



California Regulatory Notice Register

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

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: Davis Joint Unified School District
Schools Association for Excess Risk JPA

A written comment period has been established commencing on **June 27, 2008** and closing on **August 11, 2008**. Written comments should be directed to the Fair Political Practices Commission, Attention **Ashley Clarke**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the

proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **August 11, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

**EFFECT ON HOUSING COSTS
AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Ashley Clarke**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 8. DIVISION OF WORKERS' COMPENSATION

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

NOTICE OF PROPOSED RULEMAKING

Workers' Compensation — Medical Treatment Utilization Schedule

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3, proposes to adopt and amend regulations contained in Article 5.5.2 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations, sections 9792.20 through 9792.26, relating to the medical treatment utilization schedule (MTUS).

PROPOSED REGULATORY ACTION

The Division of Workers' Compensation, proposes to amend Article 5.5.2 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations, commencing with Section 9792.20:

- Amended Section 9792.20 Medical Treatment Utilization Schedule—Definitions
- Amended Section 9792.21 Medical Treatment Utilization Schedule
- Adopted Section 9792.22 General Approaches
- Adopted Section 9792.23 Clinical Topics
- Adopted Section 9792.23.1 Neck and Upper Back Complaints
- Adopted Section 9792.23.2 Shoulder Complaints

- Adopted Section 9792.23.3 Elbow Complaints
- Adopted Section 9792.23.4 Forearm, Wrist, and Hand Complaints
- Adopted Section 9792.23.5 Low Back Complaints
- Adopted Section 9792.23.6 Knee Complaints
- Adopted Section 9792.23.7 Ankle and Foot Complaints
- Adopted Section 9792.23.8 Stress Related Conditions
- Adopted Section 9792.23.9 Eye
- Adopted Section 9792.24 Special Topics
- Amended Section 9792.24.1 Acupuncture Medical Treatment Guidelines
- Adopted Section 9792.24.2 Chronic Pain Medical Treatment Guidelines (DWC 2008)
- Adopted Section 9792.24.3 Postsurgical Treatment Guidelines (DWC 2008)
- Amended Section 9792.25 Presumption of Correctness, Burden of Proof and Hierarchy of Scientific Based Evidence
- Amended Section 9792.26 Medical Evidence Evaluation Advisory Committee

TIME AND PLACE OF PUBLIC HEARING

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

- Date:** August 12, 2008
- Time:** 10:00 a.m. to 5:00 p.m., or until conclusion of business
- Place:** Elihu Harris State Office Building — Auditorium
1515 Clay Street
Oakland, California 94612
- Date:** August 11, 2008
- Time:** 10:00 a.m. to 5:00 p.m., or until conclusion of business
- Place:** Ronald Reagan State Building — Auditorium
300 South Spring Street
Los Angeles, California 90013

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interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

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

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

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 p.m., on August 12, 2008**. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 p.m. on that date by the Division.

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

Maureen Gray
 Regulations Coordinator
 Division of Workers' Compensation, Legal Unit
 P.O. Box 420603
 San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. 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. Gray must receive all written comments no later than **5:00 p.m., on August 12, 2008**.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 5307.3, and 5307.27.

Reference is to Labor Code sections 77.5, 4600, 4604.5, and 5307.27, Labor Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Labor Code section 5307.27 requires the Administrative Director to adopt a Medical Treatment Utilization Schedule (MTUS) that is "scientific and evidence-based, peer-reviewed, and nationally recognized." (See, also Lab. Code, § 4604.5(b).) The statute further provides that the MTUS shall address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases. The Administrative Director conducted formal rulemaking and the MTUS was adopted effective June 15, 2007.

Labor Code section 4600(a) requires an employer to provide medical treatment to the injured worker that is reasonably required to cure or relieve the effects of the industrial injury. Labor Code section 4600(b) provides that the medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the MTUS adopted by the Administrative Director pursuant to Labor Code section 5307.27.

Labor Code section 4604.5(a) provides that the MTUS is presumed to be correct on the issue of the extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her injury. The presumption created is one affecting the burden of proof. Labor Code section 4604.5(e) provides that treatment for injuries not covered by the MTUS shall be authorized in accordance with other evidence-based medical treatment guidelines generally recognized by the national medical community and that are scientifically based.

Labor Code section 4604.5(b) provides that the MTUS is designed to assist providers by offering an analytical framework for the evaluation and treatment of injured workers, and constitutes care in accordance with Labor Code section 4600 for all injured workers diagnosed with industrial conditions.

Labor Code section 4604.5(d)(1) provides that for injuries occurring on and after January 1, 2004, an injured worker shall be entitled to no more than 24 chiropractic,

24 occupational therapy, and 24 physical therapy visits per industrial injury. Labor Code section 4604.5(d)(3), as adopted by Assembly Bill 1073 (Statute 2007, Chapter 621), provides that the 24–visit limitation does “not apply to visits for postsurgical physical medicine and postsurgical rehabilitation services provided in compliance with a postsurgical treatment utilization schedule established by the administrative director pursuant to Section 5307.27.”

The Administrative Director has adopted into the MTUS the American College of Occupational and Environmental Medicine’s Occupational Medicine Practice Guidelines, 2nd Edition, 2004 (ACOEM Practice Guidelines), and the Acupuncture Medical Treatment Guidelines. California Code of Regulations, title 8, section 9792.23 (now as amended Section 9792.26) provides the Medical Evidence Evaluation Advisory Committee (MEEAC) will provide recommendations to the Medical Director on matters concerning the MTUS.

The proposed regulations implement, interpret, and make specific Labor Code sections 77.5, 4604.5, and 5307.27, and Labor Code section 4604.5(d)(3), as adopted by Assembly Bill 1073 (Statute 2007, Chapter 621), as follows:

1. Section 9792.20—Medical Treatment Utilization Schedule—Definitions

This section, as contained in the MTUS regulations effective June 15, 2007, defines key terms used in the regulations to ensure that the meaning will be clear to the public.

Section 9792.20(a) sets forth the definition for the term “American College of Occupational and Environmental Medicine (ACOEM).” The definition was not changed.

Section 9792.20(b) defines the term “ACOEM Practice Guidelines.” The definition was not changed.

Section 9792.20(c) sets forth the definition of the term “chronic pain.” The term is defined as any pain that persists beyond the anticipated time of tissue healing.

Section 9792.20(d) sets forth the definition for the term “claims administrator.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(c) and is re–lettered section 9792.20(d).

Section 9792.20(e) sets forth the definition of the term “evidence–based.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(d) and is re–lettered section 9792.20(e).

Section 9792.20(f) sets forth the definition of the term “functional improvement.” The definition of the term is amended to substitute the word “quantifiable” for the phrase “clinically significant.” The word “Section” is corrected for clerical errors to substitute the

higher case “S” at the beginning of the word with a lower case “s” and to make the word plural as opposed to singular. The term “functional improvement” as amended now means “either a quantifiable improvement in activities of daily living or a reduction in work restrictions as measured during the history and physical exam, performed and documented as part of the evaluation and management visit billed under the Official Medical Fee Schedule (OMFS) pursuant to sections 9789.10–9789.111; and a reduction in the dependency on continued medical treatment.” The definition was formerly contained in section 9792.20(e) and is re–lettered section 9792.20(f).

Section 9792.20(g) sets forth the definition for the term “medical treatment.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(f) and is re–lettered section 9792.20(g).

Section 9792.20(h) sets forth the definition for the term “medical treatment guidelines.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(g) and is re–lettered section 9792.20(h).

Section 9792.20(i) sets forth the definition for the term “MEDLINE.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(h) and is re–lettered section 9792.20(i).

Section 9792.20(j) sets forth the definition for the term of “nationally recognized.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(i) and is re–lettered section 9792.20(j).

Section 9792.20(k) sets forth the definition of the term “peer reviewed.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(j) and is re–lettered section 9792.20(k).

Section 9792.20(l) sets forth the definition of the term “scientifically based.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(k) and is re–lettered section 9792.20(l).

Section 9792.20(m) sets forth the definition of the term “strength of evidence.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(l) and is re–lettered section 9792.20(m).

2. Section 9792.21—Medical Treatment Utilization Schedule

This section sets forth the medical treatment utilization schedule.

Section 9792.21(a) This section, which informs the public that the Administrative Director adopts and in-

corporates the Medical Treatment Utilization Schedule, is amended to insert the acronym “MTUS” immediately following the phrase “Medical Treatment Utilization Schedule.” The acronym will be used subsequently throughout the regulations when referring to the medical treatment utilization schedule. The section is further amended to reflect that the MTUS now consists of Sections 9792.20 through Section 9792.26. The higher case “S” in the sentence in the word “Section” is corrected for clerical error to lower case “s.” Also, the first “section” word in the sentence is corrected for clerical error from plural to singular. Moreover, the section is amended to delete the phrase “The Administrative Director adopts and incorporates by reference the following medical treatment guidelines into the medical treatment Schedule.” The deletion of this phrase is for reorganization purposes. The reorganization of the MTUS is intended to make it more user-friendly and to allow the DWC to adopt and/or update portions of the MTUS through formal rulemaking without affecting other parts of the MTUS.

Section 9792.21(a)(1) This section is moved to section 9792.22(a) and is amended. The amendments will be discussed under the caption of that section in this notice.

Section 9792.21(a)(2) This section is moved to section 9792.24.1 and is amended. The amendments will be discussed under the caption of that section in this notice.

Section 9792.21(b) The substance of this section is not changed. This section is amended for nonsubstantive purposes to substitute the phrase “medical treatment utilization schedule” with the acronym “MTUS.”

Section 9792.21(c) The substance of this section is not changed. This section is amended for nonsubstantive purposes to substitute the phrase “Medical Treatment Utilization Schedule” with the acronym “MTUS” and to reflect the reference to section 9792.22 is now section 9792.25. Further, the higher case “S” in the word “Section” which appears in the sentence twice is corrected for clerical error to lower case “s.”

3. Section 9792.22—General Approaches

Section 9792.22 originally contained the subsections pertaining to the “Presumption of Correctness, Burden of Proof and Hierarchy of Scientific Based Evidence.” These subsections have been moved to section 9792.25 and were amended. The amendments will be discussed under the caption of that section.

Section 9792.22(a)(1)–(a)(4) A part of these sections was originally contained in section 9792.21(a)(1), which incorporated by reference the American College of Occupational and Environmental Medicine’s Occupational Medicine Practice Guidelines (ACOEM Practice Guidelines), Second Edition, 2004, into the

MTUS. The incorporation of the ACOEM Practice Guidelines into the MTUS has not been changed from the MTUS regulations effective June 15, 2007. However, these regulations propose to reorganize the MTUS. The reorganization incorporates the ACOEM Practice Guidelines on a guideline by guideline basis (e.g., chapter by chapter basis) and to treat every separate chapter adopted as a separate guideline. Section 9792.22(a)(1)–(a)(4) adopts and incorporates the ACOEM Practices Guidelines related to general approaches. Former section 9792.21(a)(1) (now set forth in this section) is amended to state that the Administrative Director adopts and incorporates by reference into the MTUS specific guidelines set forth below from the ACOEM Practice Guidelines. The guidelines listed as adopted are (1) Prevention (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 1); (2) General Approach to Initial Assessment and Documentation (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 2); (3) Initial Approaches to Treatment (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 3); and (4) Cornerstones of Disability Prevention and Management (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 5).

The reference to ACOEM Practice Guidelines edition (Second Edition, 2004) is deleted. The reason for deleting the reference to the second edition is that the reference will be placed next to the guideline (chapter) being adopted. As the MTUS is updated the separate guidelines will reflect different edition dates as they are revised. The statement in the section which informs the public where a copy of the ACOEM Practice Guidelines may be obtained has not been changed. Thus, the section as amended now states:

§ 9792.22. General Approaches

(a) The Administrative Director adopts and incorporates by reference into the MTUS specific guidelines set forth below from the American College of Occupational and Environmental Medicine’s Occupational Medicine Practice Guidelines (ACOEM Practice Guidelines) for the following chapters. A copy may be obtained from the American College of Occupational and Environmental Medicine, 25 Northwest Point Blvd., Suite 700, Elk Grove Village, Illinois, 60007–1030 (www.acoem.org).

(1) Prevention (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 1).

(2) General Approach to Initial Assessment and Documentation (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 2).

(3) Initial Approaches to Treatment (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 3).

(4) Cornerstones of Disability Prevention and Management (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 5).

4. Section 9792.23—Clinical Topics

Section 9792.23 originally contained the subsections pertaining to the “Medical Evidence Evaluation Advisory Committee.” These subsections have been moved to section 9792.26 and were amended. The amendments will be discussed under the caption of that section.

As previously indicated, these regulations propose to reorganize the MTUS. Another change in the MTUS regulations effective June 15, 2007 is to adopt clinical topic medical treatment guidelines into the MTUS.

Section 9792.23(a) This section introduces the clinical topics section series, and provides that the Administrative Director adopts and incorporates by reference into the MTUS specific clinical topic medical treatment guidelines in the series of sections commencing with 9792.23.1 et seq. The section provides that clinical topics apply to the initial management and subsequent treatment of presenting complaints specific to the body part.

Section 9792.23(b) provides that for all treatment not addressed in the MTUS, the authorized treatment and diagnostic services in the initial management and subsequent treatment for presenting complaints shall be in accordance with other scientifically and evidence-based medical treatment guidelines that are nationally recognized by the medical community pursuant to section 9792.25(b). If the treatment is not addressed in the clinical topics section, the MTUS allows for the use of other guidelines that meet the requirement of the statute.

Section 9792.23(b)(1) provides for situations where the treatment is being provided using other guidelines which are not part of the MTUS and the patient has chronic pain. In these situations, and when there is no surgical option for the complaint, the chronic pain medical treatment guidelines in section 9792.24.2 apply. This section provides guidance in the use of other guidelines which are not part of the MTUS.

Section 9792.23(b)(2) provides for situations where the treatment is being provided using other guidelines which are not part of the MTUS and surgery is performed. Under these circumstances, and if the injured worker is in need of physical medicine postsurgically, the postsurgical treatment guidelines in section 9792.24.3 apply. This section provides guidance in the use of other guidelines which are not part of the MTUS.

