to California statutes by the passage of AB 28 (Chapter 753), Statutes of 2003).

In accordance with Government Code Section 11340.7(d), regulatory changes will be prepared and transmitted to the Office of Administrative Law for publication in the California Notice Register. This action starts a forty-five (45) day period in which the public may make comments relating to the proposed regulations. My staff will inform you when the Department proposes to adopt amended regulations and the start of the public comment period, including the date for a public hearing, if requested, on this matter.

Thank you for bringing this issue to my attention and suggesting a solution to a problem recycling centers face with this new law. If you have any questions regarding proposed regulations or the regulatory process, please feel free to contact me directly at (323-3836), or you may contact Kent Harris of my staff at (916) 324-3209.

Sincerely,

Jim Ferguson
Assistant Director
for Recycling

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

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

AIR RESOURCES BOARD

Fees for Stationary Sources, Consumer Products

This rulemaking action, which implements AB 10X (Stats. 2003, ch. 1X), provides for the Executive Officer to assess annual fees (1) on facilities authorized by local air district permits to emit 250 or more tons per year of any nonattainment pollutant or its precursors and (2) on manufacturers of consumer products and architectural coatings whose total sales will result in emissions of volatile organic compounds in California of 250 tons per year or greater. The action provides for the collection of the emission fees on a dollar-per-ton basis, the recovery of administrative costs by the districts if they choose to collect the fees from facilities, and the imposition of additional fees on sources that do not pay in a timely manner.

Title 17

California Code of Regulations

ADOPT: 90800.75, 90800.9, 90804 AMEND:
90800.8, 90801, 90802, 90803

Filed 02/05/04

Effective 02/05/04

Agency Contact:

Robert C. Jenne

(916) 322-2884

BOARD OF EDUCATION

Regular Average Daily Attendance for Charter Schools

This rulemaking action provides that a pupil over the age of 19 years may generate attendance for apportionment purposes in a charter school only if the pupil was enrolled in public school in pursuit of a high school diploma or in keeping with an individualized education plan while 19 years of age, is enrolled in a charter school without a break in public school enrollment since that time, and is not over the age of 22 years.

Title 5

California Code of Regulations

AMEND: 11960

Filed 02/10/04
 Effective 03/11/04
 Agency Contact: Debra Strain (916) 319-0641

CALIFORNIA GAMBLING CONTROL COMMISSION

Emergency Preparedness and Evacuation Plan

This rulemaking action readopts an emergency regulation that requires the owner of a cardroom gambling establishment to develop and implement an emergency preparedness and evacuation plan to protect employees and patrons in the event of a natural disaster, critical event, or other emergency. Failure to develop a suitable plan may result in denial of an application for renewal, suspension, or revocation of a license, and a civil penalty. The emergency regulation allows the smallest cardrooms to submit simpler plans, appropriate for the size of these establishments and the number of patrons and employees.

Title 4
 California Code of Regulations
 ADOPT: 12370, 12371
 Filed 02/05/04
 Effective 02/05/04
 Agency Contact: Herb Bolz (916) 263-0700

CALIFORNIA GAMBLING CONTROL COMMISSION

Proposition Player and Gambling Business Registration

This nonsubstantive action corrects, amends, or updates various authority and reference citations.

Title 4
 California Code of Regulations
 AMEND: 12202, 12212, 12213, 12220, 12221, 1222, 12223, 12224, 1225, 12226, 12227, 12228, 12229, 12230, 12231, 12232
 Filed 02/05/04
 Effective 02/05/04
 Agency Contact: Herb Bolz (916) 263-0700

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Changes in Operation

The California Integrated Waste Management Board (Board) is amending sections 21620 and 21665, title 27, California Code of Regulations. They are currently withdrawing their amendment to section 21650, title 27, California Code of Regulations. The Board administers the California Integrated Waste Management Act of 1989, which established an integrated solid waste management program. The Law prohibits the operation of a solid waste facility without a solid waste facility permit and requires the operator of a solid waste landfill to submit to the Board and the Enforcement Agency a plan for the closure and postclosure maintenance of the solid waste landfill and

the evidence of financial ability to provide for these costs. Further, existing law prohibits the operator of a solid waste facility from making any significant change in the design or operation of the solid waste facility not authorized by the existing permit, unless the change is approved by the Enforcement Agency, pursuant to a specified procedure. The amendment to section 21620 is increasing the number of days an applicant is required to file an amendment to an RFI (Report of Facility Information) from 150 days to 180 days prior to the proposed change (Stats. 2003, Ch. 823; Public Resources Code section 44004(b).) Section 21650 was withdrawn subject to further review. Section 21665 provides for editorial corrections.

Title
 California Code of Regulations
 AMEND: 21620, 21650, 21665
 Filed 02/05/04
 Effective 02/05/04
 Agency Contact: Robert Holmes (916) 341-6376

**DEPARTMENT OF FOOD AND AGRICULTURE
 Mexican Fruit Fly Interior Quarantine**

The regulatory action is the Certificate of Compliance for the Emergency regulatory action that removed approximately 130 square miles in the Valley Center area of San Diego County from the quarantine area for the Mexican Fruit Fly. (Prior OAL File 03-0923-02E; Food and Agriculture File PH0401.)

