



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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 proposes to adopt Chapter 7, Subchapter 1, Sections 4600–4603, pertaining to Service Charges for non-regulatory services provided by the Department, in Title 3, Division 4, of the Code of Regulations.

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.

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 August 26, 2002.

INFORMATIVE DIGEST//POLICY STATEMENT OVERVIEW

Existing law provides that the Department, for the purpose of enhancing the State’s business and trade opportunities, may, upon request, perform non-regulatory services such as export market phytosanitary and product quality analyses, diagnostics, inspections and testing relating to nursery stock, plants, seeds, or plant pests and diseases. The Department may also establish charges sufficient to recover its costs for providing non-regulatory services (Food and Agricultural Code, Section 5851). Existing law also provides that the Department may establish, by regulation, a schedule of charges to cover the Department’s costs for the specific services it provides. Existing law also provides that regulations establishing charges adopted by the Secretary shall not be subject to review, approval, or disapproval by the Office of Administrative Law (Food and Agricultural Code, Section 5852).

The proposed action will establish Chapter 7, Miscellaneous Rulings; Subchapter 1, Service Charges; and, Sections 4600 through 4603, the general provisions, disclaimer of liability and financial responsibility, payment for services provided and schedule of charges for the types of non-regulatory services the Department may provide. The effect of the proposed regulations will be to provide authority for the Department to recover its costs for providing requested non-regulatory services and to enable the client that requests the service to understand the Department’s costs, billing procedures and timeframes for rendering the services.

The proposed action does not differ from any existing comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that the proposed adoption of Chapter 7, Subchapter 1, and Sections 4600 through 4603 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 proposes to adopt Chapter 7, Subchapter 1, and Sections 4600 through 4603 pursuant to the authority vested by Sections 407, 5851 and 5852 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes to adopt Chapter 7, Subchapter 1, and Sections 4600 through 4603 to implement, interpret and make specific Sections 5851 and 5852 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The adoption 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, the final statement of reasons is available upon request. Requests should be directed to the contact named herein.

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

TITLE 5. COMMISSION ON TEACHER CREDENTIALING

Proposed Amendments to Section 80054 of Title 5, California Code of Regulations, Pertaining to the Requirements for the Administrative Services Credential

The California Commission on Teacher Credentialing proposes to amend regulatory action described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

A public hearing on the proposed actions will be held:

September 5, 2002
10:00 a.m.
California Commission on Teacher Credentialing
1900 Capitol Avenue
Sacramento, California 95814

Oral comments on the proposed action will be taken at a public hearing. We would appreciate 14 days advance notice in order to schedule sufficient time on the agenda for all speakers. Please contact Terri H. Fesperman at 916-323-5777 regarding this. Any person wishing to submit written comments at the public hearing may do so. It is requested, but not required, that persons submitting such comments provide fifty copies to be distributed to the commissioners and interested members of the public. All written statements submitted at the hearing will, however, be given full consideration regardless of the number of copies submitted.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by e-mail on the proposed action. The written comment period closes at 5:00 p.m. on September 4, 2002. Comments must be received by that time or may be submitted at the public hearing. You may fax your response to (916) 322-0048; write to the California Commission on Teacher Credentialing,

attn. Terri H. Fesperman, 1900 Capitol Avenue, Sacramento, California 95814-4213; or submit an email at tfesperman@ctc.ca.gov.

Any written comments received 14 days prior to the public hearing will be reproduced by the Commission's staff for each Commissioner as a courtesy to the person submitting the comments and will be included in the written agenda prepared for and presented to the full Commission at the hearing.

AUTHORITY AND REFERENCE

Education Code Section 44225 authorizes the Commission to adopt the proposed action, which will implement, interpret or make specific Sections 44270 and 44270.1 of the Education Code and govern the procedures of the Commission.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

Education Code Section 44225 provides that the Commission may promulgate rules and regulations. Sections 44270 and 44270.1 list the requirements for the preliminary and professional clear Administrative Services Credential.

80054(a)(5)(A) Staff is proposing that the Commission allow applicants prepared in California to submit verification of completion of the requirements from an accredited Administrative Services Credential program. Removing the wording of requiring a recommendation from a California college or university allows for both the California colleges and universities and alternative providers to verify completion of the requirements for the preliminary credential.

The Education Code specifies requirements for the Administrative Services Credential. The current Title 5 Regulations governing preparation for the Administrative Services Credential are, in some cases, more restrictive than current statute because they allow only for preparation in California through a college or university program. To authorize alternative, standards-based routes to the credential, including preparation offered by local school districts, current Title 5 regulations need to be revised to conform with the Education Code, which does not exclude alternative providers. The proposed changes to Title 5 § 80054 allows for alternative, standards-based routes to the credential, including preparation offered by local school districts.

Documents Incorporated by Reference

None

Documents Relied Upon in Preparing Regulations

None

DISCLOSURES REGARDING THE PROPOSED ACTIONS

The Commission has made the following initial determinations:

Mandated costs to local agencies or school districts: None

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

Cost or savings to any state agency: None.

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

Significant effect on housing costs: None.

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

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with Section 17500) of the Government Code.

Cost impacts on a representative private persons 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.

Assessment regarding the creation or elimination of jobs in California [Govt. Code § 11346.3(b)]: The Commission has made an assessment that the proposed amendments to the regulation would not (1) create nor 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.

Effect on small businesses: The Commission has determined that the proposed amendment to the regulations does not effect small businesses. The regulations are not mandatory but an option that effects school districts and county offices⁰ of education.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative it considered 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 or small businesses than the proposed action. Interested individuals may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSON/FURTHER INFORMATION

General or substantive inquiries concerning the proposed action may be directed to Terri H. Fesperman by telephone at (916) 323-5777 or Terri H. Fesperman,

California Commission on Teacher Credentialing, 1900 Capitol Ave, Sacramento, CA 95814. General question inquiries may also be directed to Rhonda Stearns at (916) 323-7140 or at the address mentioned in the previous sentence. Upon request, a copy of the express terms of the proposed action and a copy of the initial statement of reasons will be made available. This information is also available on the Commission's web site at www.ctc.ca.gov In addition, all the information on which this proposal is based is available for inspection and copying.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice of Register, the rulemaking file consists of this notice, the proposed text of regulations, and the initial statement of reasons.

MODIFICATION OF PROPOSED ACTION

If the Commission proposes to modify the actions hereby proposed, the modifications (other than non-substantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, after the public hearing. When it is available, it will be placed on the Commission's web site at www.ct.ca.gov or you may obtain a copy by contacting Terri H. Feserman at (916) 323-5777.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations in underline and strikeout can be accessed through the Commission's web site at www.ct.ca.gov.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

(DEPARTMENT OF INDUSTRIAL RELATIONS)
PRIMARY TREATING PHYSICIAN REPORTING REQUIREMENTS; PETITION FOR CHANGE OF PRIMARY TREATING PHYSICIAN

TITLE 8, CALIFORNIA CODE OF REGULATIONS

SECTIONS 9785, 9785.2, 9785.3, 9786, AND 9787.

PROPOSED REGULATORY ACTIONS

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compen-

sation, pursuant to the authority vested in him by Labor Code Sections 133, 4061.5, 4603.2, 4603.5, 4627 and 5307.3, proposes to amend regulations contained in Title 8, California Code of Regulations, Sections 9785, 9785.2, 9785.3, 9786, and 9787.

The regulations concern the reporting duties of the primary treating physician, the "Primary Treating Physician's Progress Report" form (DWC Form PR-2), the "Primary Treating Physician's Permanent and Stationary Report" form (DWC Form PR-3), the Petition for Change of Primary Treating Physician process before the Administrative Director, and appeals from the Administrative Director's decisions on Petitions for Change of Primary Treating Physician.

TIME AND PLACE OF PUBLIC HEARING

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

Date: September 13, 2002
Time: 10:00 AM
Place: Auditorium
Gov. Hiram W. Johnson
State Office Bldg.
455 Golden Gate Avenue
San Francisco, CA 94102

The public hearing room is wheelchair accessible. Persons requiring additional accommodation of a disability are requested to alert the contact person identified below.

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

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

AUTHORITY AND REFERENCE

The Administrative Director of the Division of Workers' Compensation is undertaking this regulatory action pursuant to the authority vested in the Administrative Director by Labor Code sections 133, 139.5, 4061.5, 4603, 4603.2, 4603.5, 4627, and 5307.3, to modify existing regulations. Reference is to Labor Code sections 4061, 4061.5, 4062, 4600, 4600.3, 4603, 4603.2, 4636.

INFORMATIVE DIGEST AND POLICY STATEMENT OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes to amend provisions in the primary treating physician reporting require-

ments to clarify when an employee may change his or her primary treating physician, and to clarify the process which must be followed when a party disputes a medical determination made by the primary treating physician.

Amendments are proposed to clarify the reporting obligations of the primary treating physician, including but not limited to the service and formats of required reports.

Amendments are proposed to existing regulations dealing with "Petitions for Change of Primary Treating Physician," to clarify the grounds for filing Petitions for Change of Primary Treating Physician, and to clarify the procedures for filing and responding to these petitions.

Amendments are proposed to the "Primary Treating Physician's Progress Report" form (DWC Form PR-2), to substitute the term "released from care" for the term "discharged," and to clarify when the DWC Form PR-2 is being used by the primary treating physician to respond to a request for additional information.

Amendments are proposed to the "Primary Treating Physician's Permanent and Stationary Report" form (DWC Form PR-3), to avoid ambiguity regarding a physician's description of an employee's subjective factor of disability. The "subjective findings" portion of the DWC Form PR-3 is amended by deleting the graph in current form, which describes the frequency and severity of subjective complaints, and by allowing the primary treating physician to write a narrative description of the employee's subjective complaints. Further, the DWC Form PR-3 is amended to direct the primary treating physician to address the need for continuing medical treatment. The current form only addresses the need for future medical treatment.

Amendments are proposed to the existing regulation dealing with an appeal from an Administrative Director's decision on a Petition for Change of Primary Treating Physician to conform the time for appeal with Section 10950 of the Workers' Compensation Appeals Board's (Appeals Board) Rules of Practice and Procedure, which is currently being amended.

1. Proposed Amendments to Section 9785.

Labor Code section 4600 provides that "[a]fter 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice. . . ." Labor Code section 4061.5 requires a primary treating physician to render opinions on all medical issues necessary to determine the employee's eligibility for compensation in compliance with

regulations promulgated by the Administrative Director. Labor Code sections 4061 and 4062 specify procedures to be followed when a party disputes a medical determination of the treating physician.

Proposed amendments to Section 9785 clarify when an employee may change his or her primary treating physician, and further clarify the process which must be followed when disputes arise regarding medical determinations made by the primary treating physician.

Further, proposed amendments to Section 9785 clarify the reporting requirements of the primary treating physician with respect to the obligations regarding the service of the reports, the dates for submission of the reports, and appropriate format of the reports.

Section 9785(a):

This subdivision defines key terms used in this regulation to ensure the meaning will be clear to the regulated public. The proposed amendments in this subdivision will clarify terms used in the current regulation and further define key terms that are contained in the proposed amendments.

9785(a)(2): The term "secondary physician" is amended for consistency purposes to delete the word "injured," when referring to the term "employee."

9785(a)(4): The term "medical determination" defines when the primary treating physician makes a medical decision which affects the employee's eligibility for compensation.

9785(a)(5): The term "released from care" defines the point in time when the primary treating physician makes a medical determination that the employee's condition is permanent and stationary without need for continuing or future medical treatment.

9785(a)(6): The term "continuing medical treatment" defines presently planned treatment that in the opinion of the primary treating physician is reasonably required to cure or relieve the employee from the effects of the injury.

9785(a)(7): The term "future medical treatment" defines medical treatment which in the opinion of the primary treating physician may be required or anticipated in the future.

9785(a)(8): The term "permanent and stationary status" defines a point in time when the employee in the opinion of the primary treating physician has reached maximum medical improvement.

Section 9785(b)

9785(b)(1): This subpart sets forth the requirement that an employee may not have more than one primary treating physician at the same time.

9785(b)(2): This subpart clarifies that an employee may change primary treating physicians at any time provided the primary treating physician has determined that the employee is in need of continuing or future medical treatment.

9785(b)(3): This subpart sets forth the requirement that if an employee disputes a medical determination made by the primary treating physician, including a determination that the employee should be released from care, the dispute must be resolved under the applicable procedures set forth in Labor Code sections 4061, 4062. This subpart further sets forth the requirement that the employee may not designate a new primary treating physician until the dispute is resolved.

9785(b)(4): This subpart sets forth the requirement that if the claims examiner disputes a medical determination made by the primary treating physician, the dispute must be resolved under the applicable procedures set forth in Labor Code sections 4061, 4062. This subpart further sets forth the requirement that the employee may designate a new primary treating physician during the course of such procedures, provided the primary treating physician has determined that there is need for continuing or future medical treatment.

Section 9785(c)

This subdivision is amended to reflect that the primary treating physician must send a copy of the required reports under this section to the employee in addition to the claims administrator. This subdivision is further amended to clarify that if the employee is known to be represented by an attorney, the treating physician must send the employee's copy of the report to the employee's attorney. This subdivision is also amended to clarify the last sentence of the subdivision to reflect that a claims administrator may designate any person or entity to be the recipient of its copy of the required treating report.

Section 9785(d)

This subdivision is corrected for clerical error to substitute the word "subdivisions" for the word "subsections."

This subdivision is further amended to clarify that the primary treating physician may transmit reports to the employee, or to the employee's attorney if represented, in addition to the claims administrator, by mail or FAX or by any other means satisfactory to the claims administrator, employee or employee's attorney, including electronic transmission.

Section 9785(e)

9785(e)(2): This subpart is amended to clarify that each new primary treating physician shall submit a

Form DLSR 5021 following the initial examination in accordance with subdivision (e)(1).

9785(e)(3): This subpart is amended for consistency purposes to delete the word "injured" when referring to the term "employee."

9785(e)(4): This subpart is amended to clarify that the primary treating physician is required to promptly incorporate, or comment upon, the findings and opinions of secondary physicians in the treating reports. This subpart is further amended to require the primary treating physician to submit the secondary physicians' reports to the employee, or to the employee's attorney if represented, in addition to the claims administrator.

Section 9785(f)

This subdivision is amended to reflect that the primary treating physician is required to submit reports to the employee, or to the employee's attorney if represented, in addition to the claims administrator, when certain enumerated conditions occur.

9785(f)(5): This subpart is amended for clarification purposes to substitute the term "released from care" for the term "discharged."

9785(f)(7): This subpart is amended for clarification purposes to substitute the term "claims administrator" for "employer." This subpart is further amended to clarify that the requested additional information must be necessary to administer the claim. The phrase "necessary" information is defined as that information which directly affects the provision of compensation benefits as defined in Labor Code Section 3207.

9785(f)(8): This subpart is amended for consistency purposes to substitute the word "continuing" for the word "ongoing." The subpart is further amended to require the primary treating physician to sign and transmit a treating report to the appropriate parties within 20 days of the examination when an examination has been performed.

This subpart is also amended to specify that a response to a request for information made pursuant to Section 9785(f)(7) may be made in letter format. Further, this subpart is amended to require that a letter format response to a request for information made under Section 9785(f)(7), in addition to a narrative report under Section 9785(f)(8), must contain the same declaration under penalty of perjury as contained in the DWC Form PR-2, to wit: "I declare under penalty of perjury that this report is true and correct to the best of my knowledge and that I have not violated Labor Code § 139.3."

Section 9785(g)

This subdivision is amended to require that the primary treating physician promptly issue the permanent and stationary report required under this subdivi-

sion. This subdivision is further amended for clerical error to add the word “and” in the first sentence of the subdivision.

Note: Authority Cited: Sections 139.5, 4061.5, 4603.2, 4603.5 and 5307.3, Labor Code. Reference: Sections 4061, 4061.5, 4062, 4600, 4603.2 and 4636, Labor Code.

2. Proposed Amendments to Section 9785.2

Section 9785.2

Primary treating physicians are required to submit treatment reports using either the Primary Treating Physician’s Progress Report form (DWC Form PR-2) set forth in Section 9785.2, or in a narrative format meeting specified content and format requirements. The DWC Form PR-2 is amended for consistency purposes to substitute the term “released from care” for the term “discharged.” The DWC Form PR-2 form is amended to clarify when the primary treating physician is using the DWC Form PR-2 to submit a response to a request for information under Section 9785(f)(7). The DWC Form PR-2 may be used by checking the box indicating “Response to request for information,” and by filling in the appropriate information in the DWC Form PR-2 in response to the request for information, and/or by attaching additional pages to the DWC Form PR-2, if necessary.

Note: Authority cited: Sections 139.5, 4061.5, 4603.2, 4603.5, and 5307.3, Labor Code. Reference: Sections 4061.5, 4600, 4603.2 and 4636, Labor Code.

3. Proposed Amendments to Section 9785.3

Section 9785.3

Primary treating physicians may submit their permanent and stationary reports using the Primary Treating Physician’s Permanent and Stationary Report form (DWC Form PR-3) as set forth in Section 9785.3. Page 3 of the DWC Form PR-3 form currently contains a graph which the primary treating physician uses in describing the employee’s subjective complaints to be used in rating the employee’s disability. It has been determined that this graph, describing frequency and severity of symptoms, causes confusion which may result in the mischaracterization of the employee’s subjective factors of disability. The PR-3 is amended by deleting the graph, and by allowing the primary treating physician to write a narrative description of the subjective symptoms. The introductory language under “precipitating activity,” is also amended to clarify when a specific activity may affect the subjective factors.

Further, the PR-3 form is amended to facilitate the reporting of a determination that the employee may need continuing medical treatment and/or need for future medical treatment. Continuing medical treatment is defined as treatment presently planned, and

future medical treatment is defined as treatment which is not presently planned but may be required or anticipated at some time in the future.

Note: Authority cited: Sections 139.5, 4061.5, 4603.2, 4603.5, and 5307.3, Labor Code. Reference: Sections 4061.5, 4600, 4603.2 and 4636, Labor Code.

4. Proposed Amendments to Section 9786

Section 9786

Labor Code section 4603 requires a claims administrator desiring a change of primary treating physician to file a Petition for Change of Primary Treating Physician with the Administrative Director. Section 9786 sets forth the procedures for filing a Petition for Change of Primary Treating Physician, and what constitutes good cause for granting such petition.

Section 9786(b)

9786(b)(1): This subpart is amended to add that good cause can be established by showing that the primary treating physician failed to comply with the permanent and stationary report requirements of Section 9785(g).

9786(b)(2): This subpart is amended to specify that where good cause to grant a petition is based upon the failure of a primary treating physician to comply with Section 9785(f)(8) by failing to submit timely or complete progress reports on two or more occasions, those failures must have occurred within the 12-month period immediately preceding the filing of the petition.

9786(b)(3): This subpart is amended to clarify that good cause to grant a petition includes a clear showing that the current treatment is not consistent with the treatment plan submitted pursuant to Section 9785, subdivisions (e) or (f).

Section 9786(c)

This subdivision is amended to number the first two paragraphs, and to add two more paragraphs clarifying what constitutes good cause for granting a Petition for Change of Primary Treating Physician.

9786(c)(3): This subpart is added to require that when an allegation of good cause is based upon failure to timely issue the Doctor’s First Report of Occupational Injury or Illness pursuant to Section 9785, subdivisions (e)(1) or (e)(2), the petition setting forth such allegation must be filed within 90 days of the initial examination.

9786(c)(4): This subpart is added to require that failure to verify a letter response to a request for information pursuant to Section 9785(f)(7), failure to verify a narrative report pursuant to Section 9785(f)(8), or failure of the narrative report to conform to the format requirements of Section 9785(f)(8) does not constitute good cause to grant the petition unless the claims administrator submits documentation show-

ing that the physician was notified of the deficiency in the reporting, and was allowed a reasonable time to correct the deficiency.

Section 9786(d)

This subdivision is amended to clarify that the employee, his or her attorney, and/or the primary treating physician may file a response to the Petition for Change of Primary Treating Physician with the Administrative Director. This subdivision is further amended to allow the responding party to include supportive documentary evidence relevant to the specific allegations raised in the petition to be filed with the response. Also this subdivision is amended to clarify that, unless good cause is shown to the contrary, the Administrative Director will not consider any other documents filed except for the Petition for Change of Primary Treating Physician, the response, and any supportive documentary evidence filed with the petition and the response.

Section 9786(h)

This subdivision is deleted as no longer applicable.

Note: Authority Cited: Sections 133, 139.5, 4603, 4603.2, 4603.5 and 5307.3, Labor Code. Reference: Sections 4600, 4603, and 4603.2, Labor Code.

5. Proposed Amendments to Section 9787

Section 9787

Section 9787 currently provides that an order denying or granting the claim's administrator's petition is final and binding unless the aggrieved party files an appeal with the Appeals Board, within 30 days from service of the decision in a manner prescribed by the Appeals Board pursuant to Section 10950.

Amendments are proposed to this section to conform with Section 10950 of the Board's Rules of Practice and Procedure which are being amended to require that the appeal be filed within 20 rather than 30 days from service of the decision.

STATE REIMBURSABLE MANDATE

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

COST OR SAVINGS TO LOCAL AGENCIES OR SCHOOL DISTRICTS

The regulations proposed herein will not impose additional costs on local agencies and school districts.

OTHER NON-DISCRETIONARY COST OR SAVINGS IMPOSED UPON LOCAL AGENCIES

None.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations will not impose additional costs or savings on State agencies.

COST OR SAVINGS IN FEDERAL FUNDING TO STATE

The proposed regulations will not affect any federal funding.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS/ABILITY TO COMPETE

The Administrative Director made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The amendments do not impose new fees or significant costs on either claims administrators or physicians.

ECONOMIC IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Administrative Director has determined that the proposed regulations will not have an adverse economic impact on private persons or businesses. There may be some savings due to clarification of procedures for changes of primary treating physicians and for filing petitions for changes of primary treating physicians because appeals related to procedural errors should be reduced. There will be insignificant cost increase on treating physicians who will be required to mail out one additional copy of the treatment report to the employee or his or her attorney. As a practical matter, many or most physicians probably already send a copy of the report to the patient's attorney.

ECONOMIC IMPACT ON SMALL BUSINESSES

The Administrative Director has determined that the proposed regulations may affect certain physicians and medical groups who fall within the definition of "small businesses" under Government Code Section 11342(h). The Administrative Director has further determined that the proposed regulations will not have an adverse economic impact on small businesses. Very small costs will be incurred by physicians to mail one extra copy of treatment reports.

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

The Administrative Director has determined that the proposed regulations will have no effect on the creation or elimination of jobs or existing businesses within California, or affect the expansion of current California businesses.

IMPACT ON HOUSING COSTS

The proposed regulations will have no effect on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Administrative Director would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. No other alternatives have been identified by the Administrative Director to date.

AVAILABILITY OF TEXT OF PROPOSED
REGULATIONS, NOTICE AND STATEMENT OF
REASONS/INTERNET ACCESS

An Initial Statement of Reasons has been prepared for the proposed regulations, in addition to the Informative Digest included in this Notice. The Initial Statement of Reasons, the Notice, and the text of the proposed regulations will be available for inspection or a copy will be provided upon request. Please address all such requests to the contact person identified below. In addition, the Initial Statement of Reasons, the Notice, including the Informative Digest, and the text of the regulations may be accessed and downloaded from the Division of Workers' Compensation's website at www.dir.ca.gov.

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

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

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

Division of Workers' Compensation
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

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

Members of the public are invited to present oral and/or written statements, arguments or evidence at the public hearing.