4. Section 9792.23.1—Neck and Upper Back Complaints

Section 9792.23.1(a) provides the Administrative Director adopts and incorporates by reference the Neck

and Upper Back Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 8) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.1(b) provides that in the course of treatment where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.1(c) provides that if recovery has not taken place with respect to pain by the end of algorithm 8–5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.1(d) provides that if surgery is performed in the course of treatment for neck and upper back complaints and the injured worker is in need of physical medicine, the postsurgical treatment guidelines in section 9792.24.3 apply. It further states that when there are no surgical options for the neck and upper back complaint and the injured worker has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

5. Section 9792.23.2—Shoulder Complaints

Section 9792.23.2(a) provides the Administrative Director adopts and incorporates by reference the Shoulder Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 9) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.2(b) provides that if recovery has not taken place with respect to pain by the end of algorithm 9–5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.2(c) provides that if surgery is performed in the course of treatment for shoulder complaints and the injured worker is in need physical medicine, the postsurgical treatment guidelines in section 9792.24.3 apply. The section additionally provides that when there are no surgical options for the shoulder complaint and the injured worker has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

6. Section 9792.23.3—Elbow Complaints

Section 9792.23.3(a) provides the Administrative Director adopts and incorporates by reference the Elbow Disorders Chapter (ACOEM Practice Guidelines, 2nd Edition (Revised 2007), Chapter 10) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.3(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered for elbow complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.3(c) provides that if recovery has not taken place with respect to pain by the end of algorithm 10–5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.3(d) provides that if surgery is performed in the course of treatment for elbow complaints, the postsurgical treatment guidelines in section 9792.24.3 apply. The section additionally provides when there are no surgical options for the elbow complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

7. Section 9792.23.4—Forearm, Wrist, and Hand Complaints

Section 9792.23.4(a) provides the Administrative Director adopts and incorporates by reference the Forearm, Wrist, and Hand Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 11) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.4(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered for forearm, wrist, and hand complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.4(c) provides that when recovery has not taken place with respect to pain by the end of algorithm 11–5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.4(d) provides that if surgery is performed in the course of treatment for forearm, wrist, and hand complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine apply. It additionally provides that when there are no surgical options for the forearm, wrist, and hand complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

8. Section 9792.23.5—Low Back Complaints

Section 9792.23.5(a) provides the Administrative Director adopts and incorporates by reference the Low Back Complaints (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 12) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.5(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered to treat low back complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.5(c) provides that when recovery has not taken place with respect to pain by the end of algorithm 12–5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.5(d) provides that if surgery is performed in the course of treatment for low back complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine apply. It additionally provides that when there are no surgical options for the low back complaint and the patient has

chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

9. Section 9792.23.6—Knee Complaints

Section 9792.23.6(a) provides the Administrative Director adopts and incorporates by reference the Knee Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 13) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.6(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered to treat knee complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.6(c) provides that when recovery has not taken place with respect to pain by the end of algorithm 13–5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.6(d) provides that if surgery is performed in the course of treatment for knee complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine apply. It additionally provides that when there are no surgical options for the knee complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

10. Section 9792.23.7—Ankle and Foot Complaints

Section 9792.23.7(a) provides the Administrative Director adopts and incorporates by reference the Ankle and Foot Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 14) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.7(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered to treat ankle and foot complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.7(c) provides that when recovery has not taken place with respect to pain by the end of algorithm 14–5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.7(d) provides that if surgery is performed in the course of treatment for ankle and foot complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine apply. It additionally provides that when there are no surgical options for the ankle and foot complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

11. Section 9792.23.8—Stress Related Conditions

Section 9792.23.7(a) provides the Administrative Director adopts and incorporates by reference the Stress Related Conditions Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 15) by reference into the MTUS from the ACOEM Practice Guidelines.

12. Section 9792.23.9—Eye

Section 9792.23.9(a) provides the Administrative Director adopts and incorporates by reference the Eye Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 16) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.9(b) provides that when recovery has not taken place with respect to pain by the end of algorithm 16–6, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

13. Section 9792.24—Special Topics

As previously indicated, these regulations propose to reorganize the MTUS. Another change in the MTUS is to adopt special topics medical treatment guidelines into the MTUS.

Section 9792.24(a) provides special topics refer to clinical topic areas where the Administrative Director has determined that the clinical topic sections of the MTUS require further supplementation.

14. Section 9792.24.1—Acupuncture Medical Treatment Guidelines

Section 9792.24.1 setting forth the Acupuncture Medical Treatment Guidelines was contained in section 9792.21(a)(2) of the MTUS regulations. As part of the proposed reorganization, this section is moved to Section 9792.24.1 under the special topics section and is amended as follows.

The name of the guideline “Acupuncture Medical Treatment Guidelines” is given its own section number, and the “number (2)” immediately preceding the title of the guideline is deleted. Further, the text immediately following the title, stating: “The Acupuncture Medical Treatment Guidelines set forth in this subdivision shall supersede the text in the ACOEM Practice Guidelines, Second Edition, relating to acupuncture, except for shoulder complaints, and shall address acupuncture treatment where not discussed in the ACOEM Practice Guidelines,” is deleted. This deletion of this sentence is consistent with the proposed reorganization of the MTUS to adopt the specific clinical topics contained in the ACOEM Practice Guidelines on a guideline by guideline basis (e.g., chapter by chapter basis), and to list the acupuncture medical treatment guidelines separately under the special topics section of the MTUS.

Section 9792.24.1(a) is amended to change the letter case from higher case “A” to lower case “a” and to grammatically correct the introduction of the definitions in the section. Thus, the section now states: “As used in this section, the following definitions apply.”

Section 9792.24.1(a)(1) sets forth the definition of the term “acupuncture.” The substance of the definition was not changed. The definition was formerly contained in section 9792.21(a)(2)(A)(i) and is re-numbered section 9792.24.1(a)(1).

Section 9792.24.1(a)(2) sets forth the definition of the term “Acupuncture with electrical stimulation.” The substance of the definition was not changed. The definition was formerly contained in section 9792.21(a)(2)(A)(ii) and is re-numbered section 9792.24.1(a)(2).

Section 9792.24.1(a)(3) sets forth the definition of the term “Chronic pain for purposes of acupuncture.” The definition is revised to state that “chronic pain for purposes of acupuncture” means chronic pain as defined in section 9792.20(c). Section 9792.20(c) defines chronic pain as “any pain that persists beyond the anticipated time of tissue healing.” The definition was formerly contained in section 9792.21(a)(2)(A)(iii) and is re-numbered section 9792.24.1(a)(3).

Former section 9792.21(a)(2)(B) and subdivisions (i)–(vii) have been deleted for reorganization purposes. The section and subdivisions were deleted because they referred to the ACOEM Practice Guidelines chapters which have been incorporated on a guideline by guideline basis (chapter by chapter basis); the section and subdivisions are no longer necessary.

Section 9792.24.1(b)(1) provides that these guidelines apply to acupuncture or acupuncture with electrical stimulation when indicated in the clinical topic medical treatment guidelines in the series of sections commencing with section 9792.23.1 et seq., or in the chronic pain medical treatment guidelines (DWC 2008) contained in section 9792.24.2. This section reflects the reorganization of the MTUS. It clarifies that the physician is now able to look at the clinical topics and chronic pain medical treatment sections for the indications for acupuncture or acupuncture with electrical stimulation.

Section 9792.24.1(c) sets forth the frequency and duration of acupuncture or acupuncture with electrical stimulation. The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(C) and is re-numbered section 9792.24.1(c).

Section 9792.24.1(c)(1) sets forth the time to produce functional improvement when providing acupuncture or acupuncture with electrical stimulation. The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(C)(i) and is re-numbered section 9792.24.1(c)(1).

Section 9792.24.1(c)(2) sets forth the frequency when providing acupuncture or acupuncture with electrical stimulation. The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(C)(ii) and is re-numbered section 9792.24.1(c)(2).

Section 9792.24.1(c)(3) sets forth the optimum when providing acupuncture or acupuncture with electrical stimulation. The substance of the section was not

changed. The section was formerly contained in section 9792.21(a)(2)(C)(iii) and is re-numbered section 9792.24.1(c)(3).

Section 9792.24.1(d) sets forth when treatment may be extended in providing acupuncture or acupuncture with electrical stimulation. The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(D) and is re-numbered section 9792.24.1(d). The section is also corrected to properly reference the definition of functional improvement which is now contained in section 9792.20(f).

Section 9792.24.1(e) The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(E) and has been re-numbered section 9792.24.1(e).

15. Section 9792.24.2—Chronic Pain Medical Treatment Guidelines (DWC 2008)

Section 9792.24.2(a) provides that the Chronic Pain Medical Treatment Guidelines (DWC 2008), consisting of two parts, are adopted and incorporated by reference into the MTUS. It indicates that Part 1 is entitled Introduction, and Part 2 is entitled Pain Interventions and Treatments. This section further provides that the guidelines replace Chapter 6 of the ACOEM Practice Guidelines, 2nd Edition (2004). It clarifies that where the clinical topic sections of the MTUS in the series of sections commencing with section 9792.23.1 et seq., makes reference to Chapter 6 or when there is a reference to the “pain chapter,” or “pain assessment,” the chronic pain medical treatment guidelines will apply instead of Chapter 6. It further informs the public that a copy of these guidelines and citations listed in the guidelines may be obtained from the Medical Unit, Division of Workers’ Compensation, P.O. Box 71010, Oakland, CA 94612, or from the DWC web site at <http://www.dwc.ca.gov>.

Section 9792.24.2(b) provides that the chronic pain medical treatment guidelines apply when the patient has chronic pain as determined by following the clinical topics in the MTUS.

Section 9792.24.2(c) provides that when a patient is diagnosed with chronic pain and the treatment for the condition is covered in the clinical topics sections but is not addressed in the chronic pain medical treatment guidelines, the clinical topics section applies to that treatment.

Section 9792.24.2(d) provides that when the treatment is addressed in both the chronic pain medical treatment guidelines and the specific guideline found in the clinical topics section of the MTUS, the chronic pain medical treatment guideline will apply.

16. Section 9792.24.3—Postsurgical Treatment Guidelines (DWC 2008)

Section 9792.24.3(a) sets forth the definitions which will apply when using the postsurgical treatment guidelines.

Section 9792.24.3(a)(1) sets forth the definition for the term “general course of therapy.” The term is defined as the number of visits and/or time interval which is indicated for postsurgical treatment for the specific surgery in the postsurgical physical medicine treatment recommendations set forth in subdivision (d)(1) of this section.

Section 9792.24.3(a)(2) sets forth the definition for the term “initial course of therapy.” It defines the term as one half of the number of visits specified in the general course of therapy for the specific surgery in the postsurgical physical medicine treatment recommendations set forth in subdivision (d)(1) of this section.

Section 9792.24.3(a)(3) sets forth the definition for the term “postsurgical physical medicine period.” It defines the term as the time frame that is needed for postsurgical treatment and rehabilitation services beginning with the date of the procedure and ending at the time specified for the specific surgery in the postsurgical physical medicine treatment recommendations set forth in subdivision (d)(1) of this section. The definition also clarifies that for all surgeries not covered by these guidelines the postsurgical physical medicine period is six (6) months.

Section 9792.24.3(a)(4) sets forth the definition for the term “surgery.” It defines the term as a procedure listed in the surgery chapter of the Official Medical Fee Schedule with follow-up days of 90 days.

Section 9792.24.3(a)(5) sets forth the definition for the term “visit.” It defines the term to mean a date of service to provide postsurgical treatment billed using the physical medicine section of the Official Medical Fee Schedule.

Section 9792.24.3(b) provides for the application of the postsurgical treatment guidelines.

Section 9792.24.3(b)(1) provides that the postsurgical treatment guidelines apply to visits during the postsurgical physical medicine period only and to surgeries as defined in these guidelines. It further provides that at the conclusion of the postsurgical physical medicine period, treatment reverts back to the applicable 24-visit limitation for chiropractic, occupational and physical therapy pursuant to Labor Code section 4604.5(d)(1).

Section 9792.24.3(c) sets forth requirements for postsurgical patient management.

Section 9792.24.3(c)(1) provides that only the surgeon who performed the operation, a nurse practitioner, or physician assistant working with the surgeon, or a physician designated by that surgeon can make a determination of medical necessity and prescribe postsurgi-

cal treatment under this guideline. This section allows for prompt provision of postsurgical physical medicine.

Section 9792.24.3(c)(2) provides that the medical necessity for postsurgical physical medicine treatment for any given patient is dependent on, but not limited to, such factors as the comorbid medical conditions; prior pathology and/or surgery involving same body part; nature, number and complexities of surgical procedure(s) undertaken; presence of surgical complications; and the patient's essential work functions. This section reminds physicians and claims administrators to take into consideration factors which might affect the postsurgical treatment.

Section 9792.24.3(c)(3) provides that if postsurgical physical medicine is medically necessary, an initial course of therapy may be prescribed. The section further provides that with documentation of functional improvement, a subsequent course of therapy shall be prescribed within the parameters of the general course of therapy applicable to the specific surgery. Additionally, the section provides that upon a determination that additional functional improvement can be accomplished after completion of the general course of therapy, physical medicine treatment may be continued up to the end of the postsurgical physical medicine period. This section allows for initial, uninterrupted provision of postsurgical physical medicine and continuation of it upon documentation of functional improvement.

Section 9792.24.3(c)(4) provides that patients shall be reevaluated following continuation of therapy when necessary or no later than every forty-five days from the last evaluation to document functional improvement to continue physical medicine treatment. The section further provides that frequency of visits shall be gradually reduced or discontinued as the patient gains independence in management of symptoms and with achievement of functional goals. This section provides the timeline for reporting functional improvement to be consistent with the timeline for reporting by the primary treating physician.

Section 9792.24.3(c)(4)(A) provides that in the event the patient sustains an exacerbation related to the procedure performed after treatment has been discontinued and it is determined that more visits are medically necessary, physical medicine treatment shall be provided within the postsurgical physical medicine period. This section allows for the injured worker to start up the physical medicine again when previously discontinued if he or she sustains an exacerbation related to the procedure and it occurs within the physical medicine period.

Section 9792.24.3(c)(4)(B) provides that in cases where no functional improvement is demonstrated, postsurgical treatment shall be discontinued at any time during the postsurgical physical medicine period. There are times when patients do not show functional im-

provement. Under these circumstances, the postsurgical treatment can be discontinued even when the postsurgical physical medicine period has not ended.

Section 9792.24.3(c)(5) states that treatment is provided to patients to facilitate postsurgical functional improvement. The section establishes facilitation of postsurgical functional improvement as the goal of the treatment.

Section 9792.24.3(c)(5)(A) provides that the surgeon who performed the operation, a nurse practitioner or physician assistant working with the surgeon, or physician designated by that surgeon, the therapist, and the patient should establish quantifiable, functional goals achievable within a specified timeframe. This section allows the postsurgical team to establish treatment goals with a specified timeframe.

Section 9792.24.3(c)(5)(B) provides that patient education regarding postsurgical precautions, home exercises, and self-management of symptoms should be ongoing components of treatment starting with the first visit. It further provides that intervention should include a home exercise program to supplement therapy visits. This section allows patient education to be a fundamental component of the treatment.

Section 9792.24.3(c)(4)(C) provides that modalities (CPT codes 97010 through 97039) should only be performed in conjunction with other active treatments. It further provides that although these modalities are occasionally useful in the post surgical physical medicine period, their use should be minimized in favor of active physical rehabilitation and independent self-management. This section emphasizes the importance of active treatments during the post surgical physical medicine period.

Section 9792.24.3(d) provides postsurgical physical medicine treatment recommendations.