Title 3
 California Code of Regulations
 AMEND: 3417(b)
 Filed 02/05/04
 Effective 02/05/04
 Agency Contact: Stephen Brown (916) 654-1017

**DEPARTMENT OF PERSONNEL
 ADMINISTRATION**

Hearings

In this regulatory action, the Department of Personnel Administration amends its regulations pertaining to the agency's appeal and hearing procedures.

Title 2
 California Code of Regulations
 ADOPT: 599.893, 599.898, 599.906, 599.907, 599.909 AMEND: 599.894, 599.895, 599.896, 599.898 (renumbered to 599.897), 599.903, 599.904, 599.905, 599.906 (renumbered to 599.908), 599.910
 Filed 02/09/04
 Effective 02/09/04
 Agency Contact: Myrna Gregory (916) 322-3748

FISH AND GAME COMMISSION
Designation of Special Area Regulations

In this regulatory action, the Fish and Game Commission amends its regulation pertaining to "Ecological Reserves," adding new ecological reserves and adding and amending a number of special area regulations.

Title 14
 California Code of Regulations
 AMEND: 630
 Filed 02/09/04
 Effective 03/10/04
 Agency Contact: Robert Treanor (916) 653-4899

SECRETARY OF STATE
Standards for Proof of Residency When Proof is Required by HAVA

In this emergency regulatory action, the Secretary of State sets forth standards for proof of voter residency or identity at the time of voting where required under the Help America Vote Act of 2002.

Title 2
 California Code of Regulations
 AMEND: 20107
 Filed 02/05/04
 Effective 02/05/04
 Agency Contact: Regulation Coordinator

**CCR CHANGES FILED WITH THE
 SECRETARY OF STATE
 WITHIN OCTOBER 8, 2003
 TO FEBRUARY 11, 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 Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

02/09/04 ADOPT: 599.893, 599.898, 599.906, 599.907, 599.909 AMEND: 599.894, 599.895, 599.896, 599.898 (renumbered to 599.897), 599.903, 599.904, 599.905, 599.906 (renumbered to 599.908), 599.910
 02/05/04 AMEND: 20107
 01/23/04 ADOPT: 18531.6 AMEND: 18531.61
 01/22/04 AMEND: 18707.5
 01/15/04 ADOPT: 599.516
 01/15/04 AMEND: 2270, 2271
 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: 22100, 22110, 22120, 22130
 12/01/03 ADOPT: Division 8, Chapter 106, Section 59500
 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 ADOPT: 649.23, 649.24, 649.25, 649.26, 649.27, 649.28
 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
 10/09/03 AMEND: 1555
 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

Title 3

02/05/04 AMEND: 3417(b)
 01/27/04 ADOPT: 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857
 01/14/04 ADOPT: 6450, 6450.1, 6450.2, 6450.3, 6784 AMEND: 6000 REPEAL: 6450, 6450.1, 6450.2, 6450.3, 6784
 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: 3417(b)
 10/27/03 AMEND: 3423 (b)

CALIFORNIA REGULATORY NOTICE REGISTER 2004, VOLUME NO. 8-Z

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)

Title 4

02/05/04 AMEND: 12202, 12212, 12213, 12220, 12221, 1222, 12223, 12224, 1225, 12226, 12227, 12228, 12229, 12230, 12231, 12232

02/05/04 ADOPT: 12370, 12371

01/22/04 AMEND: 1371 REPEAL: 1373.1

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

Title 5

02/10/04 AMEND: 11960

02/03/04 ADOPT: 853.5 AMEND: 850, 852, 853, 589

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

Title 8

02/03/04 AMEND: 1712

02/02/04 ADOPT: 32017, 32018, 51096, 71010, 71026, 71027, 71030, 71035, 71040, 71050, 71055, 71060, 71070, 71080, 71090, 71095, 71100, 71110, 71115, 71120, 71130, 71140, 71200, 71210, 71225, 71230, 71235, 71300, 71310, 71320, 71330, 71340, 71680, 71685, 71700, 71

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

Title 9

11/18/03 ADOPT: 1840.112 AMEND: 1830.215

Title 10

01/16/04 AMEND: 260.102.14

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: 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 REPEAL: 4081, 4081.1, 4081.2, 4081.3, 4081.4, 4081.5, 4081.6, 4081.7, 4081.8

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: 4620

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: 4035, 4036, 4037, 4038
- 12/26/03 REPEAL: 4610, 4611, 4612, 4613, 4614,
4615, 4616, 4617, 4618, 4619
- 12/26/03 REPEAL: 4550, 4551, 4552, 4553
- 12/26/03 AMEND: 4070, 4071, 4072, 4073, 4074
REPEAL: 4070, 4071, 4072, 4073, 4074
- 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

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

Title 13

- 01/26/04 AMEND: 553.70
- 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: 225.48
- 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,
- 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

- 02/09/04 AMEND: 630
- 02/02/04 AMEND: 112
- 01/23/04 AMEND: 27.60, 27.82, 27.83, 28.26,
28.27, 28.28, 28.29, 28.54, 28.55, 28.58
- 01/15/04 AMEND: 150.06(c)
- 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)
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