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

Ms. Marcela Reyes,
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
455 Golden Gate
San Francisco, CA 94102

or

Post Office Box 420603
San Francisco, CA 94142

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

Unless submitted prior to or at the hearing, all written comments must be received by the agency contact person, no later than 5:00 PM on September 13, 2002.

The Administrative Director prefers written comments to oral testimony. If you have provided a written comment, it will not be necessary to present oral testimony at the public hearing. Equal weight will be accorded to oral and written materials.

CONTACT PERSON/BACKUP
CONTACT PERSON

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

Ms. Marcela Reyes,
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
455 Golden Gate
San Francisco, CA 94102

or

Post Office Box 420603
San Francisco, CA 94142

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

Note: In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following back-up contact person at the same address and telephone number noted above: Minerva Krohn, Industrial Relations Counsel.

**AVAILABILITY OF CHANGES FOLLOWING
PUBLIC HEARING**

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

**AVAILABILITY OF FINAL
STATEMENT OF REASONS**

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, the Initial Statement of Reasons, and the text of proposed regulations, will automatically be sent by regular mail, or upon request by electronic mail, to those interested persons on the mailing list of the Administrative Director of the Division of Workers' Compensation, and to all persons who have requested notice of hearing as required by Labor Code Section 5307.4.

If adopted, the regulations as amended will appear sequentially in the California Code of Regulations at Title 8, Chapter 4.5, Subchapter 1, commencing with Section 9785.

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

(DEPARTMENT OF INDUSTRIAL RELATIONS)

Subject Matter of Proposed Amendment to
Regulations: Workers' Compensation—Workers'
Compensation Information System

**TITLE 8, CALIFORNIA CODE OF
REGULATIONS SECTIONS 9700, ET SEQ.**

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code Sections 133, 138.6, 138.7, and 5307.3, proposes to modify existing regulations, by amending

Article 1.1, Subchapter 1 to Chapter 4.5 of Title 8, California Code of Regulations, commencing with Section 9700, relating to the Workers' Compensation Information System.

PUBLIC HEARING

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

Date: September 13, 2002
Time: 10:00 am to 5:00 PM or conclusion
of business
Place: Gov. Hiram W. Johnson State Office
Building, Auditorium
455 Golden Gate Avenue
San Francisco, California 94102

The public hearing room is wheelchair accessible. Persons requiring additional accommodation of a disability are requested to alert the contact person identified below.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held. The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Administrative Director of the Division of Workers' Compensation, is undertaking this regulatory action pursuant to the authority vested in him by Labor Code Sections 133, 138.6, 138.7, and 5307.3 and 5307.3, to adopt regulations to implement, interpret, and make specific Labor Code Section 138.6, relating to the Workers' Compensation Information System (WCIS).

**INFORMATIVE DIGEST AND POLICY
STATEMENT OVERVIEW**

Labor Code Section 138.6 requires the Administrative Director of the Division of Workers' Compensation to develop a cost efficient workers' compensation information system to accomplish the following purposes:

- Assist the Department of Industrial Relations to manage the workers' compensation system in an effective and efficient manner.
- Facilitate the evaluation of the effectiveness and efficiency of the benefit delivery system.
- Assist in measuring how adequately the system indemnifies injured workers and their dependents.

- Provide statistical data for research into specific aspects of the workers' compensation system.

The data collected electronically must be compatible with the International Association of Industrial Accident Boards and Commissions' Electronic Data Interchange (IAIABC EDI) system, and the data elements to be provided by claims administrators through the WCIS must be set forth in regulations.

Additionally, Labor Code Section 138.7 limits access to individually identifiable information maintained by the Division of Workers' Compensation, and requires the Administrative Director to adopt regulations governing access to this information by specified government agencies and bone fide researchers authorized by this statute to receive individually identifiable information.

These proposed regulations implement, interpret, and make specific these two sections of the Labor Code as follows:

1. Section 9701

This section defines key terms used in these regulations to ensure the meaning will be clear to the regulated public. The proposed amendments in this section will clarify terms in the current WCIS regulations and define key terms that are contained within the regulations proposed for Sections 9702 and 9703:

(a) "Bona Fide Statistical Research" is defined to clarify the purpose for which individually identifiable information will be released to individuals and private or public entities under existing Section 9703 (d).

(d) "Closed Claim" is defined to clarify an event that gives rise to a reporting obligation under Section 9702 (d).

(h) "EDI Implementation Guide, Release 2" is amended to reflect an updated version of the guide issued by the IAIABC on December 1, 1999.

(j) "EDI Trading Partner Profile" is redefined to reflect a revised trading partner profile form [Form DWC WCIS TP01 (Revised 07/02), entitled "Electronic Data Interchange Trading Partner Profile"].

(l) "International Association of Industrial Accident Boards and Commissions" is amended to reflect the association's change of office location.

2. Section 9702

This section sets forth the electronic data reporting requirements, and provides that the submission of the specified data elements satisfies a claims administrator's statutory obligation to send to the Division copies of benefit notices. The proposed amendments in this section eliminate unnecessary data elements, add relevant data elements, and clarify reporting obligations:

(a) This subdivision is amended to clarify that claims administrators utilizing EDI Implementation

Guide, Release 1, shall only transmit the data elements that are set forth in Release 1. Claims administrators utilizing EDI Implementation Guide, Release 2, shall only transmit the data elements that are set forth in Release 2.

(b) This subdivision sets forth the data elements required for the initial reporting of claim information. The amendments eliminate an unnecessary data element and accommodate the reporting of data elements under either of the two EDI Implementation Guides (Release 1 and 2) by eliminating the timeframe for utilizing various data elements.

(c) This subdivision clarifies the specific identifying data elements that must accompany each WCIS data transmission.

(d) This subdivision sets forth the data elements required for the reporting of indemnity benefit payments. The amendments eliminate irrelevant or duplicative data elements, add pertinent data elements, distinguish reporting obligations depending on the use of either of the two EDI Implementation Guides (Release 1 and 2), and clarify the interpretation of data elements.

(g) This subdivision sets forth the data elements required for the reporting of annual benefit payments on claims with a date of injury on or after July 1, 2000. The amendments modify the reporting date and add pertinent data elements.

3. Section 9703

This section sets forth the provisions governing access to individually identifiable information, as required by Labor Code section 138.7. The proposed amendments in this section expressly allow the use of individually identifiable WCIS data for research by the Division of Workers' Compensation and the Commission of Health and Safety and Workers' Compensation.

(b) The amendment to this subdivision specifies that the Division of Workers' Compensation may obtain and use individually identifiable information held in the WCIS to conduct research on the worker's compensation system in order to carry out the duties of the Division and the Administrative Director.

(d) This subdivision is added to conform this section to the Legislature's amendment of Labor Code Section 138.7 (Chapter 792, Stats. 2001), to allow access to individually identifiable information held in the WCIS by researchers employed or under contract to the Commission of Health and Safety and Workers' Compensation.

STATE REIMBURSABLE MANDATE

The Administrative Director has determined that the proposed regulations will not impose any new mandated program on local agencies and school districts. The California Supreme Court has deter-

mined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The requirements imposed on all employers by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers, private and public, and not uniquely to local governments.

COST OR SAVINGS TO LOCAL AGENCIES OR SCHOOL DISTRICTS

The regulations proposed herein may, from time to time, impose costs on local agencies and school districts. Any such costs, however, will be non-discretionary because the requirement that every employer contribute to the funding of California's workers' compensation programs is a statutory obligation. Furthermore, any such costs are non-reimbursable because the requirement on employers to contribute to the funding of California's workers' compensation programs is not unique to local agencies or school districts and applies to all employers alike, public and private, including the State of California. However, the proposed regulations will eliminate unnecessary data elements that may result in possible cost savings.

COST OR SAVINGS TO STATE AGENCIES

The proposed regulations may impose minimal costs on State agencies. (State government accounts for about 3% of the occupational injuries and illnesses.) The proposed regulations will eliminate unnecessary data elements that may result in possible cost savings.

COST OR SAVINGS IN FEDERAL FUNDING TO STATE

The proposed regulations will not affect any federal funding.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS/ABILITY TO COMPETE

The Administrative Director has made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations do not impose new fees or significant costs on claims administrators.

ECONOMIC IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable com-

pliance with the proposed regulations. However, the proposed regulations will eliminate unnecessary data elements that may result in possible cost savings.

The entities directly affected by WCIS regulation in terms of potential costs are those which administer workers' compensation claims in California. This includes three types of private businesses: (1) private employers who are large and financially secure enough to be permitted to self-insure their workers' compensation liability and who administer their own workers' compensation claims; (2) private insurance companies which are authorized to transact workers' compensation insurance in California; and (3) third party administrators which are retained to administer claims on behalf of self-insured employers or insurers.

ECONOMIC IMPACT ON SMALL BUSINESSES

The Administrative Director has determined that the proposed regulations will not have a significant impact on small businesses. The obligation to report workers' compensation claims data falls on insurers, self-insured employers (who must by regulation have substantial net worth and income) and third party administrators, all of whom do not qualify as "small business."

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

The Administrative Director has determined that the proposed regulations will likely have no net effect on the creation or elimination of existing businesses within California, or affect the expansion of current California businesses. However, some jobs relating to key data entry and the processing of paper reports between employers, physicians, medical bill review organizations, claims administrators, and the state may be affected based on the anticipated increase in the automated reporting of workers' compensation information.

IMPACT ON HOUSING COSTS

The proposed regulations will have no effect on housing costs.

CONSIDERATION OF ALTERNATIVES

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

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

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

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations in strikeout/underline format, and the Form 399. In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov.

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

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

In addition, any person may submit written comments concerning the proposed regulations prior to the close of the public comment period to:

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

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

Unless submitted prior to or at the public hearing, Ms. Reyes must receive all written comments no later than 5:00 p.m. on September 13, 2002.

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

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations,

Division of Workers' Compensation, 455 Golden Gate Avenue, 9th Floor, San Francisco, California, between 9:00 a.m. and 5:00 p.m., Monday through Friday. Copies of the proposed regulations, initial statement of reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON/ BACKUP CONTACT PERSON

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

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

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

Note: In the event the contact person is unavailable, or to obtain responses to questions regarding the substance of the proposed regulations, inquiries should be directed to the following backup contact person at the same address and telephone number as noted above: George Parisotto.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

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

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, Sections 9701, 9702, and 9703.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

(DEPARTMENT OF INDUSTRIAL RELATIONS)

Subject Matter of Proposed Amendment to Regulations: Workers' Compensation— Vocational Rehabilitation

TITLE 8, CALIFORNIA CODE OF REGULATIONS SECTIONS 10122 ET SEQ.

Notice is hereby given that the Administrative Director of the Division of Workers' Compensation, pursuant to the authority vested in him by Labor Code Sections 133, 139.5 and 5307.3, proposes to amend existing regulations and to adopt proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department of Industrial Relations, Division of Workers' Compensation, proposes to adopt:

- Amended Section 10122 Definitions
- Proposed Section 10122.1 Weekend or Holiday Deadlines
- Proposed Section 10127.3 Qualified Rehabilitation Representative
- Amended Section 10131 Termination of Vocational Rehabilitation Services
- Proposed Section 10131.2 Settlement of Prospective Vocational Rehabilitation
- Amended Section 10133 Forms, Form Filing Instructions & Notices
- Proposed Section 10133.10 Form RU-90 "Treating Physician's Report of Disability Status" and Form Filing Instructions
- Proposed Section 10133.11 Form RU-91 "Description of Employee's Job Duties" and Form Filing Instructions
- Proposed Section 10133.12 Form RU-94 "Notice of Offer of Modified or Alternative Work" and Form Filing Instructions
- Proposed Section 10133.13 Form RU-102 "Vocational Rehabilitation Plan" and Form Filing Instructions
- Proposed Section 10133.14 Form RU-103 "Request for Dispute Resolution" and Form Filing Instructions

- Proposed Section 10133.15 Form RB-105 "Request for Conclusion of Rehabilitation Benefits" and Form Filing Instructions
- Proposed Section 10133.16 Form RU-105 "Notice of Termination of Vocational Rehabilitation Services" and Form Filing Instructions
- Proposed Section 10133.17 Form RB-107 "Statement of Decline of Vocational Rehabilitation Benefits" and Form Filing Instructions
- Proposed Section 10133.18 Form RU-107 "Employee Statement of Declination of Vocational Rehabilitation Services" and Form Filing Instructions
- Proposed Section 10133.19 Form RU-107A "Statement of Declination of Vocational Rehabilitation Services" and Form Filing Instructions
- Proposed Section 10133.20 Form RU-120 "Initial Evaluation Summary" and Form Filing Instructions
- Proposed Section 10133.21 Form RU-121 "Vocational Rehabilitation Progress Report" and Form Filing Instructions
- Proposed Section 10133.22 Form RU-122 "Settlement of Prospective Vocational Rehabilitation Services" and Form Filing Instructions
- Repealed Section 10133.1 Standardized Report Forms
- Amended Section 10133.2 Pamphlets

PUBLIC HEARING

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

- Date:** September 3, 2002
- Time:** 10:00 am to 5:00 PM or conclusion of business
- Place:** Gov. Hiram W. Johnson State Office Building, Auditorium
455 Golden Gate Avenue
San Francisco, California 94102

The public hearing room is wheelchair accessible. Persons requiring additional accommodation of a disability are requested to alert the contact person identified below.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation. If public comment concludes before the noon recess, no afternoon session will be held. The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

AUTHORITY AND REFERENCE

The Administrative Director of the Division of Workers' Compensation is undertaking this regulatory action pursuant to the authority vested in him by Labor Code sections 133, 139.5, and 5307.3 to adopt or amend regulations and to enforce the laws. The proposed regulations will further implement, interpret or make specific Labor Code sections 124, 133, 139.5, 4635, 4636, 4637, 4638, 4641, 4640, 4643, 4644, 4646 and Civil Code sections 7, 9, 10, and 11.

INFORMATIVE DIGEST AND PLAIN ENGLISH OVERVIEW

The Administrative Director of the Division of Workers' Compensation proposes to amend existing regulations and adopt new regulations concerning the provision of vocational rehabilitation services.

Amended Section 10122 Definitions

Labor Code Section 4637(a) provides that the employer has a 10 day time frame in which to provide an eligible employee with notification of his or her medical eligibility for vocational rehabilitation services. Labor Code Section 139.5(a) provides that the Administrative Director shall promulgate regulations that would expedite and facilitate the identification, notification and referral of industrially injured employees to vocational rehabilitation services.

Proposed Section 10127.3 provides that a qualified injured worker is to be referred to a qualified rehabilitation representative within 10 days after the employee has been determined to be medically eligible absent extenuating circumstances. This amendment to Section 10122 (Definitions) defines "extenuating circumstances" as natural or social conditions so disastrous as to impede normal business operations preventing the claims administrator from meeting the 10 day time frame set forth in Labor Code Section 4637. This proposed amendment would provide guidance to the regulated community concerning when extenuating circumstances effect the imposition of the 10-day time frame.

Proposed Section 10122.1 Weekend or Holiday Deadlines

Labor Code Section 4637(a) provides that the employer has a 10 day time frame in which to provide an eligible employee with notification of his or her medical eligibility for vocational rehabilitation services. Labor Code Section 139.5(a) provides that the Administrative Director shall develop standards for governing timeliness of vocational rehabilitation services.

This proposed amendment would provide guidance to the regulated community concerning the imposition of the 10-day time frame when the deadline of the act falls on a weekend or holiday.

Proposed Section 10127.3 Qualified Rehabilitation Representative (QRR)

Labor Code Section 4635(b) defines a "qualified rehabilitation representative." Labor Code Section 4637 provides the procedures concerning the employee's right to an agreed upon qualified rehabilitation representative.

When the employee is referred to a qualified rehabilitation representative, this proposed section would require the claims administrator to send all pertinent and narrative medical and vocational reports to the qualified rehabilitation representative.

Amended Section 10131 Termination of Vocational Rehabilitation Services

Section 10131 concerns the termination of vocation rehabilitation services. The amendments, subdivision (d), (e), and (f) are required due to changes in statutory and case law.

- (d) This subdivision sets forth that vocational rehabilitation services may be terminated under certain conditions due to the employee's immigration status. This subdivision is required due to the holding of *Del Taco v. WCAB* (2000) 70 Cal.App.4th 1437.
- (e) This subdivision concerning termination of vocational rehabilitation services for a seasonal employee is necessary in order to comply with Labor Code Section 4644(a)(5), (6), and (7).
- (f) Labor Code Section 4646(b)(effective 1/1/03) provides that an employee and employer may settle the employee's right to prospective vocational rehabilitation services. The existing regulation did not provide for settlement as a basis for termination of vocational rehabilitation services, and therefore, must be amended to comply with Labor Code Section 4644.

Proposed Section 10131.2 Settlement of Prospective Vocational Rehabilitation

Labor Code Section 4646(b) (effective 1/1/03) provides that an employee and employer may settle the employee's right to prospective vocational rehabilita-

tion services. This proposed regulation sets forth the procedure for settling prospective vocational rehabilitation in compliance with Labor Code Section 4646(b).

Amended Section 10133 Forms, Form Filing Instructions & Notices

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The current regulation requires the use of certain mandatory forms; however, it does not list the forms by name. The proposed regulations will now clearly list each mandatory form by its name and number. Each form and the filing instructions for the form will be a separate regulation.

Proposed Section 10133.10 Form RU-90 “Treating Physician’s Report of Disability Status” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.10 is to make Form RU-90 and its filing instructions a separate regulation from the other forms. The purpose of Form RU-90 is for the treating physician to report the employee’s disability status.

Proposed Section 10133.11 Form RU-91 “Description of Employee’s Job Duties” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.11 is to make Form RU-91 and its filing instructions a separate regulation from the other forms. The purpose of Form RU-91 is for the employee and employer to describe the employee’s job duties. The treating physician will review the form to determine whether the employee is able to return to work.

Proposed Section 10133.12 Form RU-94 “Notice of Offer of Modified or Alternative Work” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.12 is to make Form RU-94 and its filing instructions a separate regulation from the other forms. The purpose of Form RU-94 is to provide an employee with notice of the employer’s offer of modified or alternative work.

Proposed Section 10133.13 Form RU-102 “Vocational Rehabilitation Plan” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed

section 10133.13 is to make Form RU-102 and its filing instructions a separate regulation from the other forms. The purpose of Form RU-102 is to document objectives and methods to be used to implement a proposed rehabilitation plan.

Proposed Section 10133.14 Form RU-103 “Request for Dispute Resolution” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.14 is to make Form RU-103 and its filing instructions a separate regulation from the other forms. The purpose of Form RU-103 is to request the Rehabilitation Unit to resolve a disputed rehabilitation issue.

Proposed Section 10133.15 Form RB-105 “Request for Conclusion of Rehabilitation Benefits” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.15 is to make Form RB-105 and its filing instructions a separate regulation from the other forms. The purpose of Form RB-105 is to request the Rehabilitation Unit’s approval of conclusion of rehabilitation services for injuries before January 1, 1990.

Proposed Section 10133.16 Form RU-105 “Notice of Termination of Vocational Rehabilitation Services” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.16 is to make Form RU-105 and its filing instructions a separate regulation from the other forms. The purpose of Form RU-105 is to notify the employee of the employer’s termination of liability to provide rehabilitation services.

Proposed Section 10133.17 Form RB-107 “Statement of Decline of Vocational Rehabilitation Benefits” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.17 is to make Form RB-107 and its filing instructions a separate regulation from the other forms. The purpose of Form RB-107 is to record the employee’s declination of rehabilitation services for injuries before January 1, 1990.

Proposed Section 10133.18 Form RU-107 “Employee Statement of Declination of Vocational Rehabilitation Services” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.18 is to make Form RU-107 and its filing instructions a separate regulation from the other forms. The purpose of Form RU-107 is to record the employee’s declination of rehabilitation services for injuries between January 1, 1990 and December 31, 1993, inclusive.

Proposed Section 10133.19 Form RU-107A “Statement of Declination of Vocational Rehabilitation Services” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.19 is to make Form RU-107A and its filing instructions a separate regulation from the other forms. The purpose of Form RU-107A is to record the employee’s declination of rehabilitation services for injuries on or after January 1, 1994.

Proposed Section 10133.20 Form RU-120 “Initial Evaluation Summary” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.20 is to make Form RU-120 and its filing instructions a separate regulation from the other forms. The purpose of Form RU-120 is to document the findings and recommendations of the Qualified Rehabilitation Representative who conducts the initial evaluation.

Proposed Section 10133.21 Form RU-121 “Vocational Rehabilitation Progress Report” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.21 is to make Form RU-121 and its filing instructions a separate regulation from the other forms. The purpose of Form RU-121 is report on the progress of the employee who is receiving vocational rehabilitation services.

Proposed Section 10133.22 Form RU-122 “Settlement of Prospective Vocational Rehabilitation Services” and Form Filing Instructions

Labor Code Section 139.5 authorizes the Administrative Director to establish procedures relating to vocational rehabilitation. The purpose of proposed section 10133.22 is to provide a form (Form RU-122)

to record the agreement between the employee and the employer to settle prospective vocational rehabilitation services for injuries on or after January 1, 2003.

Repealed Section 10133.1 Standardized Report Forms

As forms RU-120 and RU-121 will now be regulation sections 10133.20 and 10133.21, section 10133.1 will be repealed so as not to be duplicative.

Amended Section 10133.2 Pamphlets

The pamphlet currently entitled “Help in Returning to Work—94” will be changed to “Help in Returning to Work.” It is amended to comply with Labor Code Section 4646(b) (effective 1/1/03), which provides that an employee and employer may settle the employee’s right to prospective vocational rehabilitation services. The list of telephone numbers for District Offices in the Division of Worker’s Compensation has been deleted, as the numbers become outdated. Some additional language has been added under the section “Should I have an attorney.” Grammatical corrections have been made.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department of Industrial Relations, Division of Workers’ Compensation has made the following determinations:

State Mandated Local Costs; Reimbursement:

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

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

Cost or savings to any state agency:

The most significant change addressed by the proposed regulations is the ability to settle prospective vocational rehabilitation benefits. The remaining changes to the regulations will not result in any costs or savings to any state agency. The ability to settle prospective vocational rehabilitation benefits will most likely result in a savings to state agencies that are employers because the vocational rehabilitation benefits can be settled for a maximum amount of \$10,000, where as if the employee does not settle, he or she would be entitled to vocational rehabilitation benefits with a total value of \$16,000. As any settlement is voluntarily and usually for the economic advantage of the settling parties. The fact injured workers may now settle their vocational rehabilitation benefits may result in a savings for the Department of Industrial Relations, Division of Workers' Compensation, as the vocational rehabilitation unit may have less cases to monitor.

Cost or saving in federal funding to the state:

The proposed regulations will not affect any federal funding.

Significant adverse economic impact on business:

The proposed regulations relating to the ability to settle prospective vocational rehabilitation benefits (Section 101331.2 and Form RU-122) will adversely affect vocational rehabilitation providers. It will not impact on the ability of California businesses to compete with businesses in other states.

Potential cost impact on representative private persons or businesses:

The Administrative Director has determined that the proposed regulations relating to the settlement of vocational rehabilitation (Sections 10131.2 and 10133.22) will adversely affect private vocational rehabilitation providers. Although the actual cost is unknown, an estimate is set forth below.

Statement of mandate: Regulation Sections 10131.2 and 10133.22 implement Labor Code § 4646, which allows a represented employee to settle his or her prospective vocational rehabilitation benefits for not more than \$10,000. This regulation will apply to represented employees with dates of injury on or after 1/1/03.