Section 9792.24.3(d)(1) provides that the postsurgical physical medicine treatment recommendations, which are listed under the section indicate the frequency and duration of postsurgical treatment for specific surgeries. The section further provides that the specified surgeries in the postsurgical physical medicine guidelines are not all inclusive. It reminds the public that requests for postsurgical physical medicine treatment not included in the guidelines are to be considered pursuant to Section 9792.21(c). This section further provides that the physical medicine treatment recommendations (listed alphabetically) are adapted from Official Disability Guidelines (ODG) except where developed by the Division of Workers' Compensation and indicated as "[DWC]." The postsurgical physical medicine period is identified by an asterisk [*] as also developed by DWC. It informs the public that a copy of citations listed in the postsurgical treatment guidelines may be obtained from the Medical Unit, Division of Work-

ers' Compensation, P.O. Box 71010, Oakland, CA 94612, or from the DWC web site at <http://www.dwc.ca.gov>.

17. Section 9792.25—Presumption of Correctness, Burden of Proof and Strength of Evidence.

Section 9792.25 setting forth the presumption of correctness, burden of proof and strength of evidence was contained in Section 9792.22. As part of the reorganization of the MTUS, the entire section is moved to Section 9792.25.

Section 9792.25(a) sets forth the presumption of correctness of the MTUS. The substance of this section was not changed. The section was amended for nonsubstantive purposes to substitute the phrase "Medical Treatment Utilization Schedule" with the acronym "MTUS" in the first sentence. The section was formerly contained in section 9792.22(a) and is re-numbered section 9792.25(a).

Section 9792.25(b) sets forth the approach to be taken when injuries are not addressed by the MTUS. The substance of this section was not changed. The section was amended for nonsubstantive purposes to substitute the phrase "Medical Treatment Utilization Schedule" with the acronym "MTUS" in the first sentence. The section was formerly contained in section 9792.22(b) and is re-numbered section 9792.25(b).

Section 9792.25(c)(1) The substance of this section was not changed. The section was formerly contained in section 9792.22(c)(1) and is re-numbered section 9792.25(c)(1).

Section 9792.25(c)(1)(A) sets forth Table A—Criteria Used to Rate Randomized Controlled Trials. The substance of this section was not changed. The section was formerly contained in section 9792.22(c)(1)(A) and is re-numbered section 9792.25(c)(1)(A).

Section 9792.25(c)(1)(B) sets forth Table B—Strength of Evidence Ratings. The substance of this section was not changed. The section was formerly contained in section 9792.22(c)(1)(B) and is re-numbered section 9792.25(c)(1)(B).

Section 9792.25(c)(2) states that evidence shall be given the highest weight in the order of the strength of evidence. The substance of this section was not changed. The section was formerly contained in section 9792.22(c)(2) and is re-numbered section 9792.25(c)(2).

18. Section 9792.26—Medical Evidence Evaluation Advisory Committee

Section 9792.26 setting forth the medical evidence evaluation advisory committee was contained in Section 9792.23. As part of the reorganization of the MTUS, the entire section is moved to Section 9792.26.

Section 9792.26(a)(1) The substance of this section was not changed. The section is amended for nonsubstantive purposes to substitute the phrase "medical treatment utilization schedule" with the acronym "MTUS" in the first sentence. The section was formerly contained in section 9792.23(a)(1) and is re-numbered section 9792.26(a)(1).

Sections 9792.26(a)(1)(A) through 9792.26(b) The substance of these sections was not changed. As part of the reorganization of the MTUS, these sections are now contained in section 9792.26 instead of section 9792.23. The sections were formerly contained in sections 9792.23(a)(1)(A), 9792.23(a)(2), 9792.23(a)(2)(A) through 9792.23(a)(2)(P), 9792.23(a)(3), and 9792.23(b). The sections are re-numbered sections 9792.26(a)(1)(A), 9792.26(a)(2), 9792.26(a)(2)(A) through 9792.26(a)(2)(P), 9792.26(a)(3), and 9792.26(b) respectively.

Section 9792.26(c) The substance of this section was not changed. The section is amended for nonsubstantive purposes to substitute the phrase "medical treatment utilization schedule" with the acronym "MTUS" in the first sentence. The section was formerly contained in section 9792.23(c) and is re-numbered section 9792.26(c).

Section 9792.26(c)(1) through Section 9792.26(c)(3) The substance of these sections were not changed. The sections were amended for nonsubstantive purposes respectively to correct the reference to section 9792.22. The correct reference is now section 9792.25. The sections were also corrected for clerical to substitute the higher case "S" with the lower case "s" in all the instances where the word "section" appeared. The sections were formerly contained in sections 9792.23(c)(1), 9792.23(c)(2), and 9792.23(c)(3). The sections are re-numbered sections 9792.26(c)(1), 9792.26(c)(2), and 9792.26(c)(3) respectively.

Section 9792.26(d) The substance of this section was not changed. The section was formerly contained in section 9792.23(d) and is re-numbered section 9792.26(d).

Section 9792.26(e) The substance of this section was not changed. The section is amended for nonsubstantive purposes to substitute the phrase "medical treatment utilization schedule" with the acronym "MTUS" in the sentence, and corrected for clerical error to substitute the letter "f" with the letter "e." The section was formerly contained in section 9792.23(f) and is re-numbered section 9792.26(e).

**DISCLOSURES REGARDING THE PROPOSED
REGULATORY ACTION**

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- The Administrative Director has determined that the proposed regulations will not have a significant adverse effect on business. All California employers are required pursuant to Labor Code section 4600 to provide medical treatment to injured workers that is reasonably required to cure or relieve the effects of the industrial injury. This treatment must currently be based upon the medical treatment utilization schedule (MTUS) adopted by formal rulemaking on June 15, 2007 pursuant to Labor Code section 5307.27. The MTUS is now comprised of the ACOEM Practice Guidelines, 2nd Edition, and the acupuncture medical treatment guidelines. The regulations propose to update the MTUS by adding the chronic pain medical treatment guidelines and the postsurgical treatment guidelines (the latter being mandated by Assembly Bill 1073 (Statute 2007, Chapter 621)). Both these guidelines were adapted from the Official Disability Guidelines (ODG), and will be made available to the public at no cost. The proposed regulations also replace the Elbow Complaints Chapter as contained in the ACOEM Practice Guidelines, 2nd Edition, with the ACOEM revised Elbow Disorders Chapter (Revised 2007). This guideline will also be made available to the public at no cost. There will be minimal costs due to training and updating of computer systems to insurers, self-insured self-administered employers, third party

administrators, utilization review organizations and providers of workers' compensation medical care in order to use the updated sections of the MTUS.

- The regulations are expected to impact medical treatment decisions and may increase costs for some treatments for a subset of surgery, chronic pain, and elbow disorder cases. The regulations will assist the employer in determining proper medically necessary care for these cases which will reduce the instances where medically inappropriate care is provided. The increased specificity and clarity of the guidance on the treatment of these types of injuries and illnesses that the updated sections of the MTUS afford by defining standardized treatment protocols are expected to streamline the mandatory utilization review process (Lab. Code, §4610), reduce medically unnecessary care, reduce delays in treatment and denials of medically necessary treatment (thereby facilitating faster rates of recovery and return to work), and reduce medical disputes for these cases. These secondary effects are in turn expected to lead to cost offsets to insurers and employers in other areas, namely, utilization review, medical disputes, temporary disability indemnity payments, and permanent disability indemnity payments. Given the complex nature of the interaction of these components and the lack of a credible and reliable statistical basis for producing an estimate of the financial impact of the updated regulations, the overall statewide financial impact cannot be calculated or estimated. However, the claims that will be affected by the updated sections of the MTUS represent a small portion of workers' compensation claims overall. Elbow disorders are approximately 1.8 percent of all claims and claims that involve surgery are approximately 4.3 percent of all claims. The percentage of claims that are chronic pain cases is unknown, but is expected to be relatively uncommon. However, as these claims by definition consist of cases that persist beyond the time of expected tissue healing, their treatment is inherently more complicated and thus the costs associated with these cases will represent a disproportionately larger share of all medical treatment costs. Cost increases, if any, and cost offsets would be distributed among workers' compensation insurers (80% of costs and cost offsets) and self-insured employers (20% of costs and cost offsets). The financial impact on any

individual business, if any, would therefore be minimal.

- It is important to note that employers are already providing medical treatment for elbow, chronic pain and postsurgical injuries, but are doing so without the guidance of presumptively correct treatment guidelines for chronic pain and postsurgical therapy. The costs, if any, are due to the legal requirement that the MTUS incorporate evidence-based, peer-reviewed, nationally recognized medical guidelines that address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases (Lab. Code, § 5307.27). Additional costs would occur only if employers are currently providing less treatment, or less costly treatment, than is recommended in the presumptively correct treatment guidelines.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. 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. See *County of Los Angeles v. State of California* (1987) 43 Ca1.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4

of the Government Code: None. (See "Local Mandate" section above.)

- Other nondiscretionary costs/savings imposed upon local agencies: None. (See "Local Mandate" section above.)

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will result in small initial costs to small businesses due to training and updating of computer systems. There may also be some costs related to the purchase of other medical treatment guidelines that are evidence and scientifically based, nationally recognized and peer-reviewed if these business do not already own these guidelines as part of their ongoing business practices.

CONSIDERATION OF ALTERNATIVES

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

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

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public comment from August 20, 2007 to September 4, 2007, October 24, 2007 to November 3, 2007, and November 20, 2007 to December 4, 2007 through the Division's Internet website (the "DWC Forum"), as required by Government Code section 11346.45.

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

An Initial Statement of Reasons (ISOR), including Appendix A—Chronic Pain Medical Treatment Guidelines supplementing the ISOR, Appendix B—Chronic

Pain Medical Treatment Guidelines (DWC 2008) Evidence-Based Reviews, Appendix C—Postsurgical Treatment Guidelines (DWC 2008) Evidence-Based Reviews, and the text of the proposed regulations, including the Chronic Pain Medical Treatment Guidelines (DWC 2008) and the Elbow Disorders chapter, ACOEM Practice Guidelines, 2nd Edition (Revised 2007), 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, Appendix A, Appendix B, Appendix C, proposed text of the regulations, the Chronic Pain Medical Treatment Guidelines (DWC 2008) and the Elbow Disorders chapter, ACOEM Practice Guidelines, 2nd Edition (Revised 2007), pre-rulemaking comments and the Economic Impact Statement (Form STD 399). Also included are studies and documents relied upon in drafting the proposed regulations, including the Official Disability Guidelines, Treatment in Workers' Compensation on Pain (Chronic), Work Loss Data Institute, version dated October 31, 2007, and the Official Disability Guidelines, Treatment in Workers' Compensation—Excerpt from the Chapter Procedures Summaries (ODG Physical Medicine Guidelines), Work Loss Data Institute, version dated November 12, 2007, and Appendix D—Chronic Pain Medical Treatment Guidelines (DWC 2008) Division of Workers' Compensation and Official Disability Guidelines' References, and Appendix E—Postsurgical Treatment Guidelines (DWC 2008) Official Disability Guidelines' References.

In addition, the Notice, Initial Statement of Reasons, Appendix A, Appendix B, Appendix C, Appendix D, and Appendix E, and the proposed text of the regulations, the Chronic Pain Medical Treatment Guidelines (DWC 2008), and the Elbow Disorders chapter, ACOEM Practice Guidelines, 2nd Edition (Revised 2007), being proposed, may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations Rulemaking" link and scroll down the list of rulemaking proceedings to find the Medical Treatment Utilization Schedule link.

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, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any in-

formation contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive 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:

Maureen Gray
Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Minerva Krohn
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mkrohn@dir.ca.gov

The telephone number of this contact person is (510) 286-7100.

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 shown 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 Division's website at www.dir.ca.gov.

AUTOMATIC MAILING

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

If adopted, the regulations with any final amendments will appear in title 8 of the California Code of Regulations, commencing with section 9792.20. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.

TITLE 9. DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Notice of Rulemaking and Public Comment Period for Amendments to Regulations Contained in Chapter 3 (Commencing with Section 9795), Division 4, Title 9, California Code of Regulations

Driving Under the Influence (DUI) Programs

NOTICE IS HEREBY GIVEN that the California Department of Alcohol and Drug Programs (ADP) proposes to amend Chapter 3 (commencing with Section 9795), Division 4, Title 9, California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Chapter 3, Division 4, Title 9, CCR, currently contains regulations for licensure of DUI programs, which provide education and counseling services to individuals convicted of a DUI offense. These changes were developed in collaboration with the DUI Advisory Work Group, which is composed of licensed providers of DUI program services. Changes are summarized below:

- The term "Drinking Driver Program" has been changed to "Driving Under the Influence Program" or "DUI" to maintain consistency throughout Chapter 3.
- The term "significant other" was added and defined in order to maintain consistency with Health and Safety Code Section 11837(e).
- Within 150 days prior to expiration of a DUI license, county alcohol and drug administrators

are asked to notify ADP whether the licensee has paid county administration and monitoring fees.

- Program enrollment and intake interviews have been combined, procedures for program enrollment have been added, and administrative or clerical staff may conduct the program enrollment and intake interview.
- Certified counseling staff shall conduct assessments of participants' alcohol and drug problems.
- The licensee shall conduct the first face-to-face interview within 21 days of enrollment.
- Program services were increased from six months to nine months for participants ordered by the court to participate in a DUI program pursuant to Assembly Bill 1353 (Chapter 164, Statutes of 2005).
- Participants are prohibited from attending more than one group counseling session and one make up session per week.
- The maximum fine assessed for a missing Notice of Completion is limited to \$15,000.
- The option of testing for drug use with a chemical screening device has been added if program staff suspect a participant to be under the influence of drugs while attending program services. The licensee may charge the participant for the cost of a chemical test only if the result is positive. Chemical screening devices may already be used if program staff suspect a participant is under the influence of alcohol.
- The minimum participant fee for individuals eligible for general relief or general assistance has been raised from \$5 to \$10 per month. The program may charge participants an additional fee of no more than \$5 for failure to pay program fees on time. The program may charge participants a maximum fee of \$10 each time the participant is granted a leave of absence for vacation. The program may charge participants a maximum fee of \$10 for processing a transfer to another licensed DUI program. Ancillary fees have been limited and specified in regulation. The licensee must justify to ADP charges for ancillary services which exceed the minimum amount listed.
- The program director/administrator shall review requests for leave of absence.
- The licensee may require participants to make up all absences and pay all outstanding fees before granting a leave of absence for vacation.
- The inter-program transfer process has been updated to reflect actual practice.
- Standards for dismissal of participants have been clarified and strengthened to allow DUI programs

to dismiss participants who act in a threatening manner toward staff or other participants.

AUTHORITY

These regulations are being adopted pursuant to Sections 11755, 11835, and 11836.15 of the Health and Safety Code; and Section 23161(b) of the Vehicle Code

REFERENCE

The statutory references for this regulatory action are Sections 11836, 11836.10, 11836.12, 11836.14, 11836.15, 11837, 11837.1, 11837.2, 11837.3, 11837.4, 11837.5, 11837.6, 11837.7, 11837.8, 11838.1, 11838.3, 11838.4, 11838.5, 11838.10, and 11838.11 of the Health and Safety Code; and Sections 13352.5, 13353.4523161, 23181, Vehicle Code.

FISCAL IMPACT STATEMENTS

Anticipated costs or savings in federal funding to the Federal Government: None. ADP does not anticipate any cost to the federal government as the result of this regulatory action because this regulation does not impact any federally funded State agency or program.

Anticipated costs or savings to any State agency: None.