Background: Labor Code § 139.5 provides that maximum fees per case may not exceed \$4,500 for vocational rehabilitation services. Additionally, private vocational schools also receive approximately \$2,300 per case in fees from injured workers.

Working Data: The California Workers' Compensation Institute's (CWCI) Bulletin dated December 21, 2001 (No. 01-22) states that while workers' compensation claims increased for a third year in a row from

1996–1998, vocational rehabilitation costs declined during that same time period. The distribution of costs per case for 1998 was as follows: training programs (\$2,277); VRMA (\$3,189) and vocational rehabilitation evaluation (\$1,605).

There are approximately 250 vocational rehabilitation providers (companies) in California. In 2000, there were 22,334 new case filed with the Rehabilitation Unit. In 2001, there were 22,246 new cases filed. It is unknown how many represented employees will settle their vocational rehabilitation benefits. (85% of the employees who file cases with the Rehabilitation Unit are represented by attorneys.)

Assumptions: If 20% of employees settle their prospective vocational rehabilitation services per year, and if 22,200 new cases are filed each year for the next three years, 4,440 represented employees per year will no longer be utilizing the vocational rehabilitation services (evaluations) in the amount of approximately \$2,000 (assumption) and private vocational programs (schools) in an amount of approximately \$2,300 (assumption).

Calculation: This represents a loss of \$8,880,000 to vocational rehabilitation providers and \$10,212,000 to private vocational schools per year.

Conclusion: Whether or not the loss of revenue will cause the businesses to be eliminated is unknown. Additionally, AB749, which amended the Labor Code to allow for settlement of prospective vocational rehabilitation services also amended the Labor Code to create for a Return to Work Program which may require the services of vocational rehabilitation providers.

Adoption of these regulations will :

- (1) create or eliminate jobs in California;
Although it is impossible to estimate how many jobs may be eliminated in the area of vocational rehabilitation services, the fact that an injured employee may settle his or her right to prospective rehabilitation benefits and use the settlement for self directed vocational rehabilitation may cause the elimination of jobs related to private vocational rehabilitation services.
- (2) create new business or eliminate existing business within California; or
Although it is impossible to estimate how many businesses may be eliminated in the area of vocational rehabilitation services, the fact that an injured employee may settle his or her right to prospective rehabilitation benefits and use the settlement for self directed vocational rehabilitation may cause the elimination of private vocational rehabilitation businesses.
- (3) affect the expansion of businesses currently doing business within California.

Although it is impossible to estimate, businesses in the area of vocational rehabilitation services will more likely decrease than expand due to the fact that an injured employee may settle his or her right to prospective rehabilitation benefits and use the settlement for self directed vocational rehabilitation.

Significant effect on housing costs: None.

Small Business Determination: The Department of Industrial Relations, Division of Workers' Compensation has determined that the proposed regulation affects small business, specifically, businesses that provide vocation rehabilitation services.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective and less burdensome to affected parties that the proposed actions.

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

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

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

As of the date of this notice, the rulemaking file consists of the notice, the initial statement of reasons, the proposed text of the regulations in strikeout/underline format, and the Form 399. The file also includes the Vocational Rehabilitation Advisory Committee sign-in sheet and the minutes from the meeting. In addition, the Notice, Initial Statement of Reasons, and proposed text of regulations may be accessed and downloaded from the Division's website at www.dir.ca.gov.

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

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

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

In addition, any person may submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Marcela Reyes
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142
Tel: (415) 703-3033 or 703-4600

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

Unless submitted prior to or at the public hearing, Ms. Reyes must receive all written comments no later than 5:00 p.m. on September 3, 2002.

CONTACT PERSON/ BACKUP CONTACT PERSON

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

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

The telephone number of the contact person is (415) 703-3033 or 703-4600.

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

Destie Overpeck
Industrial Relations Counsel
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

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

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website: www.dir.ca.gov

AUTOMATIC MAILING

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

If adopted, the regulations as amended will appear in Title 8, California Code of Regulations, Section 10122 et seq.

TITLE 9. DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Emergency Amendment of Chapter 2.5 (commencing with Section 9500)

DRUG TESTING

NOTICE IS HEREBY GIVEN that the California Department of Alcohol and Drug Programs proposes to amend regulations contained in Chapter 2.5 (commencing with Section 9500), Division 4, Title 9 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Chapter 2.5 (commencing with Section 9500), Division 4, Title 9 of the California Code of Regulations (CCR) currently contains standards for the Substance Abuse and Crime Prevention Act of 2000. This emergency regulatory action amends Chapter 2.5 to by establishing a distribution formula and standards for receiving drug testing funds provided under the Substance Abuse Treatment and Testing Accountability (SATTA) Program.

These regulations are needed to implement the provisions of the Substance Abuse Treatment and Testing Accountability (SATTA) Program as enacted by Senate Bill 223 (Burton), Chapter 721, Statutes of 2001, which was effective October 11, 2001. The

statute provided \$8.4 million for distribution to counties to conduct drug testing of clients under the Substance Abuse and Crime Prevention Act of 2000 (SACPA). The counties may also use the funds for other purposes consistent with the federal law under which the funds are provided. Under the new statute the Department of Alcohol and Drug Programs (ADP) must establish a distribution formula for allocation to the counties and administer counties' use of the funds. To receive funds, counties must submit to ADP a plan describing their process for testing.

Specific changes are noted below:

- Section 9500 has been amended to specify that the requirements of Chapter 2.5 (commencing with Section 9500), Title 9, CCR, also apply to all counties, county agencies, and public or private contractors applying for Substance Abuse Treatment and Testing Accountability (SATTA) Program funds.
- Section 9505, which defines terminology, has been amended to define "fair and equitable distribution formula", "substance abuse testing", and "Substance Abuse Treatment and Testing Accountability Program funds" or "SATTA funds".
- Section 9515, which specifies requirements for SACPA county plans, has been amended to include requirements for counties applying for SATTA funds.
- Section 9526 has been adopted to specify how the Department will distribute SATTA funds to counties.
- Section 9530 has been amended to specify that it applies only to SACPA trust funds.
- Section 9531 has been adopted to specify that SATTA funds may be used for drug testing
- Section 9535 has been amended to specify the types of reports counties are required to submit to account for their expenditure of SATTA funds.

AUTHORITY

This regulation is being adopted pursuant to Section 11755 of the Health and Safety Code.

REFERENCE

The statutory references for this regulatory action are Sections 11999.20 and 11999.25 of the Health and Safety Code.

FISCAL IMPACT STATEMENTS

The Department does not anticipate any cost associated with implementation of these regulations because the regulations do not expand the scope of the implementing statute. All costs are associated with implementation of the statute rather than with implementation of the regulations themselves.

Costs or Savings in Federal Funding to the State: No costs or savings are anticipated.

Costs or Savings to Any State Agency: No costs or savings are anticipated.

Costs or Savings to Any Local Agency or School District: No costs or savings are anticipated.

Nondiscretionary Costs or Savings Imposed on Local Agencies: This regulatory action will not result in any nondiscretionary costs or savings to local agencies.

Local Mandate Determination: The Department has determined that this regulatory action will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with Section 17500), Division 4 of the Government Code.

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

Effect on Business: The Department does not anticipate any adverse economic impact on business because these regulations do not expand the scope of the implementing statutes.

The Department has made an initial determination that this regulatory action will not have a significant statewide adverse economic impact directly affecting businesses. This regulatory action will not affect the ability of California businesses to compete with businesses in other states. This regulatory action will not affect the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Effect on Small Businesses: The proposed regulatory action will affect small businesses because many entities providing services pursuant to the Act are small businesses as defined in Government Code Section 11342.610. The Department has determined that this regulation will result in no cost or savings to small businesses because the regulations do not expand the scope of the implementing statutes.

Effect on Housing Costs: This regulatory action will not effect housing costs in any way.

WRITTEN COMMENT PERIOD

Any interested person or his authorized representative may submit written comments on the proposed regulatory action. **The written comment period closes at 5 p.m. on August 26, 2002.** Please submit any written comments before that time. The Depart-

ment cannot accept written comments after the close of the public comment period. Please send written comments to Mary Conway, Regulations Coordinator, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. Comments may also be submitted by fax at (915) 323-5873 or e-mail at MCONWAY@ADP.STATE.CA.US.

SCOPE OF TESTIMONY

Section 11346.8(c) of the Government Code prohibits the Department from making any changes to the text of a noticed regulation after the public hearing, unless the change was so sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed action. Therefore please make your comments specific to the regulation discussed in this notice. Please indicate the number of the section you would like changed, the specific change requested, and the reason why you would like the section changed. Since the Department cannot make changes to sections of regulation which were not mentioned in this public notice, during the public comment period the Department will not consider testimony regarding changes which are outside the scope of this notice. If you wish to request the Department to amend, adopt, or repeal additional sections of regulation, the Department is required to consider those changes in a separate regulatory action.

PUBLIC HEARING

The Department has not scheduled a public hearing on the proposed regulatory action. However, if any person wishes to submit oral comments, the Department will schedule a public hearing upon receipt of that person's written request. Such request must be received at the address shown above no later than 15 days prior to the close of the written comment period.

CONSIDERATION OF ALTERNATIVES

Pursuant to Section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this regulatory action was taken. The Department must also determine that no alternative would be as effective and less burdensome to affected private persons than the regulatory action taken. The Department will consider any alternatives presented during the public comment period.

ADDITIONAL CHANGES

The Department may modify the proposed regulation in response to testimony received during the 45-day public comment period, so long as any additional changes made are sufficiently related to the proposed regulatory action and within the scope of this notice. The Department will make available to any interested persons, for at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation, the full text of any regulation which is changed or modified from the express terms to this regulatory action. The Department will mail a copy of the additional changes to any person who testified or submitted comments during the public hearing (if one is requested), who submitted written comments during the 45-day public comment period, or who requested copies of additional changes. Please call the Department's regulations coordinator at (916) 327-4742 if you wish to receive a copy of any additional changes and you do not plan to present comments regarding the proposed regulatory action.

AVAILABILITY OF TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared and has available for review upon request the text of the proposed regulations discussed in this notice, written in plain English; an initial statement of reasons, explaining the necessity for each regulatory change; and all the information upon which the proposed regulations were based. To obtain a copy, please call Mary Conway at (916) 327-4742 or write to her at the address shown on the first page of this notice. If you received this public notice in the mail, the text of the proposed regulation and the initial statement of reasons were enclosed. The proposed regulations and initial statement of reasons are also available on the Department's web site at <http://www.adp.ca.gov>.

PERSON TO CONTACT FOR ADDITIONAL INFORMATION

The Department's contact for this regulation package is Mary Conway, the Department's Regulations Coordinator, at (916) 327-4742 or Peggy Blair at 322-1222. Questions regarding the substance of the proposed regulatory action should be directed to Peggy Blair of the Department's Office of Criminal Justice Collaboration, at (916) 322-1222.

FINAL STATEMENT OF REASONS

After the close of the 45-day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, please call Mary Conway at (916) 327-4742. The final statement of reasons will also be posted on the Department's web site at <http://www.adp.ca.gov>.

TITLE 10. DEPARTMENT OF INSURANCE

RH01018834

NOTICE OF PROPOSED REGULATION AND NOTICE OF PUBLIC HEARING REGARDING THE WEIGHTING METHODOLOGY FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE RATING FACTORS

SUBJECT OF HEARING

Notice is hereby given that a public hearing will be held regarding proposed changes to private passenger automobile insurance rating factor regulations found at Title 10, California Code of Regulations, Chapter 5, Subchapter 4.7, Section 2632.8.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes to adopt and amend the subject regulation pursuant to the authority vested in him by Sections 1861.02 and 1861.05 of the California Insurance Code; *Spanish Speaking Citizens Foundation Inc. v. Low* (2000) 85 Cal.App.4th 1179, 103 Cal.Rptr.2d 75; and, *CalFarm Insurance Company v. Deukemejian* (1989) 48 Cal.3d 805, 258 Cal.Rptr. 161.

The purpose of this regulation is to implement, interpret, and make specific provisions of the California Insurance Code, including but not limited to Section 1861.02.

HEARING DATE AND LOCATION

The public hearing will be held to permit all interested persons the opportunity to present statements or argument, orally or in writing, with respect to the proposed regulations at the date, time, and place set forth below:

Date and Time: September 5, 2002
10:00 a.m.
Location: Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105

ACCESS TO HEARING ROOM

The public hearing room is accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for the hearing in order to make special arrangements if necessary.

WRITTEN AND/OR ORAL COMMENTS; AGENCY CONTACT PERSON

All persons are invited to submit written comments to the Insurance Commissioner on the proposed regulations. Comments should be addressed to the agency contact person

Bruce Patton
 California Department of Insurance
 300 Capitol Mall, 17th Floor
 Sacramento, CA 95814
 Telephone: (916) 492-3560
 Facsimile: (916) 324-1883
 E-mail: pattonb@insurance.ca.gov

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If he is unavailable, inquiries may be directed to:

Brian Soublet
 California Department of Insurance
 300 Capitol Mall, 17th Floor
 Sacramento, CA 95814
 Telephone: (916) 492-3521
 Facsimile: (916) 324-1883
 E-mail: soubletb@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

All written comments or materials must be received by the Insurance Commissioner, c/o the contact person at the address listed above, by not later than **5:00 p.m. on August 27, 2002**. Written comments or materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the contact person at the E-mail address listed above. The Commissioner will also accept written comments transmitted by facsimile to the contact person at the number listed above. **Comments sent to an E-mail address other than the addresses listed above will not be accepted. Comments submitted by E-mail or by facsimile are subject to the deadline for written comments set forth above.**

ADVOCACY OR WITNESS FEES

Eligible persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Title 10 California Code of Regulations, subchapter 4.5, Article 14, § 2662.1 et seq., in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

Office of the Public Advisor
 California Department of Insurance
 300 Capitol Mall, 17th Floor
 Sacramento, CA 95814
 (916) 492-3500

A copy of any written materials submitted to the Public Advisor regarding this rulemaking proceeding must also be submitted to the contact person listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Proposition 103, which was enacted by the voters on November 8, 1988, required the establishment of a new method of determining premium rates for private passenger automobile insurance. Proposition 103 mandated that premium rates must be established through the use of the following rating factors: the insured's driving safety record; the number of miles driven annually by the insured; and, the insured's number of years of driving experience. These factors are commonly referred to as the "mandatory factors." Insurers are free to use other rating factors that have been adopted by the Commissioner, by regulation, which the Commissioner has determined bear a substantial relationship to the risk of loss. The factors adopted by the Commissioner are commonly referred to as "optional factors." Insurance Code § 1861.02(a), as enacted by Proposition 103, requires that the mandatory and optional factors be applied in a specific order and the Commissioner specify a weight for the factors. The existing regulations were promulgated in Department of Insurance File Nos. RH-318 (operative on September 22, 1994), and RH-338 (Sections 2632.4(a), 2632.5, 2632.7(a), (c) and (d), 2632.8, 2632.9, 2632.11(a), and 2632.15 became operative on August 5, 1996, subdivision (b) of Section 2632.7 became operative on September 11, 1996).

In determining whether the weight of the optional factors is less than the weight of the mandatory factors, for the purpose of complying with Insurance Code § 1861.02(a), the existing regulations compare the average weight for all of the optional rating factors with the weight of each individual mandatory factor. Existing § 2632.8 calculates the weight for all of the rating factors by a technique referred to as "the single omit method." Under this method, for every insured vehicle, and for every rating factor—looking at each factor one at a time—insurers calculate the difference between the total premium including the factor under review and the total premium without the subject factor. A large insurer using the single omit method to calculate weight is required to perform millions of calculations. Unless the Department precisely duplicates the millions of calculations required by the single omit method it is extremely difficult for the Department to determine if an insurance company is correctly complying with the auto rating factor regulations.

The proposed regulation would implement a simplified methodology to calculate the weight of the automobile rating factors. This methodology is de-

signed to achieve the same result as the single omit method and will foster improved regulatory oversight of class plan filings by allowing the California Department of Insurance to more effectively verify that insurers have correctly assigned the weight calculation and rank order to each rating factor.

The Commissioner has determined that the amendment proposed in this rulemaking proceeding is necessary to effectively implement the auto rating factor provisions of Proposition 103. The proposed regulation sets forth amendments to the method for determining factor weights. The purpose of the proposed regulation is to implement, interpret and make specific the provisions of California Insurance Code Sections, 1861.02, and 1861.05 and to provide for an orderly insurance market.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

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

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that there will be no cost or savings to any local agency, state agency or school district from the proposed regulations, and that the proposed regulation will not affect federal funding to the State.

OTHER NONDISCRETIONARY COSTS OR SAVINGS ON LOCAL AGENCIES

None.

ECONOMIC IMPACT ON BUSINESS

The proposed regulation will have a beneficial effect businesses because it make it easier for insurers to perform the calculations required to meet the factor weight requirements than the single omit methodology required by the existing regulation.

IMPACT ON SMALL BUSINESS

The proposed regulation will not have an impact on small businesses because the insurers subject to the provisions of the regulation are not small businesses (Government Code § 11342.610(b)(2)).

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY EFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The proposed regulation will not have an adverse impact on businesses, including the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESS

The proposed regulation will not cause a cost increase to private persons or businesses. To the extent that the proposed regulation makes it easier for insurers to perform the necessary weight calculations, it will have a positive cost impact.

EFFECT ON CREATION OR ELIMINATION OF CALIFORNIA JOBS, WHETHER CREATION OF NEW CALIFORNIA BUSINESSES OR WHETHER ELIMINATION OR EXPANSION OF EXISTING CALIFORNIA BUSINESSES

None.

IMPACT ON HOUSING COSTS

The matters proposed herein will not have a significant effect on housing costs.

ALTERNATIVES

On January 23, 2002, pursuant to Government Code § 11346.45 (a), the Commissioner invited written public comments on three proposals (Alternatives 1, 2, and 3), which he believed would implement a simplified methodology to calculate the weight of the rating factors. The Commissioner specifically requested comments be submitted by February 25, 2002 regarding the advantages and disadvantages of each of the proposals and whether the proposals accomplished the stated goal.

Of the eleven (11) comments received by the Department, four (4) comments supported Alternative 1 (the method adopted in the proposed regulation) because they believed it is easier to use than the single omit method as well as Alternatives 2 and 3; that it would be easier to implement than the other two alternatives; and, that the results of Alternative 1 closely mimic the results of the single omit methodology. Three comments supported Alternative 2 because they believed that it produced results that were more consistent with the single omit method than the other alternatives. Alternative 3 was not favored by in any comment because of concern that this alternative would cause instability in premiums due to the erratic nature of loss cost data.

The Commissioner selected Alternative 1 because it is a viable substitute for the more labor-intensive single omit methodology. The changes proposed in Alternative 1 will enable the Department to more easily review and validate the data that is submitted by insurers in their class plan filings. Alternative 1 also reduces the burden of performing the calculations necessary to compute weight. While Alternative 2 more closely replicates the single omit method, the Commissioner rejected this alternative because it would require insurers to submit summary data, which

the Department would be unable to verify. The Commissioner rejected Alternative 3 because of the concerns that it would cause instability in premiums.

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

COMPARABLE FEDERAL LAW

There are no comparable federal regulations or statutes on the specific problem addressed by the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Insurance Commissioner has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed amendments to the regulations. Upon written request, the Initial Statement of Reasons will be made available for inspection and copying. Written requests for the Initial Statement of Reasons, or questions regarding this proceeding, should be directed to the contact persons listed above. Once the Final Statement of Reasons has been completed written requests for copies should also be directed to the contact persons listed above.

AUTOMATIC MAILING

A copy of this notice, including the Informative Digest, which contains the general substance of the proposed regulations, will automatically be sent to each person or organization on the Commissioner's mailing list.

WEBSITE POSTINGS

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout format can be accessed through the Department of Insurance website at <http://www.insurance.ca.gov>. To access the documents on the Department's website: near the top of the page, locate the heading "Protecting Consumers;" scroll down to the subheading "BE INFORMED;" click on "Search for Proposed Regulations;" in the search field enter "RH01018834." You may also search for the regulations by entering California Insurance Code Section 1861.02, or search by key word ("auto rating factors" for example). Once you "Submit" your query you will be able to access the various documents related to this rulemaking proceeding.

MODIFIED LANGUAGE

If the Department further amends the proposed regulations with changes that differ but are sufficiently

related to this proposed action, the full text of the amended regulations will be available to the public for at least 15 days prior to adoption.

TITLE 14. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

DIVISION 7

CHAPTER 3 MINIMUM STANDARDS FOR SOLID WASTE HANDLING AND DISPOSAL, ARTICLES 4.1 AND ARTICLE 5.5

CHAPTER 6 PERMITTING OF WASTE TIRE FACILITIES, ARTICLES 1 THROUGH 7 AND 9 AND 10

The California Integrated Waste Management Board (Board) proposes to amend Title 14, California Code of Regulations, Division 7, Chapters 3 and 6, by amending Articles 4.1 and 5.5 of Chapter 3, sections 17225.710 through 17225.735 and sections 17350 through 17356 and Articles 1 through 7 and 9 and 10 of Chapter 6, sections 18420 through 18494.5. Article 3.5, section 18429, is being added to Chapter 6. The proposed regulations make changes in the existing regulations to implement, interpret and make specific the provisions of SB 876 (Statutes of 2000) and AB 117 (Statutes of 1998), as well as move language to more appropriate sections, correct errors, and add definitions and language to make the regulations more functional and delete unnecessary language. In addition, existing enforcement criteria for permitted and un-permitted waste tire facilities are being incorporated into the regulations.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. **The written comment period for this rulemaking closes at 4:00 p.m. on August 26, 2002.** The Board will only consider comments received at the Board's headquarters by that time. Please submit your written comments to:

Tom Micka
Special Waste Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, California 95812-4025
Fax: (916) 319-7491
e-mail: tmicka@ciwmb.ca.gov

If an individual previously commented on these regulations during workshops, that person should be aware that those comments were considered and often incorporated into the regulations. However, if such

individuals are not satisfied with the proposed regulations, as they exist in the current proposed regulations, they must resubmit their comments so that they will be considered anew and made a part of this rulemaking record.

PUBLIC HEARING

A public hearing to receive public comments has been scheduled for the **September Special Waste & Market Development Committee Meeting**. The hearing will be held at the

Joe Serna Jr., Cal EPA Building
1001 I Street, 2nd Floor
Sacramento, CA 95814

The hearing will begin at **1:30 a.m. on September 9, 2002**, and will conclude after all testimony is given. The California Integrated Waste Management Board requests that persons making oral comments also submit a written copy of their testimony at the hearing. The hearing room is wheel chair accessible. If you have any questions, please contact Tom Micka at (916) 341- 6425.

INFORMATIVE DIGEST

The California Integrated Waste Management Act (Act), Public Resources Code (PRC) § 40000 et. seq., gives the Board authority to provide for the protection of public health, safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC § 40502 requires the Board to adopt rules and regulations to implement the Act. Assembly Bill 1843 (Brown, Statutes of 1989) established the waste tire program commencing with section 66799.60 of the Government Code. This statute was recodified by Senate Bill (SB) 937 (Vuich, Statutes of 1990) at Chapter 16, commencing with section 42800, of the Public Resources Code. Under Chapter 16 the Board is vested with responsibility for the administration of waste tire programs. Specifically the Board must protect public health, safety, and the environment, by establishing technical standards and a permitting program for waste tire facilities and technical standards for solid waste facilities, which handle tires for storage and disposal.