Anticipated costs to county or local government: None.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None. ADP has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This regulatory action will not impose a cost on business, or eliminate businesses, small businesses, or jobs.

Impact on Small Businesses: These regulations will impact small businesses, since most DUI programs are small businesses. However these regulations will not have a detrimental impact on small businesses.

Cost Impact on Representative Private Persons or Businesses: These regulations will impact individuals receiving services from DUI programs. ADP has determined that these regulations will impose a \$5/month increase in costs on approximately three percent (3%) of individuals receiving minimum fee services from DUI programs.

Impact on Housing Costs: None. ADP does not anticipate that this regulatory action will impact housing costs in any way.

Nondiscretionary cost or savings imposed on local agencies: None

LOCAL MANDATE DETERMINATION

ADP has determined that this proposed 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.

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 11, 2008.** Please submit any written comments before that time. The Department 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 per-

son 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. Millicent Gomes, Deputy Director, Office of Criminal Justice Collaboration (916) 445-7456 is the back up contact. Questions regarding the policy contained in the proposed regulatory action should be directed to Roger Thompson at (916) 327-5693.

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

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105

NOTICE OF PROPOSED ACTION

DATE: June 17, 2008 **REGULATION FILE:
REG-2008-00021**

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to add to Title 10, Chapter 5, Subchapter 3, article 14 Title Insurance of the California Code of Regulations a new Sub-article 1 entitled "Controlled Business Source" and consisting of sections 2555, 2555.1, 2555.12, 2555.13, 2555.2, 2555.21, 2555.22, 2555.23, 2555.3, 2555.31, 2555.32, 2555.33, 2555.4, and 2555.41. The proposed

regulations will promote the regulation of the business of title insurance emanating from controlled business sources to enhance competition by expressing the requirements for record keeping, annual reports, submission requirements, examinations, disclosures to the public, indications of source of business including percentages and delineating the enforcement procedures that may be employed by the Insurance Commissioner, including actions on applications, licenses, certificates of authority, permits, deposits and monetary penalties in order to implement and effect compliance by the title industry with the Controlled Business Source statute, Article 4.5 of Chapter 1, Part 6, Division 2 of the Insurance Code commencing with Insurance Code section 12396 and other related statutes.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: Tuesday, August 12, 2008 at 10:00 a.m.

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

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on August 12, 2008. Please direct all written comments to the following contact person:

Jill Alexis Jacobi
Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4426

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed ac-

tion may be directed to the following backup contact person:

Pretrice Curry-Bossett
Senior Legal Analyst
California Department of Insurance
45 Fremont Street, 24th Floor
San Francisco, CA 94105
Telephone: (415) 538-4181

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to the contact persons at his address listed above, no later than 5:00 p.m. on August 12, 2008. Any written materials received after that time may not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: JacobiJ@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile that are ten pages or less and are directed to the attention of Jill Jacobi and sent to the following facsimile number: (415) 904-5729. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code sections 104, 700, 717, 720, 730, 733, 734, 790.03, 791.19, 826, 1011, 1065.1, 1065, 1065.3, 1065.7, 1215, 12340.3, 12340.9, 12340.11, 12350, 12351, 12352, 12353, 12354, 12355, 12389, 12389.1, 12389.2, 12396, 12397, 12397.5, 12398, 12399, 12400, 12408.5, 12409, 12414.22, 12414.24, 12414.25, 12414.30, 12921, and 12926.1, Code of Civil Procedure section 2015.5 and Evidence Code section 1550(a). Insurance Code sections 700, 717, 720, 790.10, 791.19, 1065.3, 12389, 12389.1, 12389.2, 12396, 12397, 12397.5, 12398, 12399, 12408.5, 12414.22, 12414.24 and 12921 provide authority for this rulemaking, as do the following decisions *CalFarm Ins. Co. v. Deukmejian*, 48 Cal.1.3d 805 (1989), *20th Century Co. v. Garamendi*, 8 Cal. 4th 216 (1994), *McHugh v. Santa Monica Rent Control Board*, 49 Cal. 3d 348 (1989) and *George v. Department of Alcoholic Beverage Control*, 149 Cal.App.2d 702 (1957).

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW AND POLICY
STATEMENT OVERVIEW

Under existing California law, title insurers and underwritten title companies must actively compete for title business and must make submissions to the Insurance Commissioner as required by the regulator to ascertain such competitive activities. Title insurers and underwritten title companies also must under existing law maintain records sufficient to indicate the source of their title orders and must make annual reports to the Insurance Commissioner under penalty of perjury regarding the percentage of business from controlled sources. Title insurers and underwritten title companies that are controlled by, control or are in common control with persons or entities involved in the sale or financing of property — principals, lenders, representatives or agents — must also make certain indications and demonstrations at the time of application for licensure, certificate of authority or stock permit pertaining to competition and, if applicable, percentages of closed title orders from controlled business sources. Title insurers and underwritten title companies that perform escrow functions must maintain statutory deposits. Title insurers and underwritten title companies and the individuals involved in their business operations are subject to examination by the Insurance Commissioner for their compliance with the Insurance Code including these provisions. Under current California law, title orders of title insurers and underwritten title companies are deemed to emanate from controlled business sources when title insurers and underwritten title companies have these types of controlled business source arrangements, also known as affiliated business arrangements. All title insurers and underwritten title companies must also comply with state law that prohibits rebates and commissions for the purpose of inducement of title business and with California laws that prohibit the making of statements to the public which are misleading, deceptive or untrue and must maintain records regarding the payments of commissions. State law provides for denial of the application for license, certificate of authority or permit, suspension or revocation of existing license, certificate of authority or permit for violations of laws pertaining to controlled business arrangements, and as appropriate monetary penalties or other disciplinary action as determined by the Insurance Commissioner and pursuant to procedures prescribed therefor. Cease and desist orders may be issued for corrective action as appropriate under the circumstances.

The policy underlying the proposed action is to implement and make specific the existing Controlled

Business Source statute and other related statutory requirements to enhance regulatory enforcement and to achieve greater compliance with the provisions thereof. Towards the achievement of that policy goal, the proposed regulations set forth an effective date for compliance and express the statutes and purpose of the proposed regulations of enhancing competition in the title industry clarification of what is required for compliance and streamlining enforcement efforts. The proposed regulations seek to implement and make specific the Controlled Business Source statute and related statutes by setting forth the definition of key terms that are not defined or are not adequately defined in the existing statutes. Common term definitions are intended to facilitate compliance as well as comparison of the information received and reviewed. The proposed regulations also implement the statutory provisions by setting forth the evidentiary quality and content of records that must be maintained by title insurers and underwritten title companies and by setting forth a minimum time period for retention of such records. The proposed regulations also provide for the requirements of the annual reports filed by title insurers and underwritten title companies, including specifications as to content and quality of the information reported, to better assess the level of competition in the title industry. The manner of requests for submission to the Insurance Commissioner and the ability of the Insurance Commissioner to examine for compliance is also expressed. Further title insurers and underwritten title companies will be required to disclose their controlled business source arrangements to the public in their advertising and websites. The proposed action will also establish several alternative enforcement mechanisms including denial of applications, suspension or revocation in whole or part of license, certificate of authority or permit, statutory deposit increases and monetary penalties as specified and pursuant to procedures as described.

EFFECT OF PROPOSED ACTION

The proposed regulations should enhance competition in the title insurance marketplace by promoting the regulation of title insurance business particularly closed title orders generated from controlled business sources, which are affiliates of title insurers and underwritten title companies that are involved in property related business activities.

The proposed new regulations set forth the authority pursuant to which they are to be promulgated and provide for an effective date of January 1, 2009. This section will establish an effective date for the record keeping, reporting, indications and demonstrations as specified in these new regulations. The Controlled Business Source statute and related statutes require title insurers

and underwritten title companies to maintain certain business records for examination by and production to the Department of Insurance and annual reporting of certain information to the Department of Insurance. The Controlled Business Source statute also requires certain indications and demonstrations at the time of application for license or permit. These regulations will implement and make specific those requirements and in addition will require that controlled business source arrangements be disclosed in advertising and websites of title licensees. The proposed effective date will clarify when title insurers and underwritten title companies will need to comply with these new requirements. Further these regulations contain a number of enforcement mechanisms for enforcing compliance with the Controlled Business Source statute, related statutes and these regulations. The effective date will establish a starting point for these enforcement mechanisms.

The proposed new regulations explain that the purpose of these regulations is to set forth the rules and procedures necessary to promote the regulation of the business of title insurance emanating from controlled business sources so that competition in the title industry is enhanced, expectations for compliance by title insurers and underwritten title companies are clarified, and regulatory enforcement efforts are streamlined. Not all title entities have controlled business sources. The proposed new regulations will clarify the purpose of these regulations so that all title insurance licensees will be apprised that these regulations address all title entities, particularly those with controlled business sources, and the requirement that all title insurers and underwritten title companies maintain records and report source information in relation to business source.

The proposed new regulations define a number of terms as reasonably necessary for the implementation and enforcement of the Controlled Business Source statute and these regulations. The proposed new regulations define certain terms to facilitate understanding and compliance with the Controlled Business Source statute by title licensees. The proposed regulatory section defines the terms "Affiliate," "Binder," "Commitment," "Closed Title Order," "Control" including the terms "controlling" "controlled by" and "under common control with," "Controlled Business Source," "Documented," "License," "Licensee," "Non controlled business source," "Percentage," "Preliminary Report," "Source," "Title business," and "Title business transacted."

By defining these terms the new proposed regulations will clarify and provide a common meaning for terms such as "closed title order" which are not defined in the statute. An express definition of these terms in the proposed section should facilitate compliance with the statute and should also facilitate comparisons of reports, re-

ports and other information received by the Department of Insurance as well as enforcement of the statute. The proposed regulations should also eliminate confusion that may exist from the Controlled Business Source statute definition of certain terms by cross-reference to other Insurance Code sections, such as the term "controlled business source." Two terms, "license" and "licensee" are defined in the Controlled Business Source statute by inclusion of terms such as "title insurance entity" that are not defined. The new proposed regulations will clarify these terms, for example what title insurance entities are licensees for purposes of the Controlled Business Source statute and these regulations. These proposed regulations will define terms that are included within definitions. An express definition of these terms in the proposed regulations should facilitate compliance with the statute and facilitate comparisons of reports, records and other information received by the Department of Insurance and its enforcement of the statute. In addition these new regulations will implement the provision of the Controlled Business Source statute that provides for the deemed emanation of business from controlled business sources in a manner that is consistent with the Controlled Business Source statute's requirements for record keeping of all source data including non-controlled source data.

The proposed new regulations will provide the requirements for indications of the intent to actively compete at the time of application and clarify the meaning of "marketplace" for underwritten title company applicants and title insurance company applicants as well as other requirements, including the manner in which intent shall be established in the application. The proposed regulations will also provide the requirements for indications at the time of application of intent to limit controlled source business to no more than fifty percent (50%) of an applicant's closed title orders. The new regulations will set forth that failure to so establish an intent to actively compete at the time of application shall be grounds for denial of the application for license, certificate of authority or permit. As proposed, these new regulations should facilitate compliance and uniformly implement and enforce the intent to compete and limited controlled business source business provisions of the Controlled Business Source statute.

These new regulations make specific the reporting requirements for the ninety day annual report by all title licensees and the thirty day report made thereafter by title insurers by clarifying filing requirements such as submission address, the month and calendar date by which reports must be so filed, and the requirements for verification by chief executive officers or their designees. Further these new regulations will add a new requirement that reports of underwritten title company li-

censees shall be simultaneously transmitted to their underwriters to implement the statutory provisions pertaining to underwriter's thirty day reports that comment on the accuracy of the underwritten title company reports. These new regulations should provide for greater accuracy and uniformity of reported information thus enhancing the Insurance Commissioner's ability to review competitive information.

These new regulations clarify and specify what underwritten title companies and title insurer underwriters need to report to the Department of Insurance by expressing what is required in the content of these reports, together with the quality and character of the verifications, which will enhance the reliability and quality of the data provided, which should enhance the ability of the Department to compare reports, records and other information received by the Department and its enforcement of the statute. Similarly the proposed regulations clarify and specify what underwriters need to report to the Department of Insurance upon review of underwritten title company reports. These new regulations include a new requirement when title insurers can not confirm that underwritten title company report provides the correct information or the identity and location of individuals and information such that the Commissioner may as warranted conduct further examination. Thus these new regulations should facilitate the full implementation and enforcement of the Controlled Business Source statute. By expressing what is required in the content of these reports, together with the quality and character of the verifications, these new regulations should facilitate compliance with the statute, regulatory use of the reports, records and other information received by the Department of Insurance and its enforcement of the statute. These new regulations also provide requirements for the suspension of annual reporting requirements if controlled business sources generate less than five percent of a title licensee's business. If a title licensee reports five percent or less of all its title business transacted emanated from controlled business sources and identifies individuals and documents for examination, these new regulations provide that the title licensee will be relieved of further reporting until such time as business emanating from controlled business sources exceeds five percent, at which time the obligation to report will resume. Thus these new regulations will implement the suspension of the reporting requirement thus implementing the Controlled Business Source statute by establishing requirements such as the reference to individuals, documents and data as may be necessary for verification by regulatory examination.

The Controlled Business Source statute requires maintenance of certain records sufficient to indicate the source of title orders, but does not specify the length of time such records need be maintained, nor the quality

and certain specific content of the records to be so maintained. These new regulations will clarify that each title licensee shall maintain records for a minimum of seven years, that documents need be maintained as are sufficient to document the source of title business transacted by complete name and address of the source, any commission or other consideration paid to the source, and whether or not the source is a controlled business. These new regulations also will require maintenance of total dollars or income information from each transaction and the total of all income earned for each quarter of the calendar year. These new regulations will also require maintenance of the same transaction records for the same seven year time period as to closed title orders, however such records shall include a count of each closed title order by licensee, and the total number of closed title orders for each calendar year quarter rather than total dollars or income. As a result of compliance with these new regulations, title licensee documents and data should be maintained as is sufficient and necessary for verification by regulatory examination in compliance with the Controlled Business Source statute and to aid the regulator in measuring competitive behavior in the title industry.

These new regulations should clarify that requests for submission made by the Department of Insurance shall be in writing, and reply submissions shall be completely responded to within twenty days of receipt thereof, or in such other time period as is reasonable under the circumstances and acceptable to the Commissioner. These new regulations will also specify that the submissions are the records or reports maintained pursuant to these regulations and the Controlled Business Source statute. It is anticipated that these regulations will streamline the regulatory process by providing a mechanism for such submissions to enhance the implementation and enforcement of the Controlled Business Source statute and to facilitate the regulator's ability to measure competitive behavior.

These regulations will provide a new requirement of disclosure of controlled business source arrangements in publicly disseminated information which will provide title customers with additional information upon which to make an informed title insurance service purchasing decision. These new regulations will specify that each licensee shall disclose its controlled business source arrangements in all information generally disseminated to the public in this state, including its internet website and any newspapers or other publications or devices by which the licensee advertises. As a result, the purchasers of title insurance services, who often rely upon the recommendations of trusted advisors when purchasing such title services, should not be misled as to the nature of the services they are purchasing. It is anticipated that these new regulations and the disclosure

requirements will provide greater protection to the California public and enhance competition in the title insurance marketplace.

These new proposed regulations provide that the Commissioner may, as often as may be reasonable and necessary to determine a licensee's compliance with the standards of these regulations, the Controlled Business Source statute and other Insurance Code provisions, examine each licensee, including a review of the records maintained by each licensee to ascertain the source of title business and the source of closed title orders. By so providing, these new regulations will further implement the Controlled Business Source statute provisions and clarify that examination is one of the regulatory mechanisms that the Commissioner may use to enforce compliance with the Controlled Business Source statute and related statutory provisions.

These new regulations will set forth the enforcement options the Commissioner may utilize for failure of a title licensee to comply with any of the requirements of these regulations. Specifically these new regulations will specify that failure to comply with the Controlled Business Source statute and these regulations may subject a title licensee to denial of its application for title license or securities permit, suspension, restriction or revocation in whole or in part of an issued license or permit, an order to cease and desist, and an increase in statutory deposits and monetary penalties. The effect of these new regulations shall be to express all of the disciplinary tools the Commissioner may utilize against a licensee for violations of these regulations and the Controlled Business Source statute and the procedures which should result in regulatory compliance by the industry as well as facilitate and streamline any enforcement actions as may be taken by the Commissioner hereafter. Finally, these new regulations provide that if any provision of these regulations or the application thereof is determined to be invalid, the invalidity shall not affect the other provisions or applications of these regulations which are separable. As a result, the entire regulatory package should be read provision by provision as each provision may be applied stand on its own without consideration of the validity of another provision.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

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

COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES OR SCHOOL DISTRICTS OR IN FEDERAL FUNDING

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

ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the adoption of the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Title insurers and underwritten title companies will be required to maintain specific records for a period of seven years, which shall record the source of title business and include quarterly total calculations. Annual reports will also be required and businesses will be required to submit records to the Commissioner upon written request. The types of businesses that may be affected are title insurers and underwritten title companies. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

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

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The proposed regulations implement existing statutes but may have a significant impact on the many title businesses currently operating in California. The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Not all title insurers and underwritten title companies have controlled business source arrangements;

however all title insurers and underwritten title companies will be required to comply with the requirements set forth in the proposed regulations, the exact potential cost for such compliance is unknown. A title insurer or underwritten title company that is not presently capturing and maintaining the data required under the new proposed regulations or not already making the annual reports to the Insurance Commissioner as set forth in the new regulations will be affected by the proposed regulations. A title insurer or underwritten title company that advertises or has a website or other electronic web based system available to the public will be affected by the proposed regulations. A title insurer or underwritten title company that violates the requirements of the statutes or these regulations, should the proposed regulations become effective, could lose its authority to engage in title business or suffer other costs including the assessments of monetary penalties. Although the controlled business source arrangements would still be permitted under the proposed regulations, it is possible that some title business entities may go out of business as a result of the proposed regulations, particularly if they rely heavily on controlled business sources for their title business and do not comply with the record keeping and reporting requirements. The immediate impact for such a loss is estimated to be on a yearly net business revenue basis for a title insurer, a yearly net business revenue loss that could reach \$33.2 million or more depending on the volume of title business that it engages in or less than that should it be required to curtail certain title business. Similarly an underwritten title company could suffer an immediate loss of a year's net business revenue that could reach \$1.4 million or more annually depending on the volume of title business that it engages in or less than that should it be required to curtail certain title business but not all business.

The proposed regulations could force title insurers and underwritten title companies to revamp their business plans related to reliance upon controlled business sources. Some title insurers and underwritten title companies may need to develop new strategies for accessing the market place or for ownership and other affiliated business arrangements, or may need to re-engineer their businesses plans to comply with these regulations. We estimate that the business development and re-engineering costs for compliance with these regulations could cost these companies approximately \$500,000 (e.g., costs of actuarial consultants, legal advice, regulatory filing and/or approvals, marketing, training, etc. . .). We also estimate that these companies could incur approximately 5750,000 in system development and implementation costs to develop and implement computer applications as may be necessary to comply with the new proposed regulations.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state.

The proposed regulations implement existing statutes and should not have a significant impact on jobs and formation of new business in California. It is possible and certainly anticipated that the proposed action could have an overall neutral or positive impact on jobs and businesses in California. However, the proposed regulations could force one or more domestic insurers and several underwritten title companies, all of whom are domestic, to cease or limit operations, in which case the salaries, wages, and benefits lost to its employees could represent \$245 million or more per year. Collectively the title insurers and underwritten title companies stand to lose as much as \$732 million in annual after tax income. While underwritten title companies may act as agents for more than one title insurer, many underwritten title companies have exclusive underwriting relationships with one title insurer at a time, where the closure of one title insurer may result in an underwritten title company becoming the agent of another title insurer. The title insurance businesses of some insurers and underwritten title company agents could be reduced or eliminated should the proposed regulations become effective, resulting in the elimination of jobs held by individuals employed by those businesses. In the Commissioner's assessment, this regulatory action will enhance competition which may result in either the increase or elimination of businesses and jobs in California. If there is a loss of jobs and businesses, the extent to which jobs and businesses will be lost should be offset by other improvements in terms of the State's aggregate economic activity. The proposed regulations should not, however, adversely affect new business nor significantly impact the expansion of many if not all title businesses already doing business in California.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

PRESCRIPTIVE STANDARDS VERSUS PERFORMANCE STANDARDS

The Commissioner proposes the adoption of prescriptive standards as defined in Government Code sec-

tion 11342.590 rather than performance standards as defined in Government Code section 11342.570 because the proposed regulations seek to implement the requirements of the Controlled Business Source statute, Insurance Code sections 12396 through 12399, inclusive and related statutes; however the Commissioner invites alternative proposals including proposals of a performance nature.

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

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

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed amendments will affect small businesses to the extent that they affect underwritten title companies. However, insurance companies, which will also be affected, are by definition not small businesses, pursuant to Paragraph (b)(2) of Government Code section 11342.610. This notice will be mailed to underwritten title companies licensed in California.

COMPARABILITY AND CONFORMITY WITH FEDERAL LAW

Under current federal law, the regulation of insurance, including title insurance, is primarily the responsibility of the states. However title insurance entities are also subject to federal law specifically the "Real Estate Settlement Procedures Act" or "RESPA." See 12 U.S.C. § 2601 *et seq.* Under federal law, California law in general is not annulled, altered, affected or exempted by RESPA, except to the extent California laws are inconsistent with federal law, and then only to the extent they are inconsistent and the inconsistency does not provide greater protections for the consumer as specified. See 12 U.S.C. § 2616. Moreover, federal law specifically provides that no provision of state law or regu-

lation that imposes more stringent limitations on affiliated business arrangements shall be construed as being inconsistent with RESPA provisions regarding affiliated business arrangements and kickbacks. See 12 U.S.C. § 2607(d)(6). Thus, although the proposed regulations are different in significant respects to the federal RESPA law, they shall not, by that federal RESPA law, be construed as inconsistent therewith as they are more stringent limitations on affiliated business arrangements.

Federal law significantly differs from the proposed regulations as hereafter described. RESPA is for the most part enforced by the federal Housing and Urban Development agency or "HUD" not the California Insurance Commissioner. Affiliated business arrangements "ABAs" under RESPA involve persons who are in the position to refer title business that have either an ownership interest of one percent or greater who refer business and includes certain familial, corporate and contractual relations. Under RESPA, ABAs which are comparable to controlled business source arrangements as defined and permitted by California law, are permitted as long as 1) the arrangements are disclosed to consumers together with the written estimate of charges no later than the time of the referral 2) ABAs do not require directly or indirectly the purchase of title insurance from a particular title company, and 3) ABAs may only receive a return on their ownership interest and payment for services rendered. See 12 USC §§ 2602, 2607 and 2608 and 24 CFR § 3500.15. Current federal law requires that ABA records maintained pursuant to federal regulations must be retained for five years after the date of execution (see 24 CFR § 3500.15 (d)) not seven years as is proposed in these regulations. RESPA generally prohibits the giving or acceptance of kickback referral fees among persons involved in the underlying property transaction or ABAs, however it only provides as a remedy actions for injunction against affiliated business arrangements violating federal provisions regarding referral fees and affiliated business; federal law in this area does not authorize the levy of civil penalties. In addition HUD has issued a Statement of Policy 1996-2 that details factors to be used to determine whether a title agency is a bona fide operation or a sham operation. Although these federal provisions differ from current state law and these proposed regulations, California law is more stringent and protective of the California public and these proposed regulations should enhance competition in the title insurance marketplace, facilitate enforcement of the Controlled Business Source statute and otherwise enhance the enforcement of and compliance with these similar federal laws. In addition, other current federal law, the federal Gramm-Leach-Bliley Act of 1999 ("GLBA") 15 U.S.C.A. § 6713, consistently permits title insurance

sales activities by national banks and their subsidiaries in states where such activities were permitted under existing state law under a grandfathering clause.

TEXT OF REGULATIONS AND STATEMENTS OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 10:00 a.m. and 4:30 p.m., Monday through Friday.

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 all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find at the right hand side of the page the heading 'QUICK LINKS.' The third item in this column under this heading is 'For Insurers'; on the drop-down menu for this item, select 'Legal Information.' When the 'INSURERS: LEGAL INFORMATION' screen appears, click the third item in the list of bulleted items near the top of the page: 'Proposed Regulations.' The 'INSURERS: PROPOSED REGULATIONS' screen will be displayed. Select the only available link: 'Search for Proposed Regulations.' Then, when the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2008-00021" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the Office of Administrative Law's notice file number assigned to the regulations ("Z-08-*****"), or search by keyword or term ("controlled business," for example, or "title order"). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Title Insurance — Controlled Business Source' link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available 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. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

TITLE 10. DEPARTMENT OF INSURANCE

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

June 17, 2008

REG-2008-00024

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner (Commissioner) will hold a public hearing to discuss the proposed addition of sections 2355.1 and 2355.2 to Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations; and the repeal of Subarticle 1 (sections 2355.1, 2355.2, 2355.3, 2355.4, 2355.5, 2355.6, 2355.7, and 2355.8); Subarticle 2 (sections 2356.1, 2356.2, 2356.3, 2356.4, 2356.5, 2356.6, 2356.7, 2356.8, and 2356.9); Subarticle 3 (sections 2357.1, 2357.2, 2357.3, 2357.4, 2357.5, 2357.6, 2357.7, 2357.8, 2357.9, 2357.10, 2357.11, 2357.12,

2357.13, 2357.14, 2357.15, 2357.16, 2357.17, 2357.18, and 2357.19); Subarticle 4 (sections 2358.1, 2358.2, 2358.3, 2358.4, 2358.5, 2358.6, 2356.7, 2358.8, and 2358.9); and portions of Subarticle 5 (sections 2359.1, 2359.2, 2359.3, 2359.6, and certain portions of 2359.5) to Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations. The proposed regulations will implement, interpret and make specific certain provisions of Division 2, Part 6, Chapter 1 of the California Insurance Code, entitled "Title Insurance."

The purpose of the regulations, specifically, is to collect certain financial data relating to title and escrow rates and rating systems in order to generate statistical information that will aid uniform review and evaluation of such rates and rating systems.

AUTHORITY AND REFERENCE

The Commissioner proposes to adopt the proposed regulations under the authority of Insurance Code sections 12401, 12401.3, and 12401.5, which recognize the Commissioner's authority to ensure uniform administration of rate regulatory laws through the aid of a statistical plan used to review and evaluate individual rate filings and industry financial experience and ensure that rates and rating systems are fair and reasonable.

The proposed regulations will implement, interpret, and make specific Insurance Code sections 12340.3, 12340.7, 12340.8, 12401, 12401.1, 12401.3, 12401.5, 12401.7, 12401.71, 12401.9, and 12404.1.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: August 14, 2008 — 10:00 a.m.

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

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments

not presented at the hearing must be addressed to the following contact person:

Alec Stone, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
stonea@insurance.ca.gov
Telephone: (415) 538-4113
Facsimile: (415) 904-5490

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

Bryant Henley, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
henleyb@insurance.ca.gov
Telephone: (415) 538-4111
Facsimile: (415) 904-5490

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, c/o the contact person at the address listed above, by no later than **5:00 p.m. on August 14, 2008**. Any 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 following e-mail address: stonea@insurance.ca.gov, or henleyb@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile. All comments sent by facsimile must be directed to the attention of Alec Stone using the following fax number: (415) 904-5490. Comments sent to e-mail addresses or facsimile numbers, other than those provided herein will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above. Written comments shall be submitted by one method only.

ACCESS TO HEARING ROOMS

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

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

Existing law requires entities that conduct the business of title insurance to collect, maintain and report detailed information concerning title and escrow transactions. This detailed information includes information concerning the premium, expenses, claims, amounts paid to or received from other entities and related information concerning the transaction of title and escrow business.

Generally, existing statutory law authorizes the Commissioner to collect financial data as a further aid to uniform administration of rate regulatory laws and to review and evaluate regulated entities' rates and rating systems and ensure that they are fair and reasonable. Existing regulatory law prescribes the forms and details of the financial data to be submitted. The proposed regulations will replace the existing regulations that currently require regulated entities to collect and report such data.

The proposed regulations will simplify existing regulations and implement, interpret, and make specific those laws which generally authorize the Commissioner to require the collection and timely reporting of information. Specifically, the proposed regulations will implement and make specific the application of these laws to the collection, reporting and review of title and escrow ratemaking data.

The Commissioner's efforts to ensure uniform administration of the rate regulation laws and to review and evaluate individual rate filings and generate statistical information are aided by the Commissioner's authority to develop a statistical plan that includes financial data relating to economic performance and rates and rating systems in use within the state.

The Commissioner proposes to enact sections 2355.1 and 2355.2 to subchapter 3, chapter 5, title 10 of the California Code of Regulations. The proposed regulations will provide the Commissioner with an efficient statistical plan to aid the generation of statistical information and the review and evaluation of rates and charges assessed by entities engaged in the business of title insurance. The proposed regulations are necessary to ensure that rates and rating systems are fair and reasonable.

The proposed regulations will replace existing regulations which require the reporting of financial information in a manner deemed more detailed than currently necessary. The proposed regulations instruct title insurers to collect and report to the Commissioner information relating to the company's California and countrywide assets, liabilities, equity for the current re-

port year and the two previous years. They also require an Income Statement which requests the company's California and countrywide revenue, expenses (including personnel expenses, loss and loss settlement expenses, title plant maintenance expenses, title order processing expenses, closing and settlement service expenses, marketing and general expenses) for the current year and the previous two years. They also require rate distributions and summarized title and escrow transaction activities in California and countrywide, by county and policy type.