To this end, the Board developed and implemented emergency and final regulations, which became effective on February 10, 1992 and November 3, 1993, respectively. The subject regulations:

- a. Set forth permitting procedures for Major (5,000 or more waste tires) and Minor (500 to 4,999 waste tires) Waste Tire Facilities.
- b. Establish financial assurance requirements for Major Waste Tire Facilities.
- c. Establish closure and inspection requirements for all Waste Tire Facilities.

- d. Establish minimum standards for the outdoor and indoor storage of waste tires. Standards include requirements for fire prevention, facility access and site security, vector control measures, storage at waste tire facilities and storage and disposal of waste tires at permitted solid waste facilities.
- e. Allow landfills to store waste tires.
- f. Establish exclusions from the waste tire facility permitting requirements under certain circumstances.

Waste tire storage standards were designed to prevent environmental catastrophes and adverse impacts to public health and safety due to improper storage of waste tires. For Major Waste Tire Facilities (storing 5,000 or more tires), the standards require closure cost funding through various financial assurance mechanisms, and operating liability insurance requirements that place the burden of responsibility for facility closure and environmental damage on the operators of waste tire storage facilities rather than the California taxpayer.

On May 9, 1996, the Board's Waste Tire Hauler Regulations became effective pursuant to Senate Bill (SB) 744 (Statutes of 1993). On January 29, 1998 the Board adopted emergency regulations to remove certain exclusions from the regulations regarding who needs to acquire a waste tire facility permit. These emergency regulations became final this past year.

AB 117 (Escutia) was signed into law in 1998 requiring the Board to prepare a report to the legislature on the current waste tire program and to make recommendations by June 30, 1999, for needed changes. The Board adopted the final version of the report "California Waste Tire Program Evaluation and Recommendations" (Tire Report) at its June 22, 1999 meeting.

This past year SB 876 (Escutia) was passed by the Legislature to make changes to the tire statutes in order to better serve the regulated community and to protect public health and safety and the environment.

The Board, therefore, has proposed changes in the existing regulations to implement, interpret and make specific the provisions of SB 876, as well as implementing certain recommendations from the AB 117 Tire Report. To expedite the regulation development process, staff proposes to split the effort into two phases. The first phase will consist of already reviewed and work-shopped language, and minor, non-controversial changes. In addition, the Board has directed staff to add existing enforcement criteria to the regulations. This criteria is currently being used by the Board when action is taken against permitted and un-permitted waste tire facilities. The second phase will consist of those regulations necessary to implement innovative features of SB 876 such

as the new waste tire manifest form. These regulations will require more extensive public review and will enter the OAL process at a later date.

The more significant proposed changes to the existing regulations are presented as follows:

1. The existing exclusion from the permitting requirements for fully enclosed moveable containers will be deleted.
2. A new term "collection" will specify that waste tires temporarily placed in fully enclosed licensed road transportable containers will not be considered as being stored if they are not on the premises of a permitted facility and if certain conditions are met.
3. "Used tire dealer" will be defined as a business storing "used tires" as specified in SB 876 and to clarify the need of a used tire dealer to receive applicable local approvals. The regulations will specify that a used tire dealer may only store up to 1500 waste tires in accordance with the existing statute.
4. "Auto dismantlers" are exempt from the waste tire facility permitting requirements if they meet certain conditions. Auto dismantlers will now have to certify to the Board that they qualify for an exemption from the requirement to acquire a waste tire facility permit.
5. The definitions contained in Article 4.1 of Chapter 3 and Article 2 of Chapter 6 will be consolidated in Article 4.1. Some definitions, which appear in SB 876, will be deleted from regulation.
6. A trust fund, which can be built up over a five year period to equal the current closure cost estimate, is one of the current financial assurance mechanisms for closure of a major waste tire facility available to operators. This five-year period will be eliminated and an operator's initial deposit will now have to equal the current closure cost estimate.
7. The Board will be enabled to approve financial assurance mechanisms for closure and operating liability claims other than those listed in the regulations so long as the mechanisms meet certain requirements.
8. A new article, Article 3.5, entitled "Enforcement Criteria for Waste Tire Facilities" is being added to the regulations. This article specifies fines for both permitted and unpermitted facilities based on different levels of noncompliance. The penalty schedule for administrative complaints sets forth levels of fines based on size, severity, location, and frequency of the violation. This schedule, which is currently being administered by the Board, will now be placed in regulation.

POLICY STATEMENT OVERVIEW

Over the past seven years the California Integrated Waste Management Board has been regulating the storage of waste tires and more recently the hauling of waste tires in California. Existing waste tire regulations set forth permitting procedures for Major (5,000 or more waste tires) and Minor (500 to 4,999 waste tires) Waste Tire Facilities.

The existing regulations establish closure and inspection requirements for all Waste Tire Facilities and establish financial assurance requirements for Major Waste Tire Facilities. The regulations also establish minimum standards for the outdoor and indoor storage of waste tires. Standards include requirements for fire prevention, facility access and site security, vector control measures, storage at waste tire facilities and storage and disposal of waste tires at permitted solid waste facilities.

This past year Senate Bill 876 was passed by the Legislature making changes to the tire statutes in order to better serve the regulated community and to protect public health and safety and the environment. The Board has, therefore, proposed changes in the existing regulations to implement, interpret and make specific the provisions of Senate Bill 876, as well as implementing certain recommendations from a report prepared by the Board in 1999 entitled "California Waste Tire Program Evaluation and Recommendations."

The proposed regulations make changes in the existing regulations to implement, interpret and make specific the provisions of Senate Bill 876, as well as move language to more appropriate sections, correct errors, and add definitions and language to make the regulations more functional and delete unnecessary language.

PLAIN ENGLISH REQUIREMENTS

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

AUTHORITY AND REFERENCES

PRC § 40502, 42820, 42821, 42830, 42832, and 43020 provide authority for these regulations. The purpose of the proposed actions is to implement, interpret and make specific numerous statutes and regulations related to the storage of waste tires. The following is a list of references cited in these proposed regulation changes: PRC § 21068, 21082.2, 41700, 42800, 42801.6, 42801.7, 42804, 42805, 42806.5, 42807, 42808, 42812, 42816, 42820, 42821, 42822,

42823, 42824, 42825, 42830, 42831, 42833, 42834, 42835, 42840, 42841, 42842, 42843, 42845, 42850, 43020, 44014

FEDERAL LAW OR REGULATIONS MANDATE

Federal law or regulations do not contain comparable requirements.

**LOCAL MANDATE AND
FISCAL DETERMINATIONS**

Board staff has determined that the proposed regulations do not impose: 1) a mandate on local agencies or school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code §§ 17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

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

**EFFECT ON BUSINESS AND SMALL
BUSINESSES/SMALL
BUSINESS DETERMINATION**

Board staff made an initial determination that the proposed regulations will not have a significant adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Board staff has also determined that the proposed regulations may apply to business and small businesses, but as stated above, will not have a significant adverse economic impact on business and small businesses. Many businesses and small businesses which meet the proposed definition of "used tire dealer" will no longer be required to acquire a Waste Tire Facility Permit from the Board. Used tire dealers which currently fall into the category of Minor or Major Waste Tire Facility will no longer have to file an application with the Board for the issuance of a permit. In addition, used tire dealers that are now considered Major Waste Tire Facilities will not be required to meet financial assurance requirements for acquiring a Major Waste Tire Facility Permit.

Businesses and small businesses which have been issued an exclusion from the Waste Tire Facility Permitting requirements based on the storage of waste tires in fully enclosed moveable containers will no longer be able to utilize this exclusion. Many businesses and small businesses, however, may qualify under the proposed definition of "collection." Businesses and small businesses that qualify under "collection" will not be required to acquire a waste

tire facility permit. These operators will be required to use licensed trailers. The alternative is to acquire a Minor Waste Tire Facility Permit if they are storing less than 5,000 waste tires or a statutory exemption if they are a cement kiln. A few businesses and small businesses storing more than 5,000 waste tires that do not qualify under "collection" will have to either reduce the quantity stored to fewer than 5,000 or acquire a Major Waste Tire Facility Permit.

Auto dismantlers will now have to certify to the Board that they qualify for an exemption from the requirement to acquire a waste tire facility permit. There will be no cost to the auto dismantler for this certification.

If a major waste tire facility operator chooses to use a trust fund for their financial assurance mechanism it may be more costly since they will no longer have five years over which to spread the payments; however, the operator may choose another mechanism.

**EFFECT ON COMPETITION WITH
OUT-OF-STATE BUSINESS**

Board staff has determined that the proposed regulations will not have an adverse economic impact upon the ability of California businesses to compete with out-of-state business.

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

Board staff has determined that the proposed regulatory action will not affect: 1) the creation or elimination of jobs within the state of California; 2) the creation of new businesses or the elimination of existing businesses within California; or 3) the expansion of businesses currently doing business with the state.

**COST IMPACT ON PRIVATE PERSONS
OR ENTERPRISES**

Board staff has determined that the adoption of the proposed regulations may have a cost impact on private persons or enterprises. Most impacts of the proposed regulations already exist in current law and regulation. The proposed regulations primarily clarify existing law and impose no new impacts. One exception may be businesses that choose a trust fund for a financial assurance mechanism and no longer have five years to pay into the trust fund. This change will represent a potential future cost to those businesses switching financial assurance mechanisms or establishing new major waste tire storage facilities. Businesses paying into existing trust funds will not be impacted. The economic impact is unknown because businesses have a choice among a number of financial assurance mechanisms.

Additionally, those few businesses now operating under the "moveable container" exclusion that are unable to take advantage of the new definition of "collection" and do not qualify as a Minor Waste Tire Facility or a cement kiln may be impacted. These businesses will have to acquire a Major Waste Tire Facility Permit. The costs associated with a Major Waste Tire Facility Permit are a function of how many tires are stored. It is not possible, with the Board's current database, to determine the number of businesses currently utilizing the "moveable container" exclusion that might have to acquire a Major Waste Tire Facility Permit. Based on the options available staff predicts that the number would be a small fraction of the current 23 excluded Major Waste Tire Facilities.

The penalty schedule for administrative complaints does not represent a new Board activity. This schedule will, therefore, not increase the universe of businesses and small businesses presently regulated. Permitted and unpermitted facility operators who violate the waste tire statute and regulations will continue to be prosecuted under the Board's penalty schedule. The addition of this penalty schedule to the regulations should not have a significant adverse economic impact on businesses and small businesses that comply with the statute and regulations governing waste tire storage.

CONSIDERATION OF ALTERNATIVES

The Board must determine whether other alternatives would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

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

CONTACT PERSON

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

Tom Micka, Special Waste Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, California 95812-4025
(916) 341-6425 phone
(916) 341-6663 facsimile
e-mail: tmicka@ciwmb.ca.gov

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

Donald Dier Jr., Special Waste Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, CA 95812-4025
(916) 341-6290 phone
(916) 319-7597 facsimile
e-mail: ddier@ciwmb.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulations, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. The Final Statement of Reasons will also be available once it is prepared. Copies may be obtained by contacting Tom Micka at the address or phone number listed above. For more timely access to the proposed text of the regulations, and in the interest of waste prevention, interested parties are encouraged to access the Board's Internet homepage at <http://www.ciwmb.ca.gov>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

TITLE 14. FISH AND GAME COMMISSION

NOTICE IS HEREBY GIVEN that the Fish and Game Commission, pursuant to the authority vested by 1050, 5510, 8389, 8550, 8553 and 8555 of the Fish and Game Code and to implement, interpret or make specific sections 7850, 7850.5, 8043, 8053, 8389, 8550, 8552, 8552.6, 8553, 8554, 8555, 8556, 8557 and

8559 of said Code, proposes to amend sections 163, 163.5 and 164, Title 14, California Code of Regulations, relating to the herring fishery.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Sections 163 and 163.5, Title 14, CCR

Under existing law, herring may be taken for commercial purposes only under a revocable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permittee qualifications; permit application procedures and requirements; permit limitations; permit areas; vessel identification requirements; fishing quotas; seasons; gear restrictions; quotas; and landing and monitoring requirements.

The proposed regulatory changes will establish fishing quotas by area for the 2002–03 herring fishing season, based on the most recent assessments of the spawning populations of herring in San Francisco and Tomales bays. The proposed fishing quota in San Francisco Bay is 3,540 tons (10 percent of the 35,400-ton estimated spawning biomass for the 2001–02 season). An initial 300-ton fishing quota (4.1 percent of the 2001–02 estimated spawning biomass of 7,243 tons) is proposed for Tomales Bay with provisions to increase the quota in season if escapement goals are achieved by February 15, 2003. This season, the recommendation for in-season increases is as follows:

- If the spawning escapement is more than 3,000 tons, increase the quota to 400 tons.
- If the spawning escapement is more than 4,000 tons, increase the quota to 500 tons.

The proposed amendment specifies that the length of the meshes of any gill net used or possessed in the roe fishery in Tomales Bay, for the 2002–03 season only, shall be no less than 2 inches or greater than 2½ inches. The proposed one-year continuation of the regulation, originally approved for the 2000–01 and 2001–02 seasons only, will allow the Department to continue to evaluate the effect of reduced mesh length on the size and age composition of herring caught in 2 inch mesh gill nets.

Other changes relating to the Department of Fish and Game (Department) herring season dates, permit suspensions, and minor editorial changes are recommended to improve the clarity of the regulations or provide for the efficient harvest and orderly conduct of the fishery and for the protection of the resource. The following is a summary of those proposed changes in sections 163 and 163.5, Title 14, CCR.

- Set the dates of the roe herring fisheries in San Francisco Bay from 5:00 p.m. on Sunday, December 1, 2002 to noon on Friday, December 20, 2002

(“DH” gill net platoon only), and from 5:00 p.m. on Sunday, January 5, 2003 to noon on Friday, March 14, 2003.

- Set the dates of the roe herring fishery in Tomales Bay from 5:00 p.m. on Thursday, December 27, 2002 until noon on Tuesday, December 31, 2002, and from noon on Sunday, January 5, 2003 to noon on Friday, March 7, 2003.
- Correct existing latitude/longitude coordinates for position references, and add latitude/longitude coordinates to existing position references that do not provide associated coordinates.
- Clarify that the violation points assigned for failure of a permittee to be aboard the vessel during herring fishing operations also apply to a permittee’s Department-authorized temporary substitute.
- Revise the individual quota provisions for permittee’s participating in a mesh size study in San Francisco Bay to 0.5 percent of the sac roe quota for each platoon to which a permittee is assigned.
- Increase the maximum number of permittee’s that may participate in a mesh size study in San Francisco Bay from three to six.
- Transfer 10 tons of quota from the underutilized herring fresh fish fishery to the gill net fishery for use in a gill net mesh size study, for the 2002–03 season only.
- Make minor editorial revisions.

Section 164, Title 14, CCR

Under existing law, herring eggs on kelp (HEOK) may be taken for commercial purposes only under a revocable, nontransferable permit, subject to such regulations as the Fish and Game Commission shall prescribe. Current regulations specify: permit limitations; season; fishing area; permittee categories and qualifications; permit conditions; royalty fees; permit application procedures; permit performance deposit requirements; gear, fishing and harvesting restrictions; fishing quotas; landing and processing requirements; and permit suspension conditions and procedures. In addition, current regulations limit the number of permits that can be issued.

The proposed regulatory changes will establish fishing quotas for the 2002–03 herring eggs on kelp fishing season. Individual herring eggs on kelp quotas will depend on the total herring fishery quota for San Francisco Bay established by the Fish and Game Commission under Section 163, Title 14, CCR. The proposed 2002–03 total herring fishery quota for San Francisco Bay is 3,540 tons (10 percent of the estimated spawning biomass for the 2001–02 season); this results in a 6.2-ton individual herring eggs on kelp quota for a “CH” permittee and a 1.8-ton individual quota for a non-“CH” gill net permittee. These

represent a decrease in individual quotas of 24 percent for a "CH" gill net permit from the 2001-02 season quota (7.9 tons), and 14 percent for a non-"CH" gill net permit from the 2001-02 season quota (2.1 tons).

Other changes are recommended to provide for the efficient operation and orderly conduct of the fishery, improve the clarity of the regulations and for the protection of the resource. The following is a summary of those proposed changes.

- Modify Subsection (j) Method of Take to describe the area a line used for HEOK fishing may occupy as a line length rather than a square foot area.
- Clarify the description of a line used in HEOK fishing by omitting the word "continuous" from the description of a line in Subsection (j) Method of Take.

Minor editorial changes in language and form references are proposed to correct or clarify the existing regulatory language.

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 Hall, City Council Chambers, 990 Palm Street, San Luis Obispo, California on Friday, August 2, 2002 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 Elihu Harris State Building, 1st Floor Auditorium, 1515 Clay Street, Oakland, California on Saturday, August 30, 2002, 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 August 26, 2002 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 August 30, 2002, at the hearing in Oakland, CA. E-mail comments must include the true name and mailing address of the commenter.

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, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Jon D. Snellstrom at the preceding address or phone number. Eric Larson, Herring Fishery Program, Department of Fish and Game, phone (650) 631-7730, 255 Harbor Blvd., Belmont, CA 94002, 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:

163 & 163.5

The proposed changes regarding seasons, quota allocations, mesh size study individual quota provisions, coordinates for permit areas and fishing boundaries, and minor editorial changes are not expected to have a significant statewide adverse economic impact on businesses.

The average quota over the history of the San Francisco Bay roe herring fishery (30 seasons) is 6,104 tons. The average quota over the most recent five years has been lower than this (5 season average is 4,924 tons). The proposed quota (3,540 tons) is 42 percent less than the long term average, and thus, in comparison to the long-term average, the proposed decrease in the fishing quota for San Francisco Bay

will have a negative impact on some individual fishermen in the short-term. However, the proposed quota reflects appropriate quota levels relative to current population trends. Relative to the reduced quota in 2001–02, the proposed quota for San Francisco Bay represents a decrease in quota which will have a significant but unquantifiable negative short-term impact on some individual fishermen. Despite quota allotments, there is no guarantee that the quota will be caught. In the 1997–98 season, for example, only 20 percent of the quota was caught. The entire quota was caught in the 1998–99 and 2000–01 seasons, but in the 1999–00 season, only 62 percent of the quota was caught. The proposed gill net quota for San Francisco Bay represents a 14 percent decrease from last year's quota (4,476 tons), and a 6 percent increase relative to last year's catch (3,287 tons). The proposed decrease in the San Francisco Bay quota (compared to the 2001–02 season quota) will have a significant, but unquantifiable, negative short-term impact on herring buyers, and possibly to some small businesses that provide goods and services to the fishing fleet and buyers. Losses in revenue will depend on the ex-vessel price for the season and the quantity and quality of an individual's landings. The decreased revenues for the ten permittees who transfer their quota to the herring eggs on kelp fishery are significant but unquantifiable (compared to the 2001–02 season quota). Any negative impacts relative to the long-term average quota are balanced in the long-run by years when resource abundance and fishing quotas are high.

The proposed action for the Tomales Bay herring fishery will not have a significant statewide adverse economic impact affecting business, which includes the ability of California businesses to compete with businesses in other states. The proposed initial quota of 300 tons is not expected to have a significant negative impact on individual fishermen or herring buyers. In recent years, the initial quota has been based on 10 percent of the previous seasons spawning biomass. The proposed initial catch quota of 300 tons is conservatively based upon 4.1 percent of the estimated spawning biomass from the 2001–02 season. The initial quota is set at just 4.1 percent of the spawning biomass this year, as opposed to 10 percent, because high exploitation rates have sometimes occurred after high biomass seasons. The Department believes that a pro-active and conservative initial quota for the 2002–03 season may prevent a possible over-exploitation of the Tomales Bay herring population. The goal is to help ensure a stable spawning population for the future.

When compared with the commercial catch over the past ten years, only twice (1995–96 and 2001–02 seasons) has the Tomales Bay catch exceeded 300

tons. The commercial catch for the 2001–02 season was 354 tons, which exceeded the season's initial quota of 300 tons, but was only 71 percent of the in-season increased quota of 500 tons. The lower initial quota based on 4.1 percent is unlikely to have an adverse economic impact. The proposed regulations contain provisions for increasing the quota in-season if spawning escapement goals are achieved. The provision for in-season quota increases is a valuable fisheries management tool that provides flexibility to managing the fishery based on the size of the current spawning population. The provision supports the conservation of the resource and realizes the possible economic benefit of allowing a higher catch, if the resource is abundant enough to withstand the fishing pressure. The proposed action will have an unquantifiable impact on some small businesses that provide goods and services to the fleet. In the long-term, these impacts are balanced by the positive economic returns that accrue in those years when resource abundance and fishing quotas are high.

The proposed application of violation points, currently assigned to a permittee not aboard vessel during fishing operations in Section 163.5, to a Department-approved crew member temporarily serving in his or her place aboard the vessel, is not expected to have an adverse economic impact.

The proposed addition of form number is being made for the sake of clarity and will not have an economic impact.

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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 is based on regulations that are already in place. The average quota over the history of the herring eggs on kelp fishery in San Francisco Bay (thirteen seasons) is 111.6 tons per season (all individual quotas combined). The proposed quota is significantly less than the long-term average, and thus, in comparison to the long term average, will have a negative economic impact on individual fishermen in the short-term. However, there is no guarantee that the quota will be caught; the herring eggs on kelp season quota has only been reached in three seasons (i.e., 97.4, 99.7 and 100 percent of the quota was harvested in the 1989–90, 1993–94 and 1995–96 seasons, respectively). When compared to last season's catch of 45.3 tons, the proposed 57.6 ton herring eggs on kelp quota (derived from the 3,540 ton quota for San Francisco Bay) would represent a 27-percent increase. The proposed decrease in the San Francisco Bay quota (compared to the 2001–02 season quota) may have a significant, but unquantifiable, negative impact on the

buyers of herring eggs on kelp and possibly on some business that provide goods and services to the permittees. In the long-term, there is a balance between seasons when resource abundance and fishing quotas are low and seasons when resource abundance and finishing quotas are high.

The proposed corrections in the citations of sections of the Fish and Game Code or Title 14 are being made for the sake of clarity and will not have an economic impact.

- (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.
- (g) 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

(Continuation of California Notice Register Z02-0521-18, No. 22-Z, and Meetings of June 20, 2002 and August 2, 2002.)

NOTE: The Fish and Game Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption. See Updated Informative Digest changes shown in **bold face** type.

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 203 and 355 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 203, 203.1, 208, 215, 220, 355 and 356 of said Code, proposes to amend Section 300(a).

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing regulations [section 300(a)(1)(D)(4)] allow 200 two-bird permits for the East Lassen Zone, 75 two-bird permits for the Central Lassen Zone, 25 one-bird permits for the North Mono Zone, and 25 one-bird permits for the South Mono and Inyo Zone. Under the current regulatory cycle, the first Fish and Game Commission notice hearing date for sage grouse regulation changes occurs in May. However, the final sage grouse population survey results are not available until after the date that the Department must submit proposed regulation changes to the Commission. The Department proposes a range of maximum and minimum hunting permit numbers to the Commission, with the provision that the actual number of permits recommended for each hunt will be based on April strutting ground and June brood count surveys.

The proposed ranges are 10 to 375 permits for the East Lassen Zone, 10 to 175 permits for the Central Lassen Zone, 10 to 100 permits for the North Mono Zone, and 10 to 100 permits for the South Mono and Inyo Zone.