The proposed regulations incorporate by reference multiple statistical plan financial data reports. The reports will be available for review (see "Website Postings" subheading below) and public comment. The statistical plan financial reports and accompanying documents (Instructions, Certification page, etc.) will be deemed to be regulations subject to all relevant provisions of the Administrative Procedures Act found in the Government Code. The documents to be incorporated by reference are identified by title and date of publication as follows:

- (1) Instructions for Completing the Title Insurance Statistical Plan; June 27, 2008
- (2) Signature Page; June 27, 2008
- (3) Certification; June 27, 2008
- (4) Interrogatory; June 27, 2008
- (5) CATI — R1 Balance Sheet; June 27, 2008
- (6) CATI — R2 Income Statement; June 27, 2008
- (7) CATI — R3 Summary of Transaction Activities; June 27, 2008
- (8) CATI — R4.1 Summary of Rate Distribution by Type of Policy — Personal — Base Rate: Owner's Policy; June 27, 2008
- (9) CATI — R4.2 Summary of Rate Distribution by Type of Policy — Personal — Base Rate: Lender's Policy; June 27, 2008
- (10) CATI — R4.3 Summary of Rate Distribution by Type of Policy — Personal — Refinance Policy; June 27, 2008
- (11) CATI — R4.4 Summary of Rate Distribution by Type of Policy — Personal — Home Equity Line Policy; June 27, 2008
- (12) CATI — R4.5 Summary of Rate Distribution by Type of Policy — Commercial — Base Rate: Owner's Policy; June 27, 2008
- (13) CATI — R4.6 Summary of Rate Distribution by Type of Policy — Commercial — Base Rate: Lender's Policy; June 27, 2008
- (14) CATI — R4.7 Summary of Rate Distribution by Type of Policy — Commercial — Refinance Policy; June 27, 2008
- (15) CATI — R4.8 Summary of Rate Distribution by Type of Policy — Commercial — Equity Line Policy; June 27, 2008

(16) CATI — R4 Total — Summary of Rate Distribution by Type of Policy; June 27, 2008

(17) CATI — R5.1 Escrow Fee Distribution by Amount of Transaction (By County); June 27, 2008

(18) CATI — R5.2 Summary of Escrow Fees by County; June 27, 2008

Comparable Federal Law

The Real Estate Settlement Procedures Act (RESPA) is a federal statute that sets forth disclosure requirements for residential real estate transactions. (Title 12, U.S. Code, sections 2601–2617.) The RESPA requires, among other things, that borrowers must be informed of all closing costs, lender servicing and escrow account practices, including business relationships between closing service providers and other parties to the real estate transaction. The RESPA also outlines the settlement/closing process for the real estate loan transaction and prohibits illegal activity such as kickbacks and referral fees among settlement service providers.

By contrast, the proposed regulations prescribe the form and detail of the financial data that title insurance entities are required to report. The Commissioner’s purpose in receiving, reviewing and evaluating such information is to generate statistical information and to ensure that title and escrow rates and rating systems are reasonable.

The proposed regulations do not create any duties to disclose information to borrowers. To the extent that illegal activity such as kickbacks and referral fees are regulated by the Commissioner, those standards are not set forth in these regulations. While the RESPA contains particular prohibitions and disclosure requirements for the real estate transaction, the required disclosures do not conflict with, or duplicate, the requirements set forth in these proposed regulations.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

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

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscre-

tionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES

The Commissioner has made an initial determination that the adoption of this regulation may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business while remaining effective and invites you to submit proposals. Submissions may include the following considerations:

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

The types of businesses affected by the proposed regulations are insurers, underwritten title companies and controlled escrow companies that are engaged in the business of title insurance within the meaning of California Insurance Code section 12340.3. The proposed regulations may affect those businesses that fail to maintain detailed records of their business activities.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

BUSINESS REPORTING REQUIREMENT

The Commissioner finds it is necessary for the health, safety, or welfare of the people of this State that these regulations which require a report apply to businesses.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of businesses, and the expansion of businesses currently operating in the state.

The proposed regulations provide the form and detail of the financial data regulated entities are statutorily re-

quired to collect and report. The proposed regulations are less burdensome than the existing regulations they will replace. To the extent that regulated entities already collect and report such data, the proposed regulation will have little effect on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently operating in the state.

Regulated entities which do not currently collect or report the financial data required in the proposed regulations may face increased data collection and reporting duties. This could create jobs as necessary to comply with the increased reporting requirements. Should new or existing regulated entities face difficulty complying with the proposed regulations, they could decide to forego the creation of new jobs or eliminate jobs in the State of California. However, in the Commissioner's assessment, this rulemaking action will foster competition by reducing the regulatory reporting requirement currently in effect. Reducing the regulatory burden, which the proposed regulations accomplish, could have the effect of creating new jobs or new businesses in the State of California.

IMPACT ON HOUSING COSTS

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner, or that has otherwise been identified and brought to the attention of the Commissioner, would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The purpose of the proposed regulations is to implement a statutory mandate. The proposed regulation implements the statutory mandate in an effective and least burdensome manner. No reasonably effective and less burdensome alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The Commissioner has not identified any reasonable alternatives that would lessen any adverse impact on small businesses. Nor have any such reasonable alternatives otherwise been identified and brought to the attention of the Commissioner that would lessen any impact on small business. Nevertheless, the Commis-

sioner invites public comments on the proposed changes and reasonable alternatives which would be as effective to carry out the proposed changes. To the extent that the proposed regulations affect insurance companies and escrow-related services where the annual gross receipts for the business exceed two million dollars, the proposed regulations do not affect small business. (See Gov. Code § 11342.610.)

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based and the express terms of the proposed action, including the documents to be incorporated by reference. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the documents to be incorporated by reference, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons for the proposed regulations. The initial statement of reasons will be subject to amendment, and at the conclusion of this rulemaking process a final statement of reasons will be prepared.

Upon **written or e-mail** request, the rulemaking file, including the final statement of reasons, all information upon which the regulations are based and the express terms of the proposed regulation will be made available for inspection and copying once it has been prepared. Written requests for the rulemaking file should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the pro-

posed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. On the right-hand column of the page, click the drop-down menu under the heading 'For Insurers.' In this section, scroll down until you see the subheading 'Regulations.' Below this subheading, click on the 'Proposed Regulations' link and then click on the 'Search for Proposed Regulations' link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "REG-2008-00024" (the Department's regulation file number for these regulations) in the 'Search for' field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "12401.5"), or search by keyword ("title insurance," for example). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Title Insurance Statistical Plan — 2008' link, and click it. Links to the documents associated with these regulations will then be displayed.

**AVAILABILITY OF MODIFIED
TEXT OF REGULATION**

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text, such that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

**TITLE 10. DEPARTMENT OF
INSURANCE**

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

June 17, 2008

REG-2008-00022

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

SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner (Commissioner) will hold a public hearing to discuss the proposed addition of section 2359.8 to Title 10, Chapter 5, Subchapter 3, Article 7.1 of the California Code of Regulations. The proposed regulations will implement, interpret and make specific certain provisions of Division 2, Part 6, Chapter 1 of the California Insurance Code, entitled "Title Insurance."

The purpose of the regulations, specifically, is to set forth the remedies available to the Commissioner to ensure compliance with certain data collection and reporting activities as they relate to title and escrow rates and rating systems.

AUTHORITY AND REFERENCE

The Commissioner proposes to adopt the proposed regulations under the authority of Insurance Code sections 924, 12401.1, 12401.5, 12401.7, 12401.9, 12414.14, 12414.15, 12414.16, 12414.17, 12414.18, 12414.20, 12414.21, 12414.22 and 12414.23. These sections generally require regulated entities to collect, maintain and produce data relating to title insurance rates and rating systems and authorize the Commissioner to impose penalties in the event a regulated entity fails to collect, maintain or produce such data. The Commissioner also proposes to adopt the proposed regulations under the authority of *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, which recognizes an implied delegation of rulemaking authority for those statutes that give an agency the authority to adopt those rules that are necessary for the due and efficient exercise of a power expressly granted by statute. The proposed regulations will implement, interpret, and make specific Insurance Code sections 924, 12401, 12401.1, 12401.2, 12401.3, 12401.5, 12401.7, 12401.8, 12401.9, 12414.14, 12414.15, 12414.16, 12414.17,

12414.18, 12414.20, 12414.21, 12414.22 and 12414.23.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: August 15, 2008 — 10:00 a.m.

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

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person:

Bryant Henley, Senior Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
henleyb@insurance.ca.gov
Telephone: (415) 538-4111
Facsimile: (415) 904-5490

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

Alec Stone, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
stonea@insurance.ca.gov
Telephone: (415) 538-4113
Facsimile: (415) 904-5490

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, c/o the contact person at the address listed above, by no later than **5:00 p.m. on August 15, 2008**. Any materials received after that time will not be considered.

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the following e-mail address: henleyb@insurance.ca.gov or stonea@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile. All comments sent by facsimile must be directed to the attention of Bryant Henley using the following fax number: (415) 904-5490. Comments sent to e-mail addresses or facsimile numbers, other than those provided herein will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above. Written comments shall be submitted by one method only.

ACCESS TO HEARING ROOMS

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

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

Existing law requires entities that conduct the business of title insurance to collect, maintain and report detailed information concerning title and escrow transactions. This detailed information includes information concerning the premium, expenses, claims, amounts paid to or received from other entities and related information concerning the transaction of title and escrow business.

Generally, existing law authorizes the Commissioner to assess companies for failure to submit information in a timely fashion, to examine regulated entities' rates and rating systems, and to suspend or revoke the authority of an entity to engage in the business of title insurance. The proposed regulations will implement, interpret, and make specific those laws which generally authorize the Commissioner to require the collection and timely reporting of information. The proposed regulations will serve to implement and make specific the application of these laws to the collection, reporting and review of title and escrow ratemaking data, specifically.

The proposed regulations instruct all entities conducting the business of title insurance to collect and report to the Commissioner any information required by applicable title and escrow laws. The regulations establish a list of remedies that the Commissioner may pursue in order to ensure compliance with the collection and reporting requirements relating to title and escrow

ratemaking information. The Commissioner's remedies, as set forth in the proposed regulations, include but are not limited to the assessment of a late filing fee, an examination of records at the offending entity's expense, and the suspension or revocation of any license or certificate of authority issued to the offending entity.

Comparable Federal Law

The Real Estate Settlement Procedures Act (RESPA) is a federal statute that sets forth disclosure requirements for residential real estate transactions. (Title 12, U.S. Code, sections 2601–2617.) The RESPA requires, among other things, that borrowers must be informed of all closing costs, lender servicing and escrow account practices, including business relationships between closing service providers and other parties to the real estate transaction. The RESPA also outlines the settlement/closing process for the real estate loan transaction and prohibits illegal activity such as kickbacks and referral fees among settlement service providers.

By contrast, the proposed regulations set forth the Commissioner's available remedies to ensure prompt and complete retention and reporting of information relating to title and escrow rates and rating systems. The Commissioner's purpose in reviewing and receiving such information is to ensure that title and escrow rates are not excessive, inadequate or unfairly discriminatory.

The proposed regulations do not create any duties to disclose information to borrowers. To the extent that illegal activity such as kickbacks and referral fees are regulated by the Commissioner, those standards are not set forth in these regulations. While the RESPA contains particular prohibitions and disclosure requirements for the real estate transaction, the required disclosures do not conflict with, or duplicate, the requirements set forth in these proposed regulations.

**MANDATES ON LOCAL AGENCIES OR
SCHOOL DISTRICTS OR COSTS WHICH MUST
BE REIMBURSED PURSUANT TO
GOVERNMENT CODE SECTIONS 17500
THROUGH 17630**

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

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district

that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

**ECONOMIC IMPACT ON BUSINESSES AND
THE ABILITY OF CALIFORNIA BUSINESSES
TO COMPETE WITH OTHER STATES**

The Commissioner has made an initial determination that the adoption of this regulation may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

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

The types of businesses affected by the proposed regulations are insurers, underwritten title companies and controlled escrow companies that are engaged in the business of title insurance within the meaning of California Insurance Code section 12340.3. The proposed regulations may affect those businesses that fail to maintain or provide detailed records of their business activities.

**POTENTIAL COST IMPACT ON PRIVATE
PERSONS OR BUSINESSES**

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

BUSINESS REPORTING REQUIREMENT

The Commissioner finds it is necessary for the health, safety, or welfare of the people of this State that these regulations which require a report apply to businesses.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new

businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state.

The proposed regulations could force a regulated entity to surrender its license or certificate of authority to operate in this state, in which case the salaries, wages, and benefits lost to its employees could become significant.

The insurance businesses of some entities could potentially be eliminated, should the proposed regulations become effective, resulting in elimination of jobs held by individuals employed by those entities. Accordingly, in the Commissioner's assessment, this regulatory action may result in the elimination of businesses and jobs in California. However, the extent to which jobs and businesses will be lost will depend entirely upon the regulated entities' willingness to collect and report relevant ratemaking information in accordance with applicable law. Because the Commissioner expects the affected entities to comply with existing law, the impact of the proposed regulations on jobs in California should be minimal.

The proposed regulations will not affect the expansion of other businesses doing business in California.

IMPACT ON HOUSING COSTS,

The proposed regulations will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The purpose of the proposed regulations is to implement a statutory mandate. To date, no reasonable alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The Commissioner has not identified any alternatives that would lessen any adverse impact on small businesses. Nor have any such alternatives otherwise been identified and brought to the attention of the Commissioner that would lessen any impact on small business. Nevertheless, the Commissioner invites public comments on the proposed changes and reasonable alterna-

tives which would be as effective to carry out the proposed changes. To the extent that the proposed regulations affect insurance companies and escrow-related services where the annual gross receipts for the business exceed two million dollars, the proposed regulations do not affect small business. (See Gov. Code § 11342.610.)

TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based and the express terms of the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons for the proposed regulations. The initial statement of reasons will be subject to amendment, and at the conclusion of this rulemaking process a final statement of reasons will be prepared.

Upon **written or e-mail** request, the rulemaking file, including the final statement of reasons, all information upon which the regulations are based and the express terms of the proposed regulation will be made available for inspection and copying once it has been prepared. Written requests for the rulemaking file should be directed to the contact person 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 all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department’s website. To access them, go to <http://www.insurance.ca.gov>. On the right-hand column of the page, click the drop-down menu under the heading ‘For Insurers.’ In this section, scroll down until you see the subheading ‘Regulations.’ Below this subheading, click on the ‘Proposed Regulations’ link and then click on the ‘Search for Proposed Regulations’ link. When the ‘Search or Browse for Documents for Proposed Regulations’ screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter “REG-2008-00022” (the Department’s regulation file number for these regulations) in the ‘Search for’ field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, “12401.5”), or search by keyword (“title insurance,” for example). Then, click on the ‘Submit’ button to display links to the various filing documents.

To browse, click on the ‘Browse All Regulations’ button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the ‘Statistical Plan Enforcement Remedies’ link, and click it. Links to the documents associated with these regulations will then be displayed.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text, such that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

TITLE 10. DEPARTMENT OF INSURANCE

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

REG-2008-00023

June 17, 2008

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING REGARDING TITLE INSURANCE REBATES AND COMMISSIONS

SUBJECT OF HEARING

California Insurance Commissioner Steve Poizner will hold a public hearing to consider proposed regulations governing rebates and commissions involving title insurers, underwritten title companies and controlled escrow companies.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes these regulations pursuant to the authority vested in him by California Insurance Code Sections 730, 733, 12389, 12404, 12405, 12405.7, 12407, 12414.22, and 12921 and 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216. The proposed regulations implement, interpret, and make specific California Insurance Code Sections 730 et seq., 12389, 12389.1, 12389.2, 12404-12411, 12919, and 12921.