Existing regulations [Section 300(a)(1)(A)(1)] provide that the season for hunting pheasants is from the second Saturday in November extending for 30 consecutive days. The Department accepted a public proposal to extend the season for two weeks. The Department is now proposing to the Commission that the pheasant hunting season open on the second Saturday in November, and extend

for 44 days. The Department believes that this will provide additional hunting opportunity, with no adverse effects on pheasant populations. Most other states have pheasant hunting seasons from six to twelve weeks. Only male pheasants may be legally taken, and post-season composition counts conducted on heavily-hunted state wildlife areas in California show rooster to hen ratios well above those needed to assure that all hens are fertilized the following spring. Consequently, there is no sound biological reason for not allowing a longer pheasant hunting season. An additional benefit of a longer season is that some landowners may be more likely to consider pheasant habitat needs when making land management decisions. This would also benefit numerous other wildlife species.

Existing sage grouse hunting regulations [Section 300(a)(1)(D)4] allow 200 two-bird permits for the East Lassen Zone, 75 two-bird permits for the Central Lassen Zone, 25 one-bird permits for the North Mono Zone, and 25 one-bird permits for the South Mono and Inyo Zone. Under the current regulatory cycle, the first Fish and Game Commission notice hearing date for sage grouse regulation changes occurred in May. However, the final sage grouse population survey results necessary for setting hunting quotas are not available until June. The Department proposes a range of maximum and minimum permit numbers to the Commission, with the provision that the actual number of permits recommended for each hunt zone will be based on spring grouse population surveys. The originally proposed ranges are 10 to 375 permits for the East Lassen Zone, 10 to 175 permits for the Central Lassen Zone, 10 to 100 permits for the North Mono Zone, and 10 to 100 permits for the South Mono and Inyo Zone. The final recommendations for permit quotas were determined following spring strutting area surveys in each zone.

Recommended permit numbers are as follows:

- East Lassen Zone: 100 two-bird permits**
- Central Lassen Zone: 40 two-bird permits**
- North Mono Zone: 10 one-bird permits**
- South Mono and Inyo Zone: 10 one-bird permits**

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 the City Hall, City Council Chambers, 990 Palm Street, San Luis Obispo, on Friday, August 2, 2002, at 8:30 a.m. or as soon thereafter as the matter is heard. It is requested, but not required, that written comments may be submitted on or before July 26, 2002 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 August 2, 2002 at the hearing in San Luis Obispo. 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, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Tracy L. Reed at the preceding phone number. Tom Blankinship, Department of Fish and Game, (916)445-3615 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 above address. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov/fg-comm/>.

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 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.

The nature of these regulatory changes is directed at wise stewardship and would have no significant adverse effect on 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 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 IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 202 and 355 of the Fish and Game Code and to implement, interpret or make

specific sections 202, 355 and 356 of said Code, and part 20, Title 50, Code of Federal Regulations, as amended July 21, 1987, 52 Fed. Reg. 27352, proposes to amend sections 502 and 507(c), Title 14, California Code of Regulations, relating to Waterfowl, Migratory; American Coot and Common Moorhen (Common Gallinule), Prohibition on Electronic or Mechanically-operated Devices and Nontoxic Shot Requirement for Waterfowl, American Coot and Common Moorhen Hunting.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 502, Waterfowl, Migratory; American Coot; and Common Moorhen (Common Gallinule)

Current regulations in Section 502, Title 14, California Code of Regulations (CCR), provide definitions, hunting zone descriptions, season opening and closing dates, and daily bag and possession limits. In addition to the five proposals contained herein, the U.S. Fish and Wildlife Service (Service), through the analysis of waterfowl population survey and other data, may also initiate changes in federal regulations which will require changes in existing and proposed State regulations. Changes in federal regulations for season opening and closing dates, elimination or creation of special management areas, season length, and daily bag limits for migratory birds may occur. These five proposed changes to state regulations require changes in the federal regulations. These proposals must be approved by the Pacific Flyway Council at their meeting on July 26, 2002. The Service will consider these and other recommendations at their meeting on August 1, 2002.

1. Lengthen the white-fronted and cackling Canada goose hunting season in the Northeastern California Zone
The existing regulations in 502(d)(1)(A) and 502(d)(1)(B) restrict the days of hunting for white-fronted and cackling Canada geese in the Northeastern California Zone to the first 44 days of the 100 day goose season. The proposed change would eliminate this restriction.
2. Lengthen the goose hunting season in the Balance of State Zone from 79 to 86 days.
The existing regulations in 502(d)(5)(A) and 502(d)(5)(B) establish a 79 day goose season in the Balance of State Zone. The proposed change would increase the season length to 86 days.
3. Remove the prohibition on the take of Canada geese in Humboldt and Del Norte counties and allow a 5 day season.
The existing regulations in 502(d)(5)(D)1. prohibit the take of Canada geese in Humboldt and Del Norte counties during the entire Balance of State

Zone goose hunting season. The proposed change would provide for a 5 day season with a daily bag limit of 1 Canada goose.

4. Create a new Special Management Area in the Southern California Zone to allow a longer white goose hunting season in that Area. The existing regulations in 502(d)(5)(D) establish Special Management Areas where hunting regulations differ from the general regulations in the specific hunting zone. The proposed change would create a new Special Management Area in which the white goose hunting season would extend later than the existing goose hunting season dates in the Southern California Zone.

5. Remove the Sacramento Valley (East) Special Management Area and allow the take of Canada geese in that area throughout the Balance of State Zone goose season.

The existing regulations in 502(b)(5)(A)4. and 502(d)(5)(D)4. describe the Sacramento Valley (East) Special Management Area and prohibit the take of Canada geese in this Special Management Area during the Balance of State Zone goose hunting season. The proposed change would eliminate the Special Management Area and allow the take of Canada geese during the Balance of State Zone goose hunting season in this Special Management Area.

Section 507(c), relating to Prohibition on Electronic or Mechanically-operated Devices.

Existing regulation in Section 507(c), Title 14 California Code of Regulations (CCR) prohibits the use of electronic or mechanically operated spinning blade devices or spinning wing decoys when attempting to take waterfowl between the start of the waterfowl season and December 1. Existing regulation in Section 1.41 Title 14 CCR specifies that dates of seasons and closures are inclusive. The proposed change would clarify the intent of section 507(c) to prohibit the use of mechanically operated spinning blade devices or spinning wing decoys when attempting to take waterfowl prior to December. The proposed clarification would specify that the use of mechanically operated spinning blade devices or spinning wing decoys when attempting to take waterfowl would be prohibited through November 30.

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 Hall, City Council Chambers, 990 Palm Street, San Luis Obispo, California on Friday, August 2, 2002 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

Elihu Harris State Building, 1st Floor Auditorium, 1515 Clay Street, Oakland, California on Saturday, August 30, 2002, 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 August 23, 2002 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 August 30, 2002, at the hearing in Oakland, CA. E-mail comments must include the true name and mailing address of the commenter.

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, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Jon D. Snellstrom at the preceding address or phone number. Dan Yparraguirre, Waterfowl/Migratory Bird Program, Department of Fish and Game, phone (916) 445-3685, 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. The proposed regulations are intended to provide additional recreational opportunity to the public. Our experience has shown that additional recreational opportunity has a neutral economic impact on 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 and less burdensome to affected private persons than the proposed action.

TITLE 17. DEPARTMENT OF HEALTH SERVICES

SUBJECT

Newborn Screening Program Fee Increase, R-54-01E

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice. Any written statements, arguments or contentions must be received by the Office of Regulations, Department of Health Services, 714 P Street, Room 1000, P.O. Box 942732, Sacramento, CA 94234-7320, by 5 p.m. on August 26, 2002, which is hereby designated as the close of the written comment period. It is requested but not required that written statements, arguments or contentions sent by mail or hand-delivered be submitted in triplicate.

Comments by FAX (916-657-1459) or email (regulation@dhs.ca.gov) must be received before 5:00 p.m. on the last day of the public comment period. All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

CONTACTS

In any of the following inquiries, please identify the action by using the Department regulation control number, R-54-01E:

1. In order to request a copy of this regulation package be sent to you, please call (916) 654-0381 or email regulation@dhs.ca.gov.

2. Inquiries regarding the substance of the emergency regulations described in this notice may be directed to Dr. George Cunningham, Chief of the Genetic Disease Branch, at (510) 540-2552.

3. All other inquiries concerning the action described in this notice may be directed to Linda Tutor of the Office of Regulations at (916) 654-0381, or to the designated backup contact person, Barbara Gallaway, RN, MSN, at (916) 657-3197.

Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD.

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Health and Safety Code Section 125000 currently requires screening of all newborns for heritable metabolic disorders, sickle cell disorders and hereditary hemoglobinopathy. Existing law, Health and Safety Code Sections 124977, 124996 and 125000(b), provides authority to the Department of Health Services to establish fees and requires the Department to fully support the operation of the program by fees. This obligation is implemented in Title 17, California Code of Regulations (CCR), Section 6508.

This emergency regulatory action increases the total fee for the newborn screening program services from \$56 to \$60. The participation fee was \$55, to which was added a \$1 charge for specimen record forms. The participation fee is increased to \$59, and the charge for forms remains at \$1.

This fee increase enables the Department to maintain at its current authorized level a statewide newborn screening program that is consistent with medical standards, expanding medical knowledge, and the mandates of the Hereditary Disorders Act (Health and Safety Code Section 125000 et seq.). The fee adjustment is necessary to assure that the newborn screening program continues to be fully supported "from the fees collected for such testing" as required by Health and Safety Code Sections 124996 and 125000(b).

These emergency regulatory changes do not conflict with or duplicate any federal or state statutes, regulations or policies.

Specifically, the emergency action amends Title 17, California Code of Regulations, Section 6508(b).

AUTHORITY

Sections 124977, 124996 and 125000, Health and Safety Code.

REFERENCE

Sections 124977, 124996 and 125000, Health and Safety Code.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None.
- B. Fiscal Effect on State Government: \$361,000 annual General Fund costs.
- C. Fiscal Effect on Federal Funding of State Programs: \$361,000 annual matching funds for Medi-Cal.
- D. All cost impacts, known to the Department at the time the notice of emergency action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the emergency action: There will be an additional

cost of \$1,420,000 to third party payers, the insurance companies providing maternity benefits, and to women who receive testing/services for newborn screening but do not have insurance coverage.

- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

DETERMINATIONS

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

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

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

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

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

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

AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. A copy of the initial statement of reasons and a copy of the text of the emergency regulations are available upon request by writing to the Office of Regulations at the address noted above, which address will also be the location of public records, including reports, documentation, and other material related to the emergency regulations (rulemaking file). Additionally, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations at the address noted above. Materials regarding the emergency regulations that are available via the Internet may be accessed at <http://www.dhs.ca.gov/regulation/>.

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

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

ADDITIONAL STATEMENTS AND COMMENTS

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

No hearing has been scheduled; however any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8.

Sign language interpreting services at a public hearing or other reasonable accommodation will be provided upon request. Such request should be made no later than 21 days prior to the close of the written comment period, and addressed to the Office of Civil Rights within the Department of Health Services by phone (916-657-1411); FAX (916-657-0153); TDD (916-657-2861); or email (civilrights-ra@dhs.ca.gov).

**TITLE 20. PUBLIC UTILITIES
COMMISSION**

Division 1. Public Utilities Commission

**NOTICE OF PROPOSED
REGULATORY ACTION**

The California Public Utilities Commission (Commission) proposes to adopt a new Rule 14.7, regarding petitions to adopt, repeal, or amend a regulation, and to add a new Article 3.5 (which will include Rule 14.7) regarding rulemakings to the Commission Rules of Practice and Procedure (Rules).

AUTHORITY AND REFERENCE

Under Public Utilities Code Section 1708.5(e), the Commission is required to adopt a new Rule to establish procedures for petitions to adopt, repeal, or amend a regulation.

California Constitution Article XII Section 2 and Public Utilities Code Section 701 also generally authorize the Commission to adopt the proposed new Rule and Article 3.5 that would implement Public Utilities Code Section 1708.5.

INFORMATIVE DIGEST

In 1999, the Legislature adopted Assembly Bill (AB) 301 (Stats 1999, Ch. 568, Sec. 2), which requires the Commission to permit interested persons to file petitions to adopt, amend, or repeal Commission regulations (petitions) and to adopt written procedures for handling petitions. AB 301 has been codified as Public Utilities Code Section 1708.5. This legislation also requires the Commission to amend its Rules to establish procedures for handling petitions.¹

Under Public Utilities Code Section 1708.5, the Commission must consider petitions filed by interested persons and either deny the petition or institute a rulemaking proceeding within six months. The Commission may extend this six-month period to allow for public review and comment regarding a proposed rulemaking. If the petition is denied, the Commission must include a statement of the reasons for the denial in its order or resolution. If the Commission finds that it is legally precluded from granting the petition, the Commission must refer to the applicable law in its order or resolution.

In order to qualify for consideration by the Commission pursuant to Public Utilities Code Section 1708.5, the petition must propose or address a regulation that has general applicability and future effect. A regulation is generally applicable when it applies to an entire class of entities or activities over which the Commission has jurisdiction. A regulation has future effect when it applies to conduct in the future. The Commission believes that the legislative intent behind the adoption of Section 1708.5 was to permit regulated utilities and the public to petition the Commission to adopt, amend, or repeal substantive regulations of the Commission. Therefore, proposed Rule 14.7 does not apply to amendments of the Rules, which address procedural matters.

Under Public Utilities Code Section 1708.5, petitions may not be used to obtain reconsideration of Commission decisions or reconsideration of recently decided matters when there has been no change in circumstances. Proposed Rule 14.7, therefore, provides that the Commission will not consider petitions related to issues upon which the Commission has acted or decided not to act within the preceding 12 months.

¹ Although Public Utilities Code Section 1708.5(c) states that the Commission should adopt these procedures by July 1, 2001, the Commission waited until now to propose a new Rule in order to gain experience with handling petitions. The Commission had received only one petition before July 1, 2001, which was rejected because the petition did not seek a regulation and the relief sought was adjudicatory in nature. Five petitions have been filed up to the date to this Notice, and three of these petitions are pending. We have relied on our experience handling these petitions in developing these procedures to implement Public Utilities Code Section 1708.5.

Proposed Rule 14.7 defines standing to file a petition broadly, to include any person. A petition must concisely state the basis for the requested relief, and if adoption or amendment of a regulation is sought, the petition must include specific proposed language for that regulation. A petition that contains factual assertions must be verified. Unverified factual assertions will be given only the weight of the argument. Petitions must comply with all applicable requirements of the Rules for the filing of documents.

Petitions must be served on the Commission Executive Director, the Chief Administrative Law Judge, Director of the appropriate industry division, the Public Advisor, and all known interested parties. Parties filing petitions must consult with the Public Advisor to identify a service list to be used to give persons generally interested in Commission rulemakings notice of the petition. If the petition would result in the modification of a regulation adopted in a past Commission order or decision, then the petition must be served on all parties to the proceeding in which the regulation that would be modified was adopted. The assigned Administrative Law Judge may require service of the petition on additional persons.

Responses to petitions must be filed and served by no later than within 30 days of the date on which the petition was served. The petitioner and other parties may file and serve a reply to any responses. Replies must be filed and served within 10 days of the last day for filing responses. The assigned Administrative Law Judge (ALJ) may set a different date for the filing and service of responses and replies.

The Commission's Rules restricting ex parte communications and imposing reporting requirements do not apply to petitions.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments on this rulemaking to the Commission by no later than 5:00 p.m., on August 26, 2002. Reply comments (replies to comments filed by other parties) shall be filed no later than 5:00 p.m., on September 10, 2002. Comments and reply comments must be filed with the Commission Docket Office, 505 Van Ness Avenue, San Francisco, CA 94102 and must be concurrently mailed to ALJ Myra Prestidge at the same address or e-mailed to ALJ Prestidge at tom@cpuc.ca.gov.

REQUESTS FOR PUBLIC HEARING

Although the Commission does not plan to hold a hearing on this matter, interested parties may request a public hearing in writing by no later than 5:00 p.m., on August 12, 2002. Requests for a public hearing should be filed with the Commission Docket Office and mailed or e-mailed to ALJ Prestidge as indicated above.

CONTACT PERSON

If you have questions regarding this notice or would like additional information, please contact ALJ Prestidge at the above address and e-mail address, by telephone at (415) 703-2629 or by facsimile at (415) 703-1723.

TITLE 22. CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

CONFLICT OF INTEREST CODE

The California Unemployment Insurance Appeals Board (Board) proposes to amend its Conflict of Interest Code, printed in Title 22 of the California Code of Regulations (CCR), Section 5200, to update the list of positions and their filing requirements under the Code. The Board will adopt these amendments after considering all comments, objections, or recommendations regarding the proposed action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 5200 and the Appendix are amended to update the positions utilized by the Board in its workforce, and to eliminate a cumbersome and unnecessary requirement to file Board member statements of economic interests with the Fair Political Practices Commission. The California Government Code specifies those officials who are required to file their statements with the Fair Political Practices Commission, which does not include Board members. All other Board employee statements are held by the Board, and this amendment will make the practice relating to Board members consistent with all other Board staff.

AUTHORITY AND REFERENCE

Authority: Sections 87300 and 87304, Government Code.

Reference: Sections 87300 et seq., Government Code.

FISCAL IMPACT

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

Anticipated costs or savings to any State Agency: None

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

Significant statewide adverse economic impact: The Board does not anticipate this regulatory action will result in any costs to the federal government, to State government, to local county governments, to

private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Board has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact on businesses including the ability of California businesses to compete with businesses in other states. The Board has determined that the proposed amendments will not affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

The costs impact on representative persons 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 regulatory amendments.

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

Anticipated nondiscretionary costs or savings imposed upon local agencies: None

SMALL BUSINESS IMPACT

These proposed amendments will not have any impact upon small businesses because they will only affect employees of the Board.

LOCAL MANDATE DETERMINATION

The Board has determined that these proposed amendments will not impose any new mandates on school districts or other local governmental agencies or any mandates which must be reimbursed by the State pursuant to Part 7 (commencing with Section 17500), Division 4 of the Government Code.

CONSIDERATION OF ALTERNATIVES

In accordance with Section 11346.5(a)(13) of the Government Code, the Board must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory amendments. The Board will consider any additional alternatives presented during the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Ralph Hilton, Chief Counsel, 2400 Venture Oaks Way, Suite 300, Sacramento, California 95833. Written comments may also be

faxed to Mr. Hilton at (916) 263-6836. **The written comment period closes at 5 p.m. on August 26, 2002.**

PUBLIC HEARING

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Board will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on August 26, 2002.** A written request for hearing can be made to Ralph Hilton, at the address or fax number shown above.

MODIFICATION OF PROPOSED ACTION

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

FINAL STATEMENT OF REASONS

For a copy of the Board's final statement of reasons, when available, please contact Ralph Hilton at the address shown under the heading "Written Comment Period" in this Notice or call (916) 263-6783.

CONTACT PERSON/FURTHER INFORMATION

The Board has prepared a statement setting forth the purpose of this regulation and information upon which the Board relied in proposing it. This statement is available to the public upon request.

Copies of the proposed regulation in plain English may be obtained from the Chief Counsel's Office at 2400 Venture Oaks Way, Suite 300, Sacramento, CA 95833.

All of the information upon which the proposed regulation is based is contained in the rulemaking file and is available for public review by contacting Ralph W. Hilton at the address noted above.

Inquiries regarding the amendments to the Conflict of Interest Code may be directed to Ralph W. Hilton at (916) 263-6783. Inquiries regarding the regulations' development process may be directed to Laura Colozzi at (916) 654-8410.

GENERAL PUBLIC INTEREST

PLEASE NOTE

This Board of Education notice was originally printed in the California Regulatory Notice Register 2002, 26Z, June 28, 2002, p. 1174. The notice is reprinted here with additional information on fiscal impact, reference, and documents incorporated by reference. All other aspects of the notice are the same as the previously printed notice.

BOARD OF EDUCATION

Mathematics and Reading
Professional Development Program

July 30, 2002

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

PROPOSED REGULATORY ACTION

The State Board proposes to add Section 11983.5 to Subchapter 21 of Chapter 11, of Division 1 of Title 5 of the California Code of Regulations, to provide guidance as to the definition of “Instructional Materials. . . Otherwise Authorized by the State Board of Education” with regards to the Mathematics and Reading Professional Development Program.

PUBLIC HEARING

The State Board will hold a public hearing beginning at 11:00 a.m. on Thursday, September 12, 2002, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the agency of such intent. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the State Board. All written comments must be received no later than the close of the public hearing scheduled to start at 11:00 a.m. on Thursday, September 12, 2002. Requests to present oral statements at the public hearing

or written comments for the State Board’s consideration should be directed to:

Pat McGinnis, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 556
P. O. Box 944272
Sacramento, California 94244-2720
(916) 657-4669 FAX: (916) 657-3844
E-mail: pmcginni@cde.ca.gov

AUTHORITY AND REFERENCE

Authority for these regulations is found in Education Code sections 33031, and 99236. Education Code section 33031 is the State Board’s general authority to adopt rules and regulations for the government of the day and evening schools of the state. Education Code section 99236 is the specific authority for the California Department of Education to design, and the State Board to approve, regulations for implementation and monitoring of the Mathematics and Reading Professional Development Program. These regulations implement, interpret, or make specific Education Code sections 99231 and 99236. The California Department of Education AB 466—Application for Funding Fiscal Years 2001–02 and 2002–03 Form, and the “Standards for Evaluating Instructional Materials for Social Content” (2000 Edition), are incorporated by reference.

**INFORMATIVE DIGEST AND POLICY
STATEMENT OVERVIEW**

Assembly Bill 466 (Chapter 737), Statutes of 2001, established the Mathematics and Reading Professional Development Program. The Program will greatly assist efforts to increase academic performance in California schools by enabling 176,000 teachers and 22,000 instructional aides and paraprofessionals to participate in high-quality professional development activities in mathematics and reading/language arts over a four-year period.

The proposed regulations respond to requirements in Education Code section 99236 that the State Board shall authorize the Superintendent of Public Instruction to design, and the Board shall approve, regulations for the implementation and monitoring of the program. The Superintendent of Public Instruction shall provide funding to a local educational agency in accordance with the funding methodology specified in Education Code sections 99234 and 99235 and with regulations adopted by the State Board.

As a requirement of the Mathematics and Reading Professional Development Program, local educational agencies must certify to the California Department of Education that they will use specified instructional materials. Education Code section 99231(c) defines

these specified instructional materials to include “materials adopted by the State Board of Education after January 1, 2001, unless otherwise authorized by the State Board of Education.” The proposed regulations clarify the definition of “instructional materials ...otherwise authorized by the State Board of Education.” While originally it appeared that “otherwise authorized by the State Board of Education” would not require clarification, it has now been determined that the program would be better served by placing a clarifying definition of “instructional materials...otherwise authorized” into regulations. These proposed regulations are therefore necessary to include all the schools in the eligibility criteria that were intended by AB 466. This clarification must be provided before the funds are allocated in 2001–2002.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None.

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

Cost or savings in federal funding to the state: None

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

Impact on business: The State Board has made an initial determination that the proposed regulatory changes 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.

Significant effect on housing costs: The State Board has made an initial determination that the proposed regulatory action would not affect housing costs.

Effect on small business: None, because these regulations are directed to local educational agencies which are not small businesses.

CONSIDERATION OF ALTERNATIVES

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

The purpose of the proposed regulations is to clarify the definition of “instructional materials otherwise authorized by the State Board of Education” which is necessary to include all the schools in the eligibility criteria that were intended by AB 466. The State Board does not believe that existing law absent these regulations achieves that objective. Moreover, the State Board has been unable to identify any alternative to the proposed regulations that achieves the objective. The State Board invites interested persons to present statements or arguments regarding alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

ASSESSMENT REGARDING CREATION OR ELIMINATION OF JOBS IN CALIFORNIA

The State Board has made an assessment and determined that the adoption of the proposed regulations will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONTACT PERSONS

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

Karen Steentofte, Education Program Consultant
State Board of Education
721 Capitol Mall, Room 556
P.O. Box 944272
Sacramento, CA 94244-2720
Telephone: (916) 657-5478 FAX: (916) 653-7016

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

Pat McGinnis, Regulations Adoption Coordinator
California Department of Education
721 Capitol Mall, Room 552
P. O. Box 944272
Sacramento, California 94244-2720
Telephone: (916) 657-4669 FAX: (916) 657-3844
E-mail: pmcginni@cde.ca.gov

Or

Debra Strain, Regulations Analyst
Telephone: (916) 657-4440 FAX: (916) 657-3844

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office, at the above address. As of the date this

notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the address or telephone number listed above or accessing the California Department of Education's website at <http://www.cde.ca.gov/regulations>. Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the Regulations Adoption Coordinator or viewed on the website.

**AVAILABILITY OF CHANGED
OR MODIFIED TEXT**

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

DEPARTMENT OF FISH AND GAME

**CESA CONSISTENCY DETERMINATION FOR
Arroyo Trabuco Golf Course Project
Orange County**

The Department of Fish and Game ("Department") received notice on June 14, 2002 that DMB San Juan Golf Associates, Rancho Mission Viejo, 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 the construction and operation of a golf course on 230 acres in southern Orange County. The activities will result in impacts to native grassland, coastal sage scrub, riparian, and freshwater swale/marsh/open water habitats.

The U.S. Fish and Wildlife Service, on June 11, 2002, issued to the U.S. Army Corps of Engineers (Corps), a no jeopardy federal biological opinion (FWS-OR-918.5) which considers the Federally and State endangered least Bell's vireo (*Vireo bellii pusillus*), and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, the Corps is requesting a determination on whether the Federal Biological Opinion FWS-OR-918.5 is consistent with CESA.

If the Department determines that the federal biological opinion is consistent with CESA, DMB San Juan Golf Associates will not be required to obtain an incidental take permit under CESA for the proposed project.

DEPARTMENT OF FISH AND GAME

**CESA CONSISTENCY DETERMINATION FOR
Mallory Ridge Vegetation Management Project
Contra Costa County**

The Department of Fish and Game ("Department") received notice on June 20, 2002 that the Contra Costa Water District 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 prescribed burns at several locations to assess the effects of controlled burning on critical habitat quality for the Alameda whipsnake. The activities will impact varying amounts of land depending on the site and the year (minimum 10 acre burns), but are expected to have long term benefits for the snake.

The U.S. Fish and Wildlife Service, on April 30, 2002, issued an intra-Service biological opinion (1-1-02-F-0064) which considers the Federally and State threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, the Contra Costa Water District is requesting a determination on whether the Federal Biological Opinion 1-1-02-F-0064 is consistent with CESA.

If the Department determines that the federal biological opinion is consistent with CESA, the Contra Costa Water District will not be required to obtain an incidental take permit under CESA for the proposed project.

DEPARTMENT OF FISH AND GAME

**CESA CONSISTENCY DETERMINATION FOR
State Route 71 Widening Project
Riverside County**

The Department of Fish and Game ("Department") received notice on June 21, 2002 that the California Department of Transportation ("Caltrans") 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 the widening of State Route 71 from 2 to 4 lanes from postmile 0.0 to 2.7 in Riverside County. The activities will result in the permanent loss of approximately 1.817 acres of

vegetation, the temporary disturbance of 2.5 acres of riparian habitat, and may indirectly impact aquatic habitat.

The U.S. Fish and Wildlife Service, on June 7, 2002, issued to the Federal Highway Administration (FHWA), a no jeopardy federal biological opinion (FWS-WRIV-2760.2) which considers the Federally and State endangered least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii extimus*), and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, the FHWA is requesting a determination on whether the Federal Biological Opinion FWS-WRIV-2760.2 is consistent with CESA.

If the Department determines that the federal biological opinion is consistent with CESA, Caltrans will not be required to obtain an incidental take permit under CESA for the proposed project.

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Final Decision to Certify Hazardous Waste Environmental Technologies

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

Applicant: ABB, Inc.
2135 Philpott Road
South Boston, Virginia 24592

Technology: BIOTEMP® Vegetable Oil-Based
Insulating Dielectric Fluid

Chapter 412, Statutes of 1993, Section 25200.1.5, Health and Safety Code, enacted by Assembly Bill 2060 (AB 2060 by Assemblyman Ted Weggeland) authorizes DTSC to certify the performance of hazardous waste environmental technologies. The purpose of the certification program is to provide an in-depth, independent review of technologies at the manufacturers' level to facilitate regulatory and end-user acceptance. Only technologies that are determined to not pose a significant potential hazard to the public health and safety or to the environment when used under specified operating conditions may be certified. Incineration technologies are explicitly excluded from the certification program.

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

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

DTSC's proposed decision to certify was published on January 18, 2002 in the California Regulatory Notice Register 2002, Volume No. 3-Z, pp.218-227 and was subject to a 30-day public review and comment period. Written comments were submitted to DTSC. All comments received were considered and appropriate changes were made prior to publishing this final decision. The main comment submitted by the vendor and other interested parties was that the aquatic toxicity tests performed by California EPA were not analyzed in accordance with the method established in California regulations and misrepresented the product's aquatic toxicity effect. The LC₅₀ values obtained using this methodology were below the 96-hour fish bioassay toxicity value of 500 milligrams per liter (mg/L) listed in the California hazardous waste regulations. The vendor's comment are available in Section 7.0 of the June 2002 Final U.S. EPA Environmental Technology Verification Report. Although the Department appreciates and understands the vendor's concerns, the Department has determined the aquatic toxicity tests were conducted per the requirements outlined in the California hazardous waste regulations for toxicity. DTSC's Final Certification shall become effective on August 11, 2002.

Additional information supporting DTSC's final decision is included in the June 2002 Final U.S. EPA Environmental Technology Verification Report, and is available for review. Requests for additional information concerning the final decision should be submitted to the following address:

California Environmental Protection Agency
Department of Toxic Substances Control
Office of Pollution Prevention and
Technology Development
P.O. Box 806
1001 I Street, 12th Floor
Sacramento, California 95812-0806
Attn: Suzanne Davis (916) 327-4206
[http://www.dtsc.ca.gov/sciencetechnology/
TechCert_index.html](http://www.dtsc.ca.gov/sciencetechnology/TechCert_index.html)

A description of the technology to be certified, the certification statement and the certification conditions and limitations for the technology of the company listed above follow.

CERTIFICATION PROGRAM (AB 2060)
FOR HAZARDOUS WASTE
ENVIRONMENTAL TECHNOLOGIES

FINAL NOTICE OF TECHNOLOGY
CERTIFICATION BIOTEMP[®] VEGETABLE
OIL-BASED INSULATING DIELECTRIC FLUID

Technology: BIOTEMP[®] Vegetable Oil-Based
Insulating Dielectric Fluid

Manufacturer: ABB, Inc.
2135 Philpott Road
South Boston, Virginia 24592

Technology Description

The BIOTEMP[®] Vegetable Oil-Based Insulating Dielectric Fluid (BIOTEMP[®]), developed by ABB Inc. (ABB), is a vegetable oil-based dielectric fluid comprised of greater than 98.5% vegetable oil and less than 1.5% antioxidants. The product may use up to three different antioxidants to prevent unsaturated bonds in the oil from polymerizing with oxygen. The vegetable oil used in BIOTEMP[®] is manufactured off-site in a four-step process: crushing and refining, bleaching, deodorizing, and winterizing. The oil is extracted from crushed seeds using a solvent such as hexane. As part of the bleaching process, the oil is subject to a clay treatment to remove polar contaminants. Next, the oil is deodorized using steam distillation to remove unwanted volatile compounds. The last step, winterizing, involves chilling the oil to remove excessive saturates. The vegetable oil is then blended with the antioxidants per ABB's product specifications. ABB is currently using blending equipment at their South Boston, Virginia facility to oversee and control this portion of the process.

BIOTEMP[®] is used in liquid-filled electrical transformers as an electrical insulating medium. The main parts of a transformer are the core, the windings, the tank containing the core and windings, and the cooling system. The core is made of thin steel sheet laminates, which are coated with an oxide film to insulate the sheets from each other. Two distinct sets of coils called windings are placed upon the core at a suitable distance from each other. These windings consist of wire insulated with a paper covering. When the transformer is in-service, the oil and core expands and contracts as the heat generated by the transformer windings varies with the load. As the oil becomes heated, the hot oil rises to the top of the transformer where heat is dissipated to the outside, and then moves along the case to the bottom. Fins are sometimes attached to deflect moving air against the case and to increase the cooling area. Overheating the core can lead to damage, and overheating the windings can cause the insulation to deteriorate, which reduces the life of the transformer.

Basis for Certification

Evaluation Approach

The BIOTEMP[®] evaluation was designed to provide the data necessary to draw conclusions on the fluid's performance, chemical composition, toxicity, and safety. The evaluation included a review of supporting documents, information, and laboratory data submitted by ABB, and field sampling to provide independent data on the technology's performance, chemical composition, and toxicity.

The field sampling was conducted at ABB's manufacturing facility in South Boston, Virginia and at Pacific Gas and Electric's (PG&E) in-service transformers in San Francisco, California. PG&E is an ABB customer and agreed to provide staff and access to three in-service transformers as part of the field sampling activities. Prior to the field sampling, DTSC prepared a Technology Evaluation Workplan (Workplan) to identify specific field objectives, data quality objectives, testing procedures, and roles and responsibilities. ABB assumed overall responsibility for obtaining access to all locations where field sampling was conducted. DTSC staff provided independent oversight and were present to observe all field sampling activities.

The oldest transformer in-service using BIOTEMP[®] as the dielectric insulating fluid is 2.5 years old. Since the technology is still new, no data was available to assess the long-term transformer performance and waste characteristics of BIOTEMP[®] fluid at the end of its service life. Based on historical accelerated life testing results per American National Standards Institute (ANSI)/ Institute of Electrical and Electronic Engineers (IEEE) C57.100-1986, a transformer using BIOTEMP[®] is estimated to last 20 years which is comparable to a mineral oil-based transformer.

Verification Objectives

The verification/certification objectives were to verify the applicant's technology performance claims listed below.

Verification/Certification Claim #1—General Performance: In the following composition ratio (98.5% vegetable oil, 1.5% additives), BIOTEMP[®] meets criteria for oxidative, thermal, and chemical stability, as measured by Oil Qualification Tests—ASTM D3487 (Mineral Oil) and ASTM D5222 (High Temperature Hydrocarbons).

Verification/Certification Claim #2—Aquatic Biodegradability: BIOTEMP[®] biodegrades 97% in 21 days, based on the average of several performance tests as measured by the Coordinating European Council (CEC) Test Method CEC-L-33-A-93.

Verification/Certification Claim #3—Flammability: BIOTEMP[®] has a Flash Point of at least

300°C, and a minimum Fire Point of 300°C, based on the average of several performance tests as measured by ASTM D92 (Cleveland Open Cup).

Verification/Certification Claim #4—Acute Toxicity: The virgin BIOTEMP[®] product passes the toxicity characteristic criteria in Code of California Regulations, Title 22, Section 66261.24(a)(6) based on U.S. EPA/600/4-90/027F Test for Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms.

Other Verification/Certification Tests: Verify that BIOTEMP[®] consists of greater than 98.5% vegetable oil and less than 1.5% antioxidant and color additives; the formulator is meeting selected ABB purchase specifications; establish a baseline for measuring potential metals leaching and oil degradation of BIOTEMP[®] under electrical loading over time; evaluate the worker health and safety aspects of BIOTEMP[®]; and estimate costs of using BIOTEMP[®] as compared to those of mineral oil.

Verification Activities and Results

As part of this verification/certification, DTSC developed a technology evaluation workplan, which described the sample collection procedures and analyses performed. Samples were collected under DTSC oversight to ensure the samples were independent and representative. All samples were assigned a field sample identification number, which was determined prior to sampling. Proper chain of custody and storage procedures were followed. Four different laboratories were used to analyze the collected samples: Doble Engineering for the American Standard Testing Methods (ASTM) methods, Krueger Food Laboratories for the Association of Analytical Chemists (AOAC) methods, DTSC Hazardous Materials Laboratory (HML) for the semi-volatile organic compounds (SVOCs) and metals analyses, Associated Laboratories for the fish bioassay (acute toxicity) tests, and Powertech Laboratories for the aquatic biodegradability tests. Each laboratory sent data and reports directly to DTSC.

Four samples from three different virgin product lots (a total of twelve samples) were collected at ABB's manufacturing facility in South Boston, Virginia. Two lots were contained in 55-gallon drums while the third lot was contained in a 250-gallon tank. Barrel samples were collected using a glass Coliwasa. A new glass Coliwasa was used at each new barrel sampled to reduce the potential of cross contamination between samples. The composite tank samples were collected at a sampling spigot located at the bottom of the tank. Approximately one pint of oil was drained from the tank via the spigot prior to sampling.

Three samples, one from each lot, were analyzed by the following methods: EPA Method 8270/3520 for SVOCs; EPA Method 6010/5030 for metals; U.S. EPA Method 600/4-90/027F for acute toxicity; U.S. EPA Method OPPTS 835.3110 for aquatic biodegradation; AOAC Method 981.11, Oils and Fats; AOAC Method 972.28, Total Fatty Acids in Oils and Fats; AOAC Method 963.22, Methyl Esters of Fatty Acids in Oils and Fats; AOAC Method 983.15, Phenolic Antioxidants in Oils, Fats, and Butter; AOAC Method 977.17, Polymers and Oxidation Products of Vegetable Oil; ASTM Method D92, flash and fire point; ASTM Method D97, pour point; ASTM Method D445, kinematic viscosity at 0°C, 40°C, and 100°C; ASTM Method D877, dielectric breakdown (minimum); ASTM Method D1816, dielectric breakdown (gap 1.0 mm); ASTM Method D3300, dielectric breakdown (impulse); ASTM Method D924, dissipation factor at 25°C and 100°C; ASTM Method D2440, oxidation stability at 72 and 164 hours; ASTM Method D2112, oxidation stability (rotary bomb); and ASTM Method D1533, water content. One duplicate was analyzed for SVOCs, metals, and the AOAC and ASTM methods listed above. Two matrix spikes and an equipment blank were analyzed for SVOCs and metals. A field blank was analyzed for metals only. Six additional samples were also analyzed using the same ASTM methods except for the kinematic viscosity, which was only measured at 40°C.

Virgin product samples collected as part of this verification/certification were from lots produced by ABB's off-site blender. Since BIOTEMP[®] was blended off-site, ABB was not able to continuously monitor the blending of antioxidants into the oil and make adjustments based on atmospheric conditions such as humidity. Lots blended at ABB's South Boston facility were not available for this sampling event since ABB was completing installation and testing of their on-site blending equipment.

Four different in-service transformers were also sampled as part of this verification/certification: one owned by ABB located in South Boston, Virginia, and three owned by PG&E in San Francisco, California. The sampled transformers were in service for at **least one year** and part of a regular sampling/testing environment. In-service fluid samples were collected by ABB and PG&E representatives under DTSC oversight and in conjunction with PG&E's on-going sampling program. Only one sample per transformer was collected to minimize the amount of fluid removed from each transformer and the impact to the ongoing test program. New Tygon tubing connectors were used at each transformer fluid sampling port to reduce the potential of cross contamination.

The transformer pressure gauge is checked to confirm the unit is under positive pressure prior to sampling. A sampling syringe with Tygon tubing and a T-shaped sampling valve is attached to the sampling port. The T-shaped sampling valve is set to allow oil to flow through a purge line, which bypasses the sampling syringe. The sampling port valve is cracked open and oil is purged through the Tygon tubing, sampling valve, and purge line. After a few pints of oil have been purged through the line, the sample bottles are filled.

The in-service transformer samples were analyzed using the same methods listed for the virgin product samples for SVOCs, metals, and the AOAC analyses. To minimize the amount of fluid removed from each transformer, the in-service transformer samples were only tested by ASTM Method D924 for dissipation factor at 25°C, by ASTM D92 for flash and fire point, by ASTM Method D1533 for water content, and by ASTM Method D4308 for conductivity.

DTSC staff also reviewed internal product development testing data provided by ABB. These data were collected as part of ABB's ongoing internal testing prior to entry into the verification/certification agreement. Historical data collected by independent testing facilities under contract with ABB were also used. These data provided background information on the technology performance for past virgin lots and indicated trends on the fluid's performance in tested transformers for select ASTM parameters.

1. General Performance

BIOTEMP[®] was tested for select physical, chemical, thermal, and dielectric properties to verify general performance claims listed in ABB's product specifications. Since no standard suite of general performance tests exist for vegetable oil-based dielectric fluids, two ASTM specifications developed for mineral oils (ASTM D3487) and high temperature hydrocarbons (HTH)(ASTM D5222) were used. According to ABB, BIOTEMP[®] had similar dielectric and oxidation properties to those for mineral oil and HTH fluid. For the in-service transformer samples, results were compared to International Electrochemical Commission (IEC) 1203 specification for in-service synthetic organic esters since BIOTEMP[®] has similar fluid characteristics when in use. Results for the thermal properties are discussed under the flammability verification claim. Data variability reported for the virgin product results were calculated at a 95% confidence.

Virgin Product Performance Results

Dielectric Properties (or Dielectric Strength)

Dielectric breakdown and dissipation factor are the basic properties used to evaluate a dielectric fluid's performance. The minimum, gap, and impulse dielec-

tric breakdown voltage was determined for BIOTEMP[®] along with the dissipation factor at 25°C and 100°C.

Dielectric Breakdown

The minimum and gap dielectric breakdown tests measure the minimum voltage required to cause arcing between two submerged electrodes in a dielectric fluid. A low value may indicate the presence of water, dirt, or other electrically conductive particles in the oil, which may cause damage to the transformer core or windings due to arcing. The minimum and gap dielectric breakdown values for the virgin BIOTEMP[®] samples averaged 50 kilovolt (kV) \pm 3 kV, and 37 kV \pm 2 kV, respectively. These values were higher than the lowest value specified for the minimum and gap dielectric breakdown voltages for all three specifications.

The impulse dielectric breakdown value is designed to determine the minimum voltage to cause arcing in the fluid under lightning or power surge conditions. Of the ten samples analyzed, six samples had voltages ranging from 214 kV to 226 kV, which were higher than the minimum voltage listed under ASTM D3487 of 145 kV. The other four samples had voltages ranging from 130 kV to 136 kV. All ten samples exceeded the ABB minimum voltage specification of 100 kV. The percent difference between sample results collected from the same barrel and the same lot but analyzed at different points in time was between 48% and 54%. The percent difference for samples from the same barrel, the same lot, and analyzed at the same point in time, was 3%. These large variations in the sample results from the same drum and lot suggest inherent inaccuracies within the method and possible quality issues associated with Doble.

Dissipation Factor

The dissipation factor is used to measure the dielectric losses to an insulating dielectric fluid (such as oil) when it is exposed to an alternating electric field. For ASTM Method D924, the dissipation factor is determined by passing an alternating electric current through a test cell filled with dielectric fluid and measuring the capacitance with an electronic bridge circuit. This value is used to control the product quality, and to determine changes in the fluid due to contamination or degradation during use. A low dissipation factor indicates a low dielectric loss and a low contaminant concentration (e.g., dirt, water, or metals).

The ten sample results had dissipation factors averaging 0.075% \pm 0.054% at 25°C, and 1.665% \pm 0.762% at 100°C. Four sample results were much higher than the maximum dissipation value of 0.05% at 25°C for ABB and ASTM D3487 specifications, and 2.0% at 100°C for ABB specifications. None of the ten

samples were found to meet the ASTM D5222 specification values of 0.01% at 25°C and 0.3% at 100°C, and the ASTM D3487 specification value of 0.3% at 100°C.

Chemical Properties

Oxidation Stability

Oxidation stability was originally designed to assess the amount of sludge and acid products formed in mineral transformer oils under specific test conditions. Good oxidation stability minimizes the formation of sludge and acid in order to maximize the service life of the oil. Oils that meet the requirements specified for ASTM Method D2440 tend to minimize electrical conduction, ensure acceptable heat transfer, and preserve system life. Per ASTM Method D2440, there is no proven correlation between performance in this test and performance in service, since the test does not model the whole insulation system (oil, paper, enamel, wire). However, the test can be used as a control to evaluate oxidation inhibitors and to check the consistency of the oxidation stability of production oils.

The first oxidation stability tests on BIOTEMP[®] were performed per ASTM Method D2440 over a 72 hour period (the 72 hour test). After 72 hours, the ten sample results averaged 0.02% ± 0.005% for the percentage of sludge generated, and 0.17 milligram of potassium hydroxide per gram (mg KOH/g) ± 0.02 mg KOH/g for the neutralization number. The average percentage of sludge generated met the ABB and D3487 specifications of less than or equal to (≤) 0.2% and ≤ 0.1%, respectively. The average neutralization number met the ABB and D3487 specifications of ≤ 0.2 mg KOH/g and ≤ 0.3 mg KOH/g, respectively.

Oxidation stability tests were also performed on BIOTEMP[®] per ASTM Method D2440 over a 164 hour period (the 164 hour test). The percentage of sludge generated averaged 0.02% ± 0.01% which met both the ABB and ASTM D3487 specifications of 0.2%. However, the neutralization number averaged 19.02 mg KOH/g ± 1.85 mg KOH/g and exceeded the maximum value for the ABB and ASTM D3487 specifications of 0.5 mg KOH/g and 0.4 mg KOH/g, respectively.

The oxidation stability of BIOTEMP[®] was also tested using ASTM Method 2112, oxidation stability by rotating bomb (the rotary bomb test). The rotary bomb test was developed as a rapid method for evaluating the consistency of the oxidation stability for a new mineral oil between shipments. Sample results averaged 117 minutes ± 2 minutes, which did not meet the minimum ABB, ASTM D3487 and D5222 specification values of 200 minutes, 195 minutes, and 800–1,000 minutes, respectively.

Water Content

Water content is used by industry to monitor a dielectric fluid's quality. It is an indicator of possible oil deterioration, which could adversely affect the oil's electrical properties such as dielectric breakdown. This value is based on the relative saturation of the water in the dielectric fluid. The relative saturation is based on the amount of water dissolved in the oil divided by the total amount of water the oil could hold at that temperature. The dielectric strength of oil starts to fall when saturation reaches about 50%. For petroleum based dielectric oils, 50% saturation at room temperature is 30–35 milligram per kilogram (mg/kg). Synthetic esters and vegetable oil contain about 500–600 mg/kg of water at room temperature and 50% saturation. Water content at or near 50% saturation may indicate the oil has deteriorated and may cause a lower dielectric breakdown voltage, which can damage the transformer core and windings.

The water content in the ten samples averaged 79 parts per million (ppm) ± 14 ppm and were below the maximum ABB specification value of 150 ppm. The water content was observed to vary between barrels from the same lot, which may be due to variability in the analytical method, atmospheric conditions at the time of testing, and sample storage conditions.

Physical Properties

Pour Point

The pour point indicates the lowest temperature at which oil can be used. The average pour point for BIOTEMP[®] was -17°C ± 2°C. Initially, four samples were analyzed and the pour point was measured at -21°C. Six additional samples were analyzed at a later date with pour points all measured at -15°C. The difference between the two sets of sample results may be due to a different operator conducting the tests. The pour points for all samples were within the ABB specification range of -15°C to -25°C.