HEARING DATE AND LOCATION

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations at the following date, time, and place:

Date and Time: August 13, 2008
10:00 a.m.

Location: 45 Fremont Street
22nd Floor Hearing Room
San Francisco, California 94105

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments, Persons

with sight or hearing impairments are requested to notify the contact person (listed below) for this 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 prior to the public comment deadline. Comments should be addressed to the contact person for this proceeding:

Mary Ann Shulman, Senior Staff Counsel
California Department of Insurance
Legal Division
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Shulmanm@insurance.ca.gov
Telephone: (415) 538-4133
Facsimile: (415) 904-5490

The backup agency contact person for this proceeding will be:

Rebecca Westmore, Senior Staff Counsel
California Department of Insurance
Legal Division
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
WestmoreR@insurance.ca.gov
Telephone: (916) 492-3186
Facsimile: (916) 324-1883

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be **received** by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on August 13, 2008**. Any written materials received after that time will not be considered. Written comments may also be submitted to the contact person by e-mail and facsimile transmission. Written comments shall be submitted by one method only.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interest of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Sections 2662.1-2662.6 in connection with their participation in this matter. Interested persons

must submit a Petition to Participate, as specified in California Code of Regulations, Title 10, Section 2661.4. The Petition to Participate must be submitted to the Commissioner at the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, Suite 1700
Sacramento, CA 95814
Telephone: (916) 492-3500

A copy of the Petition to Participate must also be submitted to the contact person for this hearing (listed above). For further information, please contact the Office of the Public Advisor.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

California Insurance Code Section 12404 prohibits a title insurer, underwritten title company or controlled escrow company to pay, directly or indirectly, any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business. Section 12404(d) provides that reasonable expenditures for food, beverages, entertainment, educational programs, and promotional items constituting ordinary business expenses are deemed not to constitute an inducement for the referral of title business, as specified.

The Insurance Commissioner proposes adoption of these regulations to clarify the standards for such reasonable expenditures. The proposed regulations also require reporting and maintenance of documentation in order to monitor expenditures by title marketing and sales representatives employed by, or independent contractors of, a title insurer, underwritten title company or controlled escrow company that benefit a person, as defined in Insurance Code Section 12404(b)(1).

Section 2555.5 Preamble

This proposed new section describes the objectives and purpose of the proposed amendments and treatment of confidentiality of the information requested by the Insurance Commissioner.

Section 2555.6 Definitions

This proposed new section defines the key term of title marketing and/or sales representative, as used in the regulations, to avoid confusion.

Section 2555.7 Standards of Reasonable Expenditures

Section 12404(d) of the California Insurance Code provides that certain reasonable expenditures are deemed not to constitute an inducement for the placement or referral of title business, but does not specifical-

ly set forth the standards for reasonable expenditures. This proposed new section provides the standards to fill this gap.

Section 2555.8 Reporting and Record Documentation

Section 12404(d) of the California Insurance Code also does not provide for a reporting process to monitor reasonable expenditures made on behalf of, or benefiting a person, as defined in Insurance Code Section 12404(b)(1) to ensure compliance. This proposed new section specifies the reporting and documentation requirements of title insurers, underwritten title companies and controlled escrow companies to clarify their obligations under the existing law.

Section 2555.9 Penalties

Sections 12409, 12410 and 12411 of the Insurance Code provide for enforcement remedies for noncompliance with Section 12404. This new section makes clear that the Insurance Commissioner is entitled to any of these enforcement remedies for failure to comply with provisions of these regulations. Also, this new section makes explicit that nothing in these regulations alters the liability of an insurer, underwritten title company or controlled escrow company for acts of its employees and/or independent contractors.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

PRE-NOTICE PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

As provided by Government Code Section 11346.45, the Insurance Commissioner has not circulated this regulatory language prior to publication of this Notice because it does not involve a complex subject and the regulations can easily be reviewed during the comment period.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES / SCHOOL DISTRICTS / FEDERAL FUNDING

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any state agency or to any local agency or school district for which Part 7 (commencing

with Section 17500) of Division 4 of the Government Code would require reimbursement, or in other non-discretionary costs or savings to local agencies. Nor will the proposal affect federal funding to the state.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Insurance Commissioner has initially determined that the proposal 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. This proposal will have no effect on the creation or elimination of jobs in California, the creation of new businesses, the elimination of existing businesses in California, or the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

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

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposal will not affect housing costs.

EFFECT ON SMALL BUSINESSES

The Insurance Commissioner has initially determined that the proposal will have minimal, if any, effect on small businesses and invites comments.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed amendments would not mandate the use of specific technologies or equipment.

ALTERNATIVES

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

The agency 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.

PLAIN ENGLISH

The text describing the proposal is in plain English except to the extent that technical terms could not be avoided. Those technical terms are defined in plain English.

TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons which sets forth the reasons for the regulations in addition to the Informative Digest included in this notice. The Initial Statement of Reasons, together with the text of the proposed regulations, and this Notice of Proposed Action are available for inspection or copying, and will be provided at no charge upon request to a contact person listed above.

QUESTIONS REGARDING REGULATIONS / ACCESS TO RULEMAKING FILE

Any interested person may inspect a copy of the proposed rulemaking file. **By prior appointment**, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday, the rulemaking file is available for inspection at the public viewing rooms at 45 Fremont Street, 22nd Floor, San Francisco, California 94105 by calling 415/538-4300, and at the Ronald Reagan State Building, 300 South Spring Street, Los Angeles, CA 90013 by calling 213/346-6707. Interested persons may direct questions about the proposed action, the statement of reasons, and any supplemental information contained in the rulemaking file by contacting the contact persons listed above.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the

changes only, for a period of at least 15 days prior to adoption.

FINAL STATEMENT OF REASONS

Once prepared, the Final Statement of Reasons will be made available through the contact persons listed above.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, is being sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, this Notice of Proposed Action, and the text of regulations will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Chapter 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code §11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

Public Comments Due by August 11, 2008, at 5:00 PM

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by FAX at 916.227.5271 or by letter to the:

Commission on POST
Attention: Dave Spisak
1601 Alhambra Boulevard
Sacramento, CA 95816-7083

Following the close of the public comment period, the Commission may adopt the proposal substantially as described below or may modify the original proposal with sufficiently related changes. With the exception of technical or grammatical changes, the full text of a modified proposal will be available for 15 days prior to its adoption from the person designated in this notice as the

contact person. The Commission will also mail the full text to persons who submit written comments related to the proposal or who have requested notification of any changes to the proposal.

Authority and Reference

This proposal is made pursuant to the authority vested by Penal Code §13503 — POST powers and § 13506 — POST authority to adopt regulations. This proposal is intended to interpret, implement, and make specific Penal Code § 13503(e) which authorizes POST to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses; and Penal Code § 13519.6 which gives POST the authority to develop guidelines and a course of instruction and training that addresses hate crimes, for law enforcement officers — both in-service and basic trainees.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Penal Code § 13519.6 requires that POST develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers or who are enrolled in a training academy for law enforcement officers. The passage of Senate Bill 1234 (Kuehl) in 2004 added topics to be addressed in POST hate crimes training. The bill also expanded the POST-developed guidelines requirement to include a framework and possible content of a general order/policy on hate crimes that each state law-enforcement agency shall adopt. It also requires POST to encourage local law enforcement agencies to adopt the framework and general policy and includes a July 1, 2007, implementation date.

This proposal addresses only the framework and general order/policy requirements for developing hate crime guidelines.

In 2004, an ensemble of subject matter experts made up of law enforcement and community organizations developed the *2004 Draft Hate Crime Policy and Training Guidelines*. Because the initial draft of the policy guidelines document has received limited attention since 2004, POST conducted an internal review, in the second quarter of 2007, of the policy guidelines to ensure compliance with the mandate. Then, in late July 2007, a subject matter expert (SME) group convened to finalize the draft document created in 2004. The SME group also closely examined the model policy on hate crimes enforcement created by the International Association of Chiefs of Police (IACP). Subsequently, the SMEs modified the IACP model policy to reflect California laws and protocols and incorporated it into the *Hate Crimes Policy Guidelines* for use by California law enforcement.

The proposed *Hate Crimes Policy Guidelines* includes the seven hate crimes guidelines, the message from the agency chief executive, and the model policy framework. Topics in the framework document include the purpose, Policy; Definitions and Laws; Response and Reporting Procedures — First Response Procedures, and Supervisory and Investigative Responsibilities; Training Resources; and Planning and Prevention.

At its January 2008 meeting, the Commission approved the proposal to adopt the new guidelines, subject to successful completion of the rulemaking process. Adoption of the new guideline requirements in POST regulations will comply with the legislative mandate to provide resources to local law enforcement for adopting a framework and general order/policy document that addresses the topic of hate crimes. The law requires each state law enforcement agency to adopt such policies and to have in place a model standard in managing hate crimes with regard to response, reporting, training, planning, and prevention. Local law enforcement agencies will be encouraged to create or revise policies to mirror the POST framework for hate crime policies. The reference to the *Hate Crimes Policy Guidelines* and the requirement for every state local law enforcement department to a framework and formal policy will appear in Regulation 1081, Legislatively-Mandated Training.

Local Mandate

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

Fiscal Impact Estimates

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

Costs or Savings to State Agencies

POST anticipates no additional costs or savings to state agencies.

Business Impact/Small Businesses

The Commission has made an initial determination that this regulatory proposal would have no significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by Government Code §11342.610 because the Commission sets selection and training standards for law enforcement and does not have an impact on California businesses, including small businesses.

Assessment Regarding Effect on Jobs/Businesses

The Commission has determined that this regulatory proposal will not have any impact on the creation or elimination of jobs and will not result in the elimination of existing businesses or the creation or expansion of businesses in the State of California.

Cost Impacts on Representative Private Persons or Businesses

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.

Effect on Housing Costs

None

Alternatives

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

Contact Persons

Please direct inquiries or written comments about the proposed regulatory action to the following:

Dave Spisak
 Commission on POST
 1601 Alhambra Boulevard
 Sacramento, CA 95816–7083
 916.227.0539 or Dave.Spisak@post.ca.gov
 916.227.5271 (FAX)

or

D’Karla Leach
 Commission on POST
 1601 Alhambra Boulevard
 Sacramento, CA 95816–7083
 916.227.3912 or DKarla.Leach@post.ca.gov

Text of Proposal

Individuals may request copies of the exact language of the proposed regulations, the Initial Statement of Reasons, and the information the proposal is based upon, from the Commission on POST at 1601 Alhambra Boulevard, Sacramento, CA 95816. These documents are also located on the POST website at: <http://www.post.ca.gov/RegulationNotices/RegulationNotices.asp>

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

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person(s) named

above. To request a copy of the Final Statement of Reasons once it has been prepared, submit a written request to the contact person(s) name above.

TITLE 16. BUREAU OF AUTOMOTIVE REPAIR

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING LICENSING AND QUALIFICATIONS FOR SMOG CHECK TECHNICIANS; INITIAL AND RENEWAL APPLICATIONS

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs (DCA), Bureau of Automotive Repair (Bureau) is proposing to take the action described in the Informative Digest. No public hearing has been scheduled. Any interested person, or his or her duly authorized representative, may request, in writing, a public hearing pursuant to subdivision (a) of Section 11346.8 of the Government Code. A request for hearing must be received by the Bureau contact person designated below not less than 15 days prior to the close of the written comment period.

Any interested person, or his or her duly authorized representative, may submit written statements or arguments relevant to the proposed action. Written comments, including those sent by mail, facsimile, or e-mail must be sent to the addresses listed under Contact Person in this Notice. All written comments must be **received by the Bureau at its office not later than 5:00 p.m. on August 11, 2008. Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.**

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

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 44002, 44013, 44014, 44016, 44031.5, 44034, 44034.1 and

44045.5 of the Health and Safety Code and Sections 163.5 and 9882 of the Business and Professions Code, and to implement, interpret or make specific Sections 44012, 44014, 44015, 44030, 44031.5, 44032, 44034, 44034.1, 44035, 44045.5 and 44045.6 of the Health and Safety Code and Section 1798.17 of the Civil Code as it relates to the Bureau; the Bureau is proposing to adopt the following changes to Article 5.5 of Chapter 1 of Division 33 of Title 16 of the California Code of Regulations:

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Background:

The Bureau, located within DCA, is the state agency charged with the administration and implementation of the Smog Check Program (Program). The Program is designed to reduce emissions from mobile sources, such as passenger vehicles and light trucks, by requiring that these vehicles meet specific in-use emissions standards as verified by periodic inspections. To ensure uniform and consistent vehicle testing, the Bureau licenses Smog Check stations and technicians and certifies inspection equipment.

The Licensing Unit’s current information database is being converted to the DCA Application Tracking System and Consumer Affairs System (ATS/CAS). The automated functions of ATS/CAS will require the technician license renewal procedures to be revised.

At present, one form is used to apply for an initial Smog Check Technician license or to renew an existing license, the Application for Smog Check Technician License, form T-6 (10-99). For purposes of license renewal, that form will be replaced with the Technician License Renewal Application, form SMOG TECH 2 (11/07). Since licensees are already required to complete an application for renewal, there will be no significant change. In fact, the new automated renewal application will require less information and eliminate the need to submit documentation with renewal applications.

Proposed Action:

This proposed action also includes a thorough revision of the *Application for Smog Check Technician License*, form T-6 (10-99). With the revision of the current application [from *Application for Smog Check Technician License*, form T-6 (10-99) to *Application for Initial Smog Check Technician License*, form SMOG TECH 1 (11/07)], the change to an automated renewal processing procedure and the addition of the new *Technician License Renewal Application*, form SMOG TECH 2 (11/07), Section 3340.29 will need to be amended. The amendments will reference and incor-

porate the new form and delete the current form. The amendments will also incorporate by reference the revised initial application form.

The reference to the \$65 examination fee specified in Section 3340.29 will be amended to reflect \$45.

Currently, in subsection (f) it states that to renew a license the technician shall pay a \$65 examination fee, and successfully complete the appropriate technician examination. The technician is no longer required to take a separate examination in order to renew their license. Therefore, a renewing technician is not required to pay any examination fee and this provision needs to be deleted to eliminate any potential confusion. The technician is required only to submit the renewal application and \$20 renewal fee, along with proof of successful completion of the appropriate update course. The examination at the conclusion of the update course replaces the licensing examination for license renewal.

The current provisions of Section 3340.28, which specify that technician training courses must be completed “within the last twelve months,” are inconsistent with the current statutory provision. In 2002, subdivision (e) of Section 44031.5 was amended to change the length of time that certificates of completion issued upon successful completion of Bureau-certified training courses are valid. Previously certificates of completion for Bureau of Automotive Repair certified training courses were valid for one year. These amendments conform to the previous amendment of subdivision (e) of Section 44031.5¹ which changed the length of time certificates of completion are valid to two years.