Viscosity

The dielectric fluid's viscosity is used by transformer designers to confirm that the fluid is appropriate for the unit under certain operating conditions. The viscosity of BIOTEMP[®] was determined at 0°C, 40°C, and 100°C. The viscosities at 0°C, 40°C, and 100°C varied slightly between samples and averaged 275.77 centistokes (cSt) ± 1.19 cSt, 40.68 cSt ± 0.19 cSt, and 8.59 cSt ± 0.05 cSt, respectively. These values were below the ABB maximum specification values of 300 cSt at 0°C, 45 cSt at 40°C, and 10 cSt at 100°C, respectively.

In-service Transformer Fluid Results

The dissipation factor for all four transformer samples ranged from 0.082 % to 0.252% which were below the IEC 1203 maximum value of 0.8%. One

sample had a higher dissipation factor and was observed to have an amber-orange color. This sample was collected from a transformer used by ABB for testing BIOTEMP[®] under extreme operating conditions such as overload scenarios. Historical results for this transformer showed a steady rise in the dissipation factor corresponding to overload scenarios. A comparison of historical in-service fluid results for the ABB transformer with the ABB virgin product specification shows the dissipation factors differ between 48 to 167% which indicates the oil may have a higher contaminant content due to use. The color and higher dissipation factor for the ABB transformer might indicate thermal decomposition of the fluid or possible oxidation.

The water content for the in-service transformer samples ranged from 15 ppm to 78 ppm, which was below the IEC 1203 and ABB maximum value of 400 ppm and 100 ppm, respectively. Historical water contents for the ABB transformer were below the ABB maximum value for all but one point. When compared to the other transformer results, the higher water content results for INS-07 correspond to overload tests conducted by ABB.

The conductivity values ranged from 8.51 picosiemens per meter (pS/m) to 24.65 pS/m and were greater than the minimum value specified in the original ABB specification of 2.0 pS/m. ABB has since discontinued use of this specification since high conductivity values do not affect the oil's performance. IEC 1203 did not specify a conductivity value. Again, the higher conductivity values for INS-07 corresponds to overload tests and were probably the result of extreme operating conditions.

2. Aquatic Biodegradability

Three virgin BIOTEMP[®] samples were tested by the Coordinating European Council (CEC) test method CEC-L-33-A-93, which compares the biodegradation potential of BIOTEMP[®] against the standard oils specified in the test method. The average biodegradability of BIOTEMP[®] was 99% ± 3% at 95% confidence after 21 days. An earlier study by ABB showed 90% biodegradation after 21 days.

While mineral oil was not tested as part of this study, literature data were available on biodegradability using an older version of the CEC-L-33-A-93, a U.S. EPA method, and an Organization of Economic Cooperation and Development (OECD) method. The Universite de Liege study reported the biodegradability of mineral oil over 70% after 40 days using test method CEC-L-33-T-82. A U.S. Army Corp of Engineers document reported the biodegradation rates for conventional mineral oil ranged from 42–49% after 28 days using U.S. EPA Method 560/6/-82-003, Aerobic Aquatic Biodegradability. Another study by

the Conservation of Clean Air and Water-Europe (CONCAWE) reported a ready biodegradation rate for a light naphthenic distillate mineral oil of 28% after 28 days when analyzed by OECD 301B, Sturm test. Both the U.S. EPA and OECD methods estimated the degree of biodegradability by the amount of carbon dioxide (CO₂) produced and expressed this result as a percentage of the theoretical CO₂, which can be produced. These methods are not considered equivalent to CEC-L-33-A-93 but the data does indicate that mineral oil is not readily biodegraded.

Based on these results, the virgin BIOTEMP[®] fluid appears to biodegrade more readily than mineral oil. Although BIOTEMP[®] readily biodegrades per this test, releases to water should be prevented. The product's ability to degrade in the environment is dependent on factors such as geography, pH, temperature, oxygen concentration, dispersal of oil, the presence of other chemicals, soil characteristics, nutrient quantities, and populations of various microorganisms at the location.

3. Flammability

The flash and fire point for virgin and in-service BIOTEMP[®] fluid were determined using ASTM Method D92, Cleveland Open Cup test. The flash point was measured to assess the overall flammability of the fluid and determine the presence of volatile or flammable material at elevated temperatures. The fire point was measured to determine the temperature at which the fluid could support combustion. These values were compared to ABB's specifications for BIOTEMP[®]. They were also compared to ASTM D3487 for flash point, and ASTM D5222 for fire point, which are designed for virgin mineral oil and HTH oil, respectively. The data variability was calculated at 95% confidence. The virgin product samples had flash and fire points averaging 331°C ± 3°C and 360°C ± 1°C, respectively. The in-service samples had flash and fire points ranging from 328°C to 334°C and 362°C to 364°C, respectively. These values met ABB and ASTM specifications with flash points greater than 300°C and 145°C, and fire points greater than 300°C and within 304 to 310°C, respectively.

The fire point results agreed with those obtained by Underwriters Laboratory (UL) and the Factory Mutual Research Corporation (FMRC) of 354°C and 360°C, respectively. UL determined the flash point at 243°C while FMRC determined a flash point at 330°C. The lower flash point reported by UL was due to their use of a different test method.

UL classified BIOTEMP[®] as a dielectric medium with a fire hazard rating of 4 to 5 which is less hazardous than paraffin oil. BIOTEMP[®] is one of five products listed by UL as a Class 4 to 5 dielectric medium.

FMRC classified this product as a less flammable transformer fluid. FMRC also identified BIOTEMP[®] as an alternative to high fire point hydrocarbons, silicone fluids, and synthetic esters or hydrocarbons where fire resistance, improved high temperature operation, and improved cooling are desired.

4. Acute Toxicity

Three virgin BIOTEMP[®] samples, one from each lot, were analyzed by U.S. EPA method, *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, EPA/600/4-90/027F, August 1993. The tests used juvenile pimephales promelas (fathead minnow) and samples were prepared in accordance with the "Static Acute Bioassay Procedures for Hazardous Waste Samples" developed by the California Department of Fish and Game, Water Pollution Control Laboratory and specified in the Code of California Regulations, Title 22, Section 66261.24(a)(6). This procedure requires using the wrist-action shaker method to dissolve the oil. Dissolved oxygen (DO) content, pH, and temperature were monitored and maintained as required by the method.

The lethal concentrations for 50% of the test population (LC₅₀) values for this evaluation were less than 250 milligram per liter (mg/L). Historical results provided by ABB reported a LC₅₀ of 776 mg/L.

A review of both the historical results and the verification/certification results was conducted to identify the differences, which could lead to such conflicting results. The main difference between the two sets of results was the sample preparation method used. Samples with the lower LC₅₀ results were prepared using the wrist-action shaker method while samples with the higher LC₅₀ results used a carrier solvent to make the oil miscible in water, per U.S. EPA method, *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*. Oil samples prepared using the wrist action method are thought to stratify, with the oil at the top of the tank. Fish swimming through this upper layer of the tank will become coated with the product and gill exchange will be impaired. Oil samples prepared using the wrist shaker method are thought to provide more realistic results for conditions, which may occur during an environmental release. Samples prepared using the carrier solvent provided results that reflect systemic (chemical) impacts on fish. For hazardous waste classification, the end-users should characterize the spent BIOTEMP[®] at the time of disposal since changes may occur to the oil due to use, storage, or age.

5a. Chemical Composition

The chemical compositions of the virgin and in-service fluids were analyzed for SVOCs and metals to verify chemical composition. These samples were also analyzed by various AOAC methods to create a chemical "fingerprint". Data variability was calculated at 95% confidence

The virgin BIOTEMP[®] samples averaged 80.06% ± 0.26% oleic acid, 10.45% ± 0.08% diunsaturated fatty acids, 0.26% ± 0.02% triunsaturated fatty acids, and 9.22% ± 0.18% saturated fatty acids. The in-service BIOTEMP[®] samples had 79.55% to 84.41% oleic acid, 5.38–10.68% diunsaturated fatty acids, 0.21%–0.27% triunsaturated fatty acids, and 9.50–9.99% saturated fatty acids. The average phenolic antioxidant concentration for the virgin product was 3,207 mg/kg ± 103 mg/kg. Phenolic antioxidants ranged between 2,990 and 3,600 mg/kg in the in-service transformer samples. The results for both the virgin and in-service samples were similar to the formulation provided by ABB.

The polymer and oxidation product values determined by AOAC Method 977.17 are simple indicators used in the food industry to assess the quality of vegetable oil after exposure to heat. If lower values are reported for a oil as it is reheated, the difference is assumed to show an increase in non-elution material (compounds not dissolved using a solvent) that indicates the polar compounds in the oil such as unsaturated fatty acids are degrading. Compared to the average virgin product value of 2.23% ± 0.69%, the in-service fluid samples had values ranging from 1.39% to 2.40% and appear to have degraded slightly due to use except for one sample.

For the 65 standard SVOC compounds analyzed by HML, only n-nitrodiphenylamine was detected around the detection limit of 20 mg/L for the virgin and in-service transformer samples. This may be a component of one of the antioxidants used in the fluid. For the in-service fluid, bis-(2-ethylhexyl)phthalate was also detected. This compound, a widely used plasticizer, was also detected in the equipment and field blanks collected. Other tentatively identified compounds were TBHQ, 2-isopropyl-1,4-benzenediol, 2,3-dihydro-2-methyl-5-phenyl-benzofuran, 2-isopropyl-1,4-benzoquinone, p,p'-diocetyl-diphenylamine, beta-stosterol, squalene, and vitamin E.

Metals were not detected in the in-service transformer samples except for INS-2, which had a zinc concentration of 2.3 mg/kg. For the virgin samples, copper and zinc were detected in one sample at 4.13 mg/kg and 2.02 mg/kg, respectively. Barium was detected in one sample at 0.31 mg/kg and two other samples at 0.32 mg/kg.

5b. Worker Health and Safety Aspects

DTSC reviewed material safety data sheets (MSDSs) and information on a transformer unit and its operation to determine potential hazards and regulations associated with BIOTEMP[®] usage. These hazards were then compared to potential hazards associated with select mineral oil-based and silicone oil-based transformer fluids. The discussion of the potential hazards and regulations below is not considered comprehensive. The end-user is still responsible for identifying potential hazards and implementing applicable regulations associated with worker health and safety.

The BIOTEMP[®] MSDS lists the components as >98.5% vegetable oil and <1.5% additives (e.g., antioxidants and color). The antioxidants used in this product are not listed as hazardous materials. Two of the antioxidants have been cleared by the Food and Drug Administration (FDA) for use as an indirect food additive in food packaging while the third antioxidant is identified as a food grade antioxidant. Although the BIOTEMP[®] components may be food grade, this product should not be used as a food product.

According to the BIOTEMP[®] MSDS, this product is also not considered a hazardous substance as defined under Title 8, California Code of Regulations, Section 5194, Hazard Communications. However, this does not relieve the end-user who uses this product from providing workers with information and training necessary to handle BIOTEMP[®] safely. Workers should review the MSDS and be familiar with the information concerning first aid procedures, physical properties, personal protective equipment (PPE), respiratory protection, and slip hazards. Workers should wash skin that has contacted the product with soap and water. For eye contact, the eyes should be flushed with water. The primary physical property workers should be aware of is the product's flash point of greater than 300°C. In the case of a BIOTEMP[®] spills, employees should be aware of the increased slip hazard in the affected area due to the product.

Before working with BIOTEMP[®], employees should ensure the work area has adequate ventilation, and the appropriate respiratory protection and protective clothing are selected. When working with hot BIOTEMP[®], workers should don neoprene gloves, rubber boots and aprons. Respiratory protection should only be worn if oil mists or dusts contaminated with oil are detected at concentrations equal to or exceeding the permissible exposure limit (PEL). OSHA has set the PEL for vegetable oil mist as a nuisance particulate at 15 milligram per cubic meter (mg/m³) and 5 mg/m³ for respiratory protection for an 8-hour time-weighted average (TWA) exposure. In California, the nuisance particulate PEL is 10 mg/m³. The end-user should consult the appropriate regulatory

authority about applicable nuisance particulate PELs used in their area. If the transformer is located in a poorly ventilated area, then workers should use appropriate engineering controls to ventilate the area. Based on the MSDS information on BIOTEMP[®]'s antioxidants, BIOTEMP[®] may produce carbon monoxide, carbon dioxide, nitrogen oxides, and other toxic compounds when the antioxidants thermally decompose. Mineral oil-based and silicone oil-based transformer fluids may also thermally decompose and produce fumes, smoke, carbon monoxide, aldehydes and other products. For some mineral oil-based transformer fluids, sulfur oxides are also listed as a possible decomposition product while silicon dioxide is listed for some silicone oil-based fluids. No data are available on the composition of emissions from transformers in general.

When comparing the PPE requirements for handling BIOTEMP[®] to select mineral oil-based transformer fluids, the requirements were found to be similar. This comparison is based on MSDS information for select mineral-oil-based transformer fluids obtained from the Vermont Safety Information Resources, Inc. (SIRI) MSDS archive. However, respiratory protection for the mineral oil-based transformer fluids is required when the mineral oil mist concentration equals or exceeds the OSHA PEL set at 5 mg/m³ for an 8-hour TWA exposure. For select silicone oil-based transformer fluids found in the Vermont SIRI MSDS archive, workers are advised to don impervious gloves and chemical goggles when handling the fluid.

Occupational exposure to transformer fluid is limited and associated with infrequent activities such as filling, draining, or sampling of transformers. These activities are not likely to generate a mist or aerosol at concentrations approaching the PEL. Potential hazards associated with filling or draining the transformer include slipping on work surfaces where the product was spilled, or splashing of the material into the eyes or onto the skin. Potential hazards associated with sampling the transformer include coming in contact with extremely hot oil, potential electrical arcing from the transformer, or slipping hazards due to spilled BIOTEMP[®] on the floor.

MSDS information for three silicone transformer fluids identified as less-flammable transformer oils by UL and FMRC were reviewed along with several mineral oil-based transformer fluids listed in the Vermont SIRI MSDS Archive. Health and safety information on the components listed on the MSDSs were compared to information listed in 2000 edition of Sax's Dangerous Properties of Industrial Materials. The primary component of the mineral oil-based transformer fluid was a hydrotreated light naphthenic

petroleum distillate (Chemical Abstract Service [CAS] No. 64742-53-6) ranging from 30–100%, which was identified as an International Agency for Research on Cancer (IARC) confirmed carcinogen, based on experimental data for animals. The primary ingredient of the silicone oil-based transformer fluids was dimethyl polysiloxane (CAS No. 63148-62-9) listed at 100% and identified as a combustible liquid, a teratogen, and the cause of reproductive effects based on experimental data on animals.

5c. Estimated Cost of BIOTEMP[®] versus Mineral Oil

The initial purchase cost of a new transformer unit containing BIOTEMP[®] is approximately 1.25–1.30 times more than the cost for a comparable mineral oil transformer. The price of the BIOTEMP[®] fluid ranges from \$7 to \$11 per gallon depending on the volume purchased and is based on estimates provided by ABB. The fluid is available in 5-gallon containers, 55-gallon drums, 200-gallon totes, 6,000-gallon tanker trucks, or by the rail car. Prices for mineral oil typically range from \$2 to \$3 per gallon. Monitoring costs will vary depending on the maintenance program the purchaser has in place. The waste characterization cost for a transformer using BIOTEMP[®] or mineral oil are anticipated to be approximately the same except for mineral oil suspected to contain PCBs where the costs will be higher. The disposal cost for mineral oil and BIOTEMP[®] are assumed to be comparable since data are not available on the waste characteristics of BIOTEMP[®] after 25 years of use.

For a retrofilled transformer, no additional costs due to modifications of the transformer unit are incurred for using BIOTEMP[®]. The costs associated with draining and disposing of the used oil are expected to be the same for both mineral oil and BIOTEMP[®]. Costs associated with flushing and filling a retrofilled transformer with BIOTEMP[®] versus mineral oil are also anticipated to be higher since BIOTEMP[®] costs between \$4 to \$9 per gallon more than mineral oil depending on the volume purchased.

Certification Statement

Under the authority of Health and Safety Code section 25200.1.5, the BIOTEMP[®] Vegetable Oil-Based Insulating Dielectric Fluid (BIOTEMP[®]) is hereby certified as a pollution prevention technology subject to the specific conditions including the limitations/disclaimer set forth in the Certification Notice as published in the California Regulatory Notice Register on July 12, 2002, Register No. 2002, Volume No. 28-Z, pages [xxx–xxx]. Field test results show that the ABB Inc. BIOTEMP[®] Vegetable Oil-Based Insulating Dielectric Fluid is a biodegradable, vegetable oil-based dielectric fluid with a flash and fire point above 300°C. The product has dielectric breakdown voltages comparable to mineral oil and

high temperature hydrocarbon oil. The product may have varying amounts of antioxidants based on past and current oxidation stability results. BIOTEMP[®] samples from normal in-service transformers had flash and fire points above 300°C, and showed no signs of oil degradation due to use. Spent BIOTEMP[®] fluid may exhibit a hazardous characteristic per California's hazardous waste characteristic definition based on limited data for the virgin product. The end-user must characterize the spent BIOTEMP[®] at the time of disposal since changes may occur to the oil due to use, storage, or age.

Limitations of Certification

DTSC makes no express or implied warranties as to the performance of the BIOTEMP[®] Vegetable Oil-Based Insulating Dielectric Fluid. Nor does DTSC warrant that the BIOTEMP[®] product is free from any defects in workmanship or materials caused by negligence, misuse, accident or other causes. However, DTSC believes that the BIOTEMP[®] Vegetable Oil-Based Insulating Dielectric Fluid can be used in accordance with the conditions specified in this certification notice to achieve the results specified herein.

Use of the certified technology is limited to transformers as an insulating dielectric fluid. The product must also meet the requirements specified by Underwriters Laboratories (UL) and the Factory Mutual Research Center (FMRC) for a less flammable transformer fluid and transformer installation requirements specified under the National Electrical Code (NEC).

Specific Conditions

1. Applicability. This certification is limited to the use of BIOTEMP[®] Vegetable Oil-Based Insulating Dielectric Fluid (BIOTEMP[®]) as an insulating dielectric fluid in transformers up to 20 megavolt amperes (MVA).
2. Use for Transformers. This certification is limited to use of the BIOTEMP[®] in transformers up to 20 megavolt amperes (MVA). Use of BIOTEMP[®] does not automatically classify the transformers as less flammable per the Factory Mutual Research Center definition. The user is responsible for assessing whether existing transformers where BIOTEMP[®] will be substituted for the original dielectric fluid (retrofilling) meets current NEC requirements.
3. Compliance with the Oil Spill Pollution Prevention and Management Requirements. Use of the BIOTEMP[®] Vegetable Oil-Based Insulating Dielectric Fluid must be in compliance with all

- federal, state, and local regulations requiring the reporting of oil releases to the soil or water and their subsequent clean-up.
4. Compliance with Hazardous Waste Classification and Disposal Requirements. Prior to disposal, spent BIOTEMP[®] and waste material generated from the clean-up of BIOTEMP[®] spills must be characterized per 22CCR Section 66261.20 and managed accordingly. Spent BIOTEMP[®] or waste material from spills shall be tested for polychlorinated biphenyls (PCBs) if the transformer in question formerly contained a PCB-laden oil. The disposal of virgin and spent BIOTEMP[®] must be in compliance with all federal, state, and local regulations.
 5. Compliance with Used Oil Management Requirements. The user shall be responsible for determining if the spent BIOTEMP[®] meets the definition of an used oil per 22CCR Section 66279.1(d), contains no more than 5 ppm of PCBs, and has a total halogen content of less than 1,000 ppm. If the spent BIOTEMP[®] meets these criteria, then it must be managed as an used oil under California's Used Oil Management Program and sent to a certified California waste oil recycler. If the spent BIOTEMP[®] does not meet the definition of an used oil per 22CCR Section 66279.1(d) but does meet the definition of a hazardous waste per 22CCR Section 66261.20, then it must be managed as a hazardous waste.
 6. Compliance with Worker Health and Safety Laws. Use of BIOTEMP[®] in transformers must be in compliance with all federal, state and local regulations relating to the protection of worker health and safety. In California these include, but are not limited to, Cal-OSHA and OSHA requirements.
 7. Personnel Training. Operators with knowledge and proper training in transformer sampling are required to collect samples from in-service transformers. Training includes, but is not limited to, safe operation and maintenance of the transformers, and knowledge of safe work practices and operating procedures for high voltage electrical equipment.
 8. Compliance with Applicable Federal, State, Local Regulations. The user shall comply with all applicable federal, state, and local regulatory requirements.
 9. Modifications and Amendments at the Request of the Applicant. Modifications and amendments to this certification may be requested by the applicant and shall be subject to approval by DTSC.

10. Certification Reference. The holder of a valid hazardous waste environmental technology certification is authorized to use the certification seal (California Registered Service Mark Number 046720) and shall cite the certification number and date of issuance in conjunction with the certification seal whenever it is used. When providing information on the certification to the user of the technology or another interested party, the holder of a hazardous waste environmental technology certification shall at a minimum provide the full text of the final certification decision as published in the California Regulatory Notice Register.
11. The user of the certified technology shall maintain adequate records to document compliance with the conditions of certification. The records shall be maintained onsite and available for inspection.

Regulatory Implications

This certification is for the specific claims, conditions, and limitations outlined in this notice, and is based on DTSC's evaluation of the technology's performance. The Certification does not change the regulatory status of BIOTEMP[®] Vegetable Oil-Based Insulating Dielectric Fluid; it should, however, facilitate and encourage the acceptance of this technology as a pollution prevention alternative to transformer oils containing PCBs, mineral oils, and silicone oils.

Use of this technology, as a pollution prevention alternative does not require a hazardous waste management permit issued by DTSC. However use of the technology may be subject to regulation by other state and local agencies. For each specific application, the end-user must ensure compliance with all applicable regulations and standards established by other state and local agencies.

This Certification is issued under the California Environmental Technology Certification Program, and is therefore subject to the conditions set out in the regulations, such as the duration of the Certification, the continued monitoring and oversight requirements, and the procedures for certification amendments, including decertification.

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

Duration of Certification

This certification will remain in effect for three years from the date of issuance, unless it is amended or revoked for cause.

**DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

**HOUSEHOLD HAZARDOUS WASTE UNIT
STATE REGULATORY PROGRAMS DIVISION
PUBLIC NOTICE FOR VARIANCE ISSUANCE**

On June 12, 2002, the State Regulatory Programs Division of the Department of Toxic Substances Control (DTSC) issued a variance to the City of Los Angeles. Authority for this action is contained in Health and Safety Code, section 25143. The variance was issued for four-days mobile household hazardous waste and conditionally exempt small quantity generator waste (CESQG) collections to be conducted at:

Los Angeles Valley College
5800 Fulton Avenue
Van Nuys, California 91401
June 19-22, 2002

This variance authorizes the City of Los Angeles through its contractor to set up the mobile four-day collection events at the locations listed above for the specific dates and collect household and CESQG hazardous wastes. The first day is for CESQG collections only. Specific standards exempted are permit requirements contained in the Health and Safety Code, section 25201 and California Code of Regulations, title 14, division 4.5, chapter 20. The collections are subject to strict operating standards specified in the variance. For additional information contact Asha Arora at the Department of Toxic Substances Control, Household Hazardous Waste Unit at (510) 540-3874.

**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.

BOARD OF EDUCATION

Mathematics & Reading Professional Developmental Program (AB466)

The proposed emergency regulatory action amends provisions governing the Mathematics and Reading Professional Development Program (AB 466). This

action adds a definition of the phrase “instructional materials. . .otherwise authorized by the State Board of Education” contained in Education Code section 99231(c).

Title 5
California Code of Regulations
ADOPT: 11983.5
Filed 06/28/02
Effective 06/28/02
Agency Contact: Pat McGinnis (916) 657-4669

BOARD OF EQUALIZATION

Diesel fuel Used in farming Activities or Food Processing

This regulatory action interprets the partial exemption for sales of diesel fuel used in farming activities or food processing.

Title 18
California Code of Regulations
ADOPT: 1533.2
Filed 07/02/02
Effective 09/01/01
Agency Contact: Diane G. Olson (916) 322-9569

**BUREAU OF SECURITY AND INVESTIGATIVE
SERVICES**

Fees for locksmiths, private investigators, private security services, and alarm companies

This rulemaking action sets fees, mostly at the maximum level, pursuant to recent legislation (SB 722, Statutes of 2001, Chapter 607) which raised maximum fees for licensing, registration, and renewals for locksmiths, private investigators, private security services, including private patrol operators, and alarm companies.

Title 16
California Code of Regulations
ADOPT: 638, 639, 640, 641
Filed 07/01/02
Effective 07/01/02
Agency Contact:
Noreene DeKoning (916) 322-7530

**CA INDUSTRIAL DEVELOPMENT FINANCING
ADVISORY COMMISSION**

Industrial Development Bond Fees

The California Industrial Development Financing Advisory Commission (CIDFAC) assists California manufacturing businesses in funding capital expenditures for acquisitions or expansions for defined economic development purposes. The program allows a business to borrow funds at competitive rates through the issuance of tax-exempt bonds enhanced by a letter of credit. Federal law recently increased the scope and dollar limit on funds to be borrowed in Empowerment Zones (EZ’s), so the Commission is amending its present quarter of a percent fee, adding a

cap for the higher amounts so the industrial development bonds (IDB's) are more competitive and fulfill their legislative purpose.

Title 10

California Code of Regulations

AMEND: 6070

Filed 07/02/02

Effective 07/02/02

Agency Contact:

Joanie Jones-Kelly (916) 653-3376

CALIFORNIA GAMBLING CONTROL COMMISSION

Work Permits—Grounds of Denial—Issuance of Temporary Permits

This emergency regulatory action adopts the requirements for obtaining a temporary work permit and the standards the Commission will use to deny an application for a work permit. (Previous OAL file #01-1109-08E, 01-1121-06E, and 02-0312-05EE)

Title 4

California Code of Regulations

ADOPT: 12100, 12102, 12104, 12106, 12108, 12110, 12120, 12130

Filed 07/01/02

Effective 07/01/02

Agency Contact: Herb Bolz (916) 327-8272

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Racial Profiling Course

The proposed regulatory action establishes the Racial Profiling Training course pursuant to the mandate of Penal Code section 13519.4.

Title 11

California Code of Regulations

AMEND: 1081

Filed 07/01/02

Effective 07/31/02

Agency Contact: Leah Cherry (916) 227-3891

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Drug Testing

In this emergency regulatory action, the Department of Alcohol and Drug Programs implements the "substance abuse treatment and testing accountability program" provided for under Statutes of 2001, Chapter 721. The regulations relate to funding local substance abuse testing programs.

Title 9

California Code of Regulations

ADOPT: 9526, 9531 AMEND: 9500, 9505, 9515, 9530, 9535

Filed 06/28/02

Effective 07/01/02

Agency Contact: Mary Conway (916) 327-4742

DEPARTMENT OF FOOD AND AGRICULTURE
Direct Marketing

The proposed action would amend the conditions under which certified producers may sell their agricultural products at certified farmers' markets. The amendments would require certified producers who sell products under their own primary certificate and also sell products under a partnership to comply with all requirements that individual certified producers are required to comply with, which includes selling for and/or representing for no more than two other producers on a certified producer's certificate in a 12-month period.

Title 3

California Code of Regulations

AMEND: 1392.1, 1392.2, 1392.4, 1392.9.1

Filed 07/03/02

Effective 07/03/02

Agency Contact:

Janice L. Price (916) 654-0919

DEPARTMENT OF FOOD AND AGRICULTURE
Meat & Poultry Branch—Permit Reform Act and Enforcement Fees

In this regulatory action, the Department of Food and Agriculture establishes enforcement fees (fixing the amounts of the fees and providing for the collection of the fees) for the following types of entities: (1) rendering establishments, (2) collection centers, and (3) transporters of inedible kitchen grease. This regulatory action further establishes Permit Reform Act time periods for the licenses/registrations applicable to these types of entities.

Title 3

California Code of Regulations

ADOPT: 1180.3.1, 1180.3.2 AMEND: 300(c)

Filed 07/01/02

Effective 07/31/02

Agency Contact: Nancy Grillo (916) 651-7280

DEPARTMENT OF HEALTH SERVICES

Newborn Screening Program Fee Increase

This emergency regulatory action increases the total fee for the newborn screening program services from \$56 to \$60.

Title 17

California Code of Regulations

AMEND: 6508

Filed 06/28/02

Effective 06/28/02

Agency Contact: Linda Tutor (916) 654-0381

DEPARTMENT OF JUSTICE

Non-Profit Raffle Program

The proposed regulatory action is the Certificate of Compliance filing making permanent the prior emergency adoption of regulations establishing registration

and reporting requirements for eligible organizations conducting non-profit raffles for beneficial or charitable purposes. This action implements Penal Code section 320.5. The prior emergency files initially adopting and readopting these provisions were OAL file numbers 01-0522-05E, 01-1029-01EE, and 01-0213-03EE.

Title 11
 California Code of Regulations
 ADOPT: 410, 411, 415, 416, 417, 418, 419, 419.1, 419.2, 419.3, 420, 421, 422, 423, 424, 425, 426
 REPEAL: 410, 411, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426
 Filed 07/02/02
 Effective 07/02/02
 Agency Contact:
 Barbara D. Moore (916) 323-6665

**DEPARTMENT OF JUSTICE
 Firearm Dealer Fee Increase**

Pursuant to SB 294 (Chapter 138, Statutes of 2001), the Attorney General is increasing the annual fee from \$85 to \$115 for firearms dealers who pay a fee to be on the Centralized List and are subject to inspections for compliance with various statutory requirements.

Title 11
 California Code of Regulations
 AMEND: 987.1
 Filed 06/27/02
 Effective 07/27/02
 Agency Contact: Jeff Amador (916) 227-3705

**DEPARTMENT OF PARKS AND RECREATION
 Relocation Assistance**

Government Code section 7267.8 (a) requires that all public entities adopt regulations to implement payments and to administer relocation assistance in accordance with regulations adopted by the Department of Housing and Community Development. However, if the project is federally funded, Government Code section 7267.8 (b) requires that the public entity make relocation assistance payments and provide relocation advisory assistance as required under federal law. The Department of Housing and Community Development (DHCD) has adopted relocation assistance and real property acquisition guidelines in subchapter 1 of chapter 6 of title 25 of the California Code of Regulations. This filing is a readoption of an emergency regulatory action of the Department of Parks and Recreation (DPAR) which incorporated by reference those relocation assistance guidelines of DHCD and further provided that, with respect to a federally funded project, relocation assistance payments and relocation advise assistance shall be provided as required under federal law.

Title 14
 California Code of Regulations
 ADOPT: 4971
 Filed 06/27/02
 Effective 06/27/02
 Agency Contact:
 David Wrightsman (916) 445-9101

**DEPARTMENT OF SOCIAL SERVICES
 Refugee Cash Assistance/Entrant Cash Assistance (RCA/ECA) Amendments**

This Certificate of Compliance allows California counties to operate their Refugee Cash Assistance (RCA) programs in accordance with the California Work Opportunity and Responsibility to Kids (CalWORKS) program instead of the obsolete Aid to Families with Dependent Children (AFDC) program. (Previous OAL # 02-0125-07E)

Title MPP
 California Code of Regulations
 ADOPT: 69-209, 69-210 AMEND: 69-201, 69-202, 69-203, 69-204, 69-205, 69-206, 69-207, 69-208, 69-211, 69-212, 69-213, 69-214, 69-215, 69-216, 69-217, 69-301, 69-302, 69-303, 69-304, 69-205, 69-306 REPEAL: 69-210, 69-221
 Filed 07/03/02
 Effective 07/03/02
 Agency Contact:
 Anthony J. Velasquez (916) 657-2586

**DEPARTMENT OF SOCIAL SERVICES
 Foster Family Homes Emergency Regulations**

This emergency regulatory action conforms current regulations dealing with the licensing of foster care homes to changes in federal and state law.

Title 22, MPP
 California Code of Regulations
 ADOPT: 89202, 89261, 89319, 89323, 89370, 89372, 89374, 89376, 89388, 89400, 89405
 AMEND: 87000, 87001, 87005, 87006, 87007, 87009, 97010, 97010.1, 87010.2, 87017, 87018, 87019, 87019.1, 87019.2, 87020, 87021, 87024, 87026, 87027, 87028, 87029, 87031, 8
 Filed 06/26/02
 Effective 07/01/02
 Agency Contact:
 Anthony J. Velasquez (916) 657-2586

**DEPARTMENT OF SOCIAL SERVICES
 CalWORKS 60-Month Time Limit Procedures**

This emergency readoption implements federal and state law concerning CalWORKs 60-month time limit procedures. It establishes a process by which recipients can claim exemptions to the time limit, and requires notification of remaining time.

Title MPP

California Code of Regulations

ADOPT: 40-107.141, 40-107.142, 40-107.143, 40-107.144, 40-107.15, 40-107.151, 40-107.152, 42-302.114, 42-302.114(a)-(c), 42-302.21(h)(1), 42-302.3, 44-133.8, 82-833 AMEND: 40-107.14, 40-107.16, 40-107.17, 40-107.18, 40-107.19, 42-301.2, 44-133.51, 82-8

Filed 06/28/02

Effective 06/28/02

Agency Contact:

Anthony J. Velasquez (916) 657-2586

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Land Disposal Restrictions

The Department of Toxic Substances Control (Toxics) is amending the captioned sections to provide for various changes made by the United States Environmental Protection Agency pertaining to Land Disposal Restriction requirements. These changes made by Toxics simply conform to federal language contained within the Code of Federal Regulations.

Title 22

California Code of Regulations

ADOPT: 66268.31.5 AMEND: 66261.32, 66261.33, Ch. 11 App. VII, Ch. 11 App. VIII, 66268.7, 66268.33, 66268.39.5, 66268.40 and table entitled "Treatment Standards for Hazardous Wastes, 66268.48, 66268.49, Ch. 18 App. VII.

Filed 07/03/02

Effective 08/02/02

Agency Contact: Joan Ferber (916) 322-6409

FAIR POLITICAL PRACTICES COMMISSION

Advertisement Disclosure

This action concerns committee names, advertisement disclosures, and amendments to such disclosures. This is also a Certificate of Compliance filing to a previous emergency.

Title 2

California Code of Regulations

ADOPT: 18450.3, 18450.4, 18450.5 AMEND: 18402

Filed 06/27/02

Effective 07/27/02

Agency Contact: Scott Tocher (916) 322-5660

FISH AND GAME COMMISSION

Use of Dogs for Pursuit/Take of Mammals or for Dog Training

Section 207 of the Fish and Game Code provides that the Fish and Game Commission shall hold meetings in the first 10 days of the months of February, March, and April in even-numbered years for the purpose of considering and adopting revisions to regulations relating to mammals. At the Febru-

ary meeting, the commission shall receive recommendations for regulations from its own members and staff, the department, other public agencies, and the public. At the March meeting, the commission shall devote time for open public discussion of proposed regulations presented at the February meeting and shall announce the regulations it intends to add, amend, or repeal relating to mammals. At, or within 20 days after, the April meeting, the Commission may choose to hear additional public discussion regarding the regulations it intends to adopt and shall adopt the regulations it deems necessary to preserve, properly utilize, and maintain each species or subspecies. This regulatory action adopts changes to the mammal hunting and trapping regulations for 2002-2003.

Title 14

California Code of Regulations

ADOPT: 708 AMEND: 265, 308, 360, 361, 362, 363, 364, 365, 367, 368, 401, 555, 601, 711 REPEAL: 370, 371, 372, 373

Filed 06/28/02

Effective 06/28/02

Agency Contact: John M. Duffy (916) 653-4899

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Variances from Occupational Safety and Health Standards

This action updates the Board's regulations describing the procedures and standards related to the consideration of variances, parties, dismissal, and appeals from decisions concerning variance applications.

Title 8

California Code of Regulations

ADOPT: 417.5 AMEND: 406, 411.1, 415, 417.3 REPEAL: 411.2, 411.3, 411.4

Filed 07/01/02

Effective 07/31/02

Agency Contact: Marley Hart (916) 274-5721

STATE LANDS COMMISSION

Marine Terminal Physical Security Program

This readopted emergency regulatory action sets forth the requirements for the "Marine Terminal Physical Security Program". (California State Lands Commission File W 9777.104.)

Title 2

California Code of Regulations

ADOPT: 2351

Filed 06/27/02

Effective 06/27/02

Agency Contact:

Livin D. Prabhu (562) 499-6312

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN FEBRUARY 27, 2002
TO JULY 03, 2002**

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

- 06/27/02 ADOPT: 18450.3, 18450.4, 18450.5
AMEND: 18402
- 06/27/02 ADOPT: 2351
- 06/25/02 AMEND: 1189.10
- 06/20/02 REPEAL: 548.96
- 06/20/02 AMEND: 561.2, 561.3
- 06/17/02 AMEND: 18239, 18615, 18616
- 06/06/02 ADOPT: 18572
- 05/28/02 ADOPT: 1896.300, 1896.310, 1896.320,
1896.330, 1896.340, 1896.350, 1896.360,
1896.370
- 05/22/02 AMEND: 571(a)(5)
- 05/13/02 AMEND: 18428
- 05/10/02 AMEND: 18351
- 05/09/02 AMEND: 20202, 20206, 20210, 20224,
20234, 20298, 20350, 20363, 20910
REPEAL: 20106, 20205, 20213
- 05/02/02 ADOPT: 1859.104.1, 1859.104.2,
1859.104.3 AMEND: 1859.2, 1859.21,
1859.50, 1859.51, 1859.61, 1859.70,
1859.73.1, 1859.73.2, 1859.74.1,
1859.75.1, 1859.76, 1859.78.2,
1859.79.3, 1859.81, 1859.81.1, 1859.82,
1859.91, 1859.95, 1859.100, 1859.101,
1859.102,
- 04/26/02 ADOPT: 18520 AMEND: 18521, 18523,
18523.1
- 04/19/02 ADOPT: 18537.1
- 04/10/02 ADOPT: 1859.74.4 AMEND: 1859.2,
1859.20, 1859.21, 1859.30, 1859.33,
1859.40, 1859.41, , 1859.42, 1859.43,
1859.50, 1859.51, 1859.60, 1859.70,
1859.73.1, 1859.73.2, 1859.74.1,
1859.74.4, 1859.75.1, 1859.76,
1859.78.2, 1859.79.3, 1859.81,
1859.81.1, 1859.
- 04/04/02 ADOPT: 60, 60.1, 60.2, 60.3, 60.4, 60.5,
60.6, 60.7, 60.8, 60.9, 60.10
- 03/27/02 ADOPT: 59100
- 03/19/02 ADOPT: 599.930

- 03/18/02 AMEND: 599.502, 599.508
- 03/15/02 ADOPT: 1859.200, 1859.201, 1859.202,
1859.203, 1859.204, 1859.205, 1859.206,
1859.207, 1859.208, 1859.209, 1859.210,
1859.211, 1859.212, 1859.213, 1859.214,
1859.215, 1859.216, 1859.217, 1859.218,
1859.219, 1859.220
- 03/13/02 AMEND: 56800
- 03/07/02 ADOPT: 2351

Title 3

- 07/03/02 AMEND: 1392.1, 1392.2, 1392.4,
1392.9.1
- 07/01/02 ADOPT: 1180.3.1, 1180.3.2 AMEND:
300(c)
- 06/20/02 REPEAL: 3431, 3591.17
- 06/13/02 ADOPT: 1366
- 06/13/02 AMEND: 2303(t)
- 06/11/02 AMEND: 3425(b)
- 06/10/02 AMEND: 3406(b)
- 06/10/02 AMEND: 6391, 6393, 6394, 6395
- 06/04/02 AMEND: 3591.16(a)
- 05/29/02 AMEND: 1380.19, 1436.38, 1446.7,
1454.14, 1462.15
- 05/16/02 AMEND: 1428.12, 1428.16
- 05/02/02 AMEND: 3700(a), (b), & (c)
- 04/23/02 AMEND: 3591.12(a)
- 04/23/02 ADOPT: 899.2 AMEND: 899.1
- 04/18/02 AMEND: 6510, 6793
- 04/12/02 AMEND: 3423(b)
- 04/11/02 ADOPT: 3664, 3665, 3666, 3667, 3668,
3669
- 04/08/02 AMEND: 6450.2, 6450.3, 6784
- 04/04/02 AMEND: 3033.2, 3033.3, 3033.4
- 04/02/02 ADOPT: 480.9 AMEND: 480.7
- 03/12/02 AMEND: 3423(b)
- 03/12/02 AMEND: 3423(b)
- 03/08/02 ADOPT: 306, 6188, 6780 AMEND: 6000

Title 4

- 07/01/02 ADOPT: 12100, 12102, 12104, 12106,
12108, 12110, 12120, 12130
- 05/13/02 ADOPT: 8110, 8111, 8112, 8113, 8114,
8115, 8116, 8117, 8118, 8119, 8120,
8121, 8122, 8123, 8124, 8125
- 05/07/02 ADOPT: 3005, 3006, 3007, 3008, 3009,
3010 AMEND: 1928
- 04/16/02 AMEND: 1405, 1527
- 03/21/02 ADOPT: 8090, 8091, 8092, 8093, 8094,
8095, 8096, 8097, 8098, 8099, 8100,
8101
- 03/19/02 ADOPT: 12100, 12102, 12104, 12106,
12108, 12120, 12130

Title 5

- 06/28/02 ADOPT: 11983.5
- 06/11/02 AMEND: 11530, 11531
- 06/05/02 AMEND: 59311, 59328, 59342

05/21/02 AMEND: 80026.4, 80026.6, 80122
 05/20/02 ADOPT: 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219 AMEND: 55316.5, 58003.1, 58003.3, 58007, 58009, 58051, 58056 REPEAL: 55317, 55352, 55370, 55372, 55374, 55376, 55378, 55380
 05/08/02 ADOPT: 80434 AMEND: 80001
 05/03/02 ADOPT: 54045.5, 58003.6
 03/25/02 ADOPT: 11980, 11981, 11982, 11983, 11984, 11985, 11986
 03/20/02 AMEND: 59300, 59302, 59303, 59304, 59305, 59306, 59310, 59311, 59320, 59322, 59324, 59326, 59327, 59328, 59329, 59330, 59333, 59334, 59336, 59338, 59339, 59340, 59342, 59350, 59351, 59352, 59354, 59358, 59360, 59362
 03/20/02 AMEND: 50500
 03/15/02 ADOPT: 11963, 11963.1, 11963.2, 11963.3, 11963.4
 03/12/02 ADOPT: 18400, 18405, 18406, 18407, 18408, 18409, 18409.5, 18410, 18411, 18412, 18413, 18414, 18415, 18416, 18417, 18418, 18419, 18420, 18421, 18422, 18423, 18424, 18425, 18426, 18427, 18428, 18429, 18430, 18431, 18432, 18433, AMEND: 18409.5, 18409(e),
 03/01/02 ADOPT: 11967.5, 11967.5.1

Title 7

04/04/02 ADOPT: 237

Title 8

07/01/02 ADOPT: 417.5 AMEND: 406, 411.1, 415, 417.3 REPEAL: 411.2, 411.3, 411.4
 06/20/02 AMEND: 3700, 3702
 06/18/02 AMEND: 5189
 06/12/02 AMEND: 9791.1, 9792.5, 9793, 9795
 06/03/02 AMEND: 4885
 06/03/02 AMEND: 5034(f)
 05/28/02 AMEND: 3650, 3664
 05/20/02 AMEND: 32125, 32130, 32140, 32603, 32604, 32720, 32735, 32738, 32739, 32744, 32752, 32763, 32980
 05/07/02 ADOPT: 11080, 11090, 11100, 11110, 11120, 11130, 11150 REPEAL: 11080, 11090, 11100, 11130, 11130, 11150
 05/06/02 AMEND: 3089
 05/02/02 AMEND: 100, 106, 107
 05/01/02 ADOPT: 1716.2 AMEND: 1632, 1635, 1671, 1709, 1710
 05/01/02 ADOPT: 11140 AMEND: 11140
 04/22/02 AMEND: 2320.2 of the Low voltage Electrical safety orders
 04/03/02 AMEND: 1626
 03/28/02 ADOPT: 341.15

03/05/02 AMEND: 3251

Title 8, 24

05/08/02 AMEND: 3011(d), 3120.1 and 3122.0

Title 9

06/28/02 ADOPT: 9526, 9531 AMEND: 9500, 9505, 9515, 9530, 9535

Title 10

07/02/02 AMEND: 6070
 06/24/02 ADOPT: 2698.68
 06/20/02 AMEND: 2498.6
 06/20/02 ADOPT: 2729.5, 2790.6, 2846.1 AMEND: 2790.1, 2791.8, 2792, 2800, 2810, 2811, 2910, 2911, 2912, 2930
 06/17/02 ADOPT: 2193, 2193.1, 2193.2, 2193.3
 06/07/02 AMEND: 5.2001 and Appendix
 06/06/02 AMEND: 2698.70, 2698.71 REPEAL: 01-1219-06 E
 06/03/02 ADOPT: 2187.3 AMEND: 2186.1, 2187.1, 2187.2
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 04/29/02 ADOPT: 2699.6606, 2699.6711, 2699.6631, 2699.6631, 2699.6717 AMEND: 2699.6500, 2699.6600, 2699.6605, 2699.6607, 2699.6611, 2699.6613, 2699.6617, 2699.6623, 2699.6625, 2699.6629, 2699.6700, 2699.6703, 2699.6705, 2699.6709, 2699.6800, 2699.6801, 2699.6809
 04/16/02 AMEND: 2698.73
 03/27/02 ADOPT: 260.204.9
 03/26/02 AMEND: 250.30
 03/22/02 AMEND: 2698.200, 2698.201, 2698.301, 2698.302
 03/21/02 ADOPT: 2130, 2130.1, 2130.2, 2130.3, 2130.4, 2130.5, 2130.6, 2130.7.8
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 06/27/02 AMEND: 987.1
 06/19/02 ADOPT: 999.10, 999.11, 999.12, 999.13, 999.14, Appendix A
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05/06/02 ADOPT: 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 48

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03/07/02 AMEND: 1018

03/06/02 ADOPT: Article 20, Section 51.19

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05/22/02 AMEND: 1037.4, 1092.19

05/21/02 ADOPT: 17367, 17368, 17369, 17370.1, 17370.2, 18225

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03/26/02 AMEND: 28.59

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03/25/02 AMEND: 2090, 2105, 2420, 2425, 2530, 2690

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03/11/02 ADOPT: 3501

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06/03/02 AMEND: 2034, 2036

05/29/02 ADOPT: 980.1 AMEND: 974

05/28/02 AMEND: 3340.42

05/24/02 ADOPT: 832.06 AMEND: 832.05

05/21/02 ADOPT: 2412 AMEND: 2411, 2418

05/21/02 AMEND: 2006

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 05/13/02 ADOPT: 1434
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