Current Regulation:

Existing regulations in the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 5.5, are summarized as follows:

1. Section 3340.28 establishes the classifications of Smog Check technician licenses and the qualifications to take the examination for each class of license.
2. Section 3340.29 establishes the Smog Check technician license application, renewal and examination fees, provides procedures for initial and renewal application processes, and incorporated the Smog Check technician license application form.

Effect of Regulatory Action:

The proposed action will make the following changes to existing regulation:

1. Amend paragraphs (1), (2), and (3) of subsection (b) of Section 3340.28 to specify that technician training course certificates of completion are valid for two years as provided in Section 44031.5 of the

¹ Statutes of 2002, Chapter 405 (AB 2973), § 70

Health and Safety Code. Previously certificates of completion for Bureau of Automotive Repair certified training courses were valid for one year. These amendments conform to the previous amendment of subdivision (e) of Section 44031.5² which changed the length of time certificates of completion are valid to two years.

2. Amend subsection (a) of Section 3340.29, to incorporate by reference a revised license application form for Smog Check technicians. The current application form (*Application for Smog Check Technician License*, T-6 (10-99)) will be revised and retitled "*Application for Initial Smog Check Technician License*, SMOG TECH 1 (11/07)."
3. Amend paragraphs (1), (2), and (3) of subsection (b) of Section 3340.29, to provide that the fee for the Smog Check technician's examination shall be \$45.
4. Amend paragraph (1) of subsection (d) of Section 3340.29 by removing the reference to renewal of a technician's license.
5. Amend subsection (f) of Section 3340.29, as follows:
 - a. The requirements to submit appropriate documents and to use the *Application for Smog Check Technician License*, T-6 (10-99), in order to renew a Smog Check technician's license, have been deleted. The deleted application form has been replaced with the *Technician License Renewal Application*, SMOG TECH 2 (11/07), which is also incorporated by reference.
 - b. The requirement of paying an examination fee and successfully completing an appropriate examination in order to renew a technician's license has been deleted.

INCORPORATION BY REFERENCE:

The incorporation by reference in Section 3340.29 of the *Application for Initial Smog Check Technician License*, form SMOG TECH 1 (11/07) and the *Technician License Renewal Application*, form SMOG TECH 2 (11/07), is appropriate because to publish or print these forms in the CCR, in the text of a regulation, would be cumbersome, impractical and unnecessary. To describe the forms in the regulation would require several pages of text, which would unnecessarily expand the CCR. Form SMOG TECH 1 (11/07) alone consists of four full pages. Establishing the form and content of these ap-

plications is accomplished more simply and directly by incorporating the forms by reference.

The initial license application form, *Application for Initial Smog Check Technician License*, form SMOG TECH 1 (11/07) is currently available online through the Bureau's Web site at www.smogcheck.ca.gov. Current licensees will automatically receive the *Technician License Renewal Application*, form SMOG TECH 2 (11/06) as a part of their license renewal notice mailed to them approximately 150 days prior to the expiration of their licenses. There is no need to describe or print this form in the regulation since it will be routinely provided when required, together with all the necessary instructions, notices and information.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

Nondiscretionary Costs/Savings to Local Agencies:

None.

Local Mandate:

None.

Costs to Any Local Agency or School district for Which Government code Section 17561 Requires Reimbursement:

None.

Businesses Impact:

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

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

The proposed action does not impose any requirement upon or require any action by any business. There is no reporting or recordkeeping requirement mandated, nor are there any performance standards imposed, technologies or equipment specified, nor specific actions or procedures prescribed.

Impact on Jobs/New Businesses:

The Bureau has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

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

² Statutes of 2002, Chapter 405 (AB 2973), § 70

Effect on Housing Costs:

None.

Effect on Small Business:

These regulations will not have any adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

The proposed action does not impose any requirement upon or require any action by any business. There is no reporting or recordkeeping requirement mandated, nor are there any performance standards imposed, technologies or equipment specified, nor specific actions or procedures prescribed.

CONSIDERATION OF ALTERNATIVES

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

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

**INITIAL STATEMENT OF REASONS
AND INFORMATION**

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau at 10240 Systems Parkway, Sacramento, California 95827.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the Bureau at the address mentioned above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written re-

quest to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Virginia Vu
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-2135
Fax No.: (916) 255-1369
E-mail: Virginia_vu@dca.ca.gov

The backup contact person is:

Kathy Runkle
Bureau of Automotive Repair
10240 Systems Parkway
Sacramento, CA 95827
Telephone: (916) 255-4300
Fax No.: (916) 255-1369

WEB SITE ACCESS

Materials regarding this proposal can also be found on the Bureau's Web site at www.smogcheck.ca.gov.

TITLE 19. STATE FIRE MARSHAL

NOTICE OF PROPOSED RULEMAKING

**OFFICE OF THE STATE FIRE MARSHAL
California Code of Regulations Title — 19
Portable Fire Extinguisher Fees**

The State Fire Marshal proposes to adopt the proposed regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PUBLIC HEARING

The State Fire Marshal has not scheduled a public hearing on this proposed action. However, the State Fire Marshal will hold a public hearing if a written request is received from any interested party or their authorized representative no later than 15 days before the end of the 45-day comment period ending on August 11, 2008.

If a written request for a hearing is received the State Fire Marshal will hold a public hearing as scheduled below:

Date: Wednesday, August 13, 2008

**Resources Building
First Floor Auditorium
1416 Ninth Street
Sacramento, CA 95814
From 9 a.m. to 1:00 p.m.**

The public hearing facilities are accessible to persons with mobility impairments. If any special assistance is required (i.e. interpreter), please notify the contact person(s) named in this notice at least 15 days prior to the public hearing.

At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest below. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

The State Fire Marshal will accept written comments regarding this regulatory action for 45 days beginning June 27, 2008 until 5:00 p.m. on August 11, 2008

Send mailed comments to:

OFFICE OF THE STATE FIRE MARSHAL
Attention: Diane Arend
P.O. Box 944246
Sacramento, CA 94244-2460

Or by e-mail to
PFEFeeIncrease@fire.ca.gov

Or you may fax your comments to:
Attention: Diane Arend
(916) 445-8459

AUTHORITY & REFERENCE

The State Fire Marshal is proposing this regulatory action pursuant to Health and Safety Code Section: 13160 with reference to 13160-13169, Health and Safety Code.

**INFORMATIVE DIGEST — POLICY
STATEMENT OVERVIEW**

The State Fire Marshal proposing to increase and establish the following Fees

1. Increase the fee for original and renewal of Certificates of Registration from \$55 to \$85.
2. Increase the fee for limited licenses from \$125 to \$325.

3. Increase the fee for change of location or any license revision requiring physical inspection from \$125 to \$325.
4. Establish an \$85 fee for testing existing Certificate of Registration holders.
5. Establish a \$200 re-inspection fee.
6. Establish a \$25 fee for replacement of a Certificate of Registration or License

Current Law requires the State Fire Marshal to administer the regulations and standards for the protection and preservation of life and property to control the servicing, including charging, and testing, of all portable fire extinguishers and for controlling the sale and marketing of all such devices with respect to conformance with standards of their use, capacity, and effectiveness. In addition, the State Fire Marshal is required to license companies and certify individuals who service and test fire extinguishers.

The State Fire Marshal utilized the Fire Extinguisher Advisory Committee to make recommendations regarding revising these regulations.

Proposed Title 19 Modified Sections

Section 560(d)(1) is being proposed to be amended to increase fee for a Certificate of Registration

Sections 560(d)(3) is being proposed to be amended to increase the fee for a Limited license.

Section 560(f) is being proposed to be amended to increase the fee for a change of location or any license revision requiring a physical inspection.

Section 560(g) is being proposed to be added to include a fee for Certificate of Registration renewal testing.

Section 560(h) is being proposed to be added to include a fee for second and each subsequent re-inspection.

Section 560(i) is being proposed to be added to include a fee for the replacement of a Certificate of Registration or License.

**DISCLOSURES REGARDING
THE PROPOSED ACTION**

The State Fire Marshal has made the following determinations:

1. Mandate on local agencies and school districts: **None**
2. Cost or savings to any other State agency: **None**
3. Cost to any local agency or school district which must be reimbursed in accordance with Government Code, Section 17561: **None**
4. Other non-discretionary cost or savings imposed upon local agencies: **None**
5. Cost or savings in federal funding to the State: **None**

6. Significant adverse economic effect directly effecting business, including the ability of California businesses to compete with businesses in other States: **None**
7. Cost impact on private persons or directly affected businesses: The State Fire Marshal is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations **will not**:

- a) create or eliminate jobs within California;
 - b) create new businesses or eliminate existing businesses within California; or
 - c) affect the expansion of businesses currently doing business within California.
8. Significant effect on housing costs: **None**

SMALL BUSINESS EFFECTS

The State Fire Marshal has made the initial determination that the amendments to these regulations will have no substantial effect to small businesses and the State Fire Marshal has not identified any alternatives that would lessen any adverse impact, if any, on small businesses. The proposed fees cover the cost of administering the Fire Extinguisher program, which includes; inspections, investigations, testing and certification of individuals, and the licensing of companies who service and test fire extinguishers. Limited license fee increases cover the cost of on-site inspections which are necessary to insure the company has all the equipment needed to properly service fire extinguishers. The re-inspection fees cover the cost of re-inspections, which are necessitated when fire extinguisher companies are not adequately prepared for inspections.

CONSIDERATION OF ALTERNATIVES

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

The State Fire Marshal 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 proposed regulatory action, or requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text

of the regulations, or other information upon which the rulemaking is based may be directed to:

Office of the State Fire Marshal
Diane Arend, Senior Deputy State Fire Marshal
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 324-9592
Fax: (916) 445-8459
E-mail: diane.arend@fire.ca.gov

Alternate Contact:

James Parsegian, Supervising DSBM
P.O. Box 944246
Sacramento, California 94244-2460
Telephone: (916) 445-8415
Fax: (916) 445-8458
E-mail: james.parsegian@fire.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Office of the State Fire Marshal will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office, shown above. As of this date, this notice is published in the Notice Register. The State Fire Marshal rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons for the proposed action. The full text of the regulations, along with the initial statement of reasons upon which the changes are based is available from the contact person as shown. Copies may be obtained by contacting Diane Arend at the address or telephone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the 45-day comment period, the State Fire Marshal 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 indicated — shall be made available to the public for at least 15 days before the State Fire Marshal adopts (amends or repeals) the regulations as revised. Requests for copies of any modified regulations should be sent to Diane Arend at the address indicated above. The State Fire Marshal will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of proposed regulations, highlighted in underline and strikeout, can be accessed through our web-site at <http://osfm.fire.ca.gov>.

TITLE 22. DEPARTMENT OF PUBLIC HEALTH

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Drinking Water State Revolving Fund,
DPH-06-009

PUBLIC PROCEEDINGS

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

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The Safe Drinking Water State Revolving Fund (SDWSRF) program provides low cost financing for construction of public water system projects to correct violations of public health based water quality standards. This program is governed largely by federal requirements set forth in Section 1452 of the federal Safe Drinking Water Act (42 U.S.C. 300f, et seq.), and by the California Safe Drinking Water State Revolving Fund law, Health and Safety Code 116760 et seq. Section 116760.42 (b) of the Health and Safety Code (H&S Code) requires the State program to include any federal requirements as spelled out in the federal Drinking Water State Revolving Fund (DWSRF) legislation, as well as any federal rules, regulations, policies, or guidelines established by the U.S. Environmental Protection Agency (USEPA) for conduct of the SRF program. The California SDWSRF program is patterned after and is consistent with the federal DWSRF program requirements, 40 Code of Federal Regulations (CFR), Part 35, Subpart L, Sections 35.3505 through 35.3585.

Effective July 1, 2007, the California Department of Health Services was reorganized as two separate agencies, the Department of Health Care Services, and the Department of Public Health. This reorganization was

effected by the passage of Senate Bill (SB) 162, Chapter 241, Statutes of 2006. The subject of this proposed regulatory package was assigned in that legislation to the Department of Public Health (Department).

The Department proposes to amend the California Code of Regulations (CCR) Title 22, Social Security, Division 4, Environmental Health, Chapter 12, Safe Drinking Water Project Funding, for three primary purposes: (1) Amend existing regulations based on recent statutory changes to grant eligibility and the definition of an economically disadvantaged community, (2) Reflect minor changes to application processing procedures, and (3) Improve timely funding of projects, as required by the USEPA for the SDWSRF program.

Specifically, these regulations would

1. Amend Section 63000.25 to change the threshold for identifying a disadvantaged community to 80 percent, as used in other programs funded by Prop 50;
2. Adopt Section 63000.48 to define Intended Use Plan;
3. Amend the definitions in Sections 63000.16, 63000.43, 63000.46, and 63000.77 to reflect minor procedural changes;
4. Amend the definition in Section 63000.66 to conform with state statute;
5. Amend the definition in Section 63000.68 to reflect changes in planning funding;
6. Amend Section 63010 to refer to a renumbered section;
7. Amend Section 63011 concerning planning funding;
8. Amend Section 63013 concerning refinancing loans;
9. Amend Sections 63020, and 63021, concerning grant eligibility and grant limitations, to restore consistency with a change in state statute;
10. Amend Section 63029 to reflect minor changes in application processing procedures;
11. Amend Section 63030 concerning project bypassing;
12. Amend Section 63040 to reflect minor changes in application processing procedures;
13. Amend Section 63050 by deleting subsection (b), concerning compliance with federal cross-cutting requirements;
14. Adopt Section 63051 to identify the mechanism by which projects subject to federal cross-cutting requirements will be identified.
15. Amend Section 63051 as 63052; and
16. Amend Section 63055 to reflect minor changes in the claims processing procedures; and

17. Amend Authority citations for the affected sections to reflect the change from the Department of Health Services to the Department of Public Health.

The net effect of adoption of the proposed regulatory changes will be to restore consistency with statute regarding grant funding to not-for-profit water systems, and utilize the intended use plan to identify the threshold for projects subject to federal cross-cutting requirements (defined in CCR Section 63000.45 as “those federal laws, regulations, policies, and executive orders listed in Appendix VII of the USEPA program guidelines.” Funding is contingent on adherence to these federal requirements, such as environmental protections in the Endangered Species Act and the Wild and Scenic Rivers Act. In addition, the adoption of these proposed regulatory changes will increase funding allowable for planning projects and allow a grant component for planning projects, clarify how fire flow requirements are considered in project design, simplify the criteria for grant funding determinations, and make minor program implementation changes.

AUTHORITY

Sections 100275, 116760.10, 116760.40, 116760.43, 116760.50, 116760.70, 116760.80, 116761.20, 116762.60 and 131200, Health and Safety Code.

REFERENCE

Sections 116760.10, 116760.20, 116760.30, 116760.40, 116760.42, 116760.50, 116760.70, 116760.79, 116760.80, 116760.90, 116761, 116761.20, 116761.21, 116761.23, 116761.50, 116761.86, 131050, 131051 and 131052, Health and Safety Code.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations and Hearings by 5 p.m. on August 15, 2008, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations and Hearings, California Department of Public Health, MS 0507, 1501 Capitol Avenue, P.O. Box 997377, Sacramento, CA 95899-7377. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or
3. By email to regulations@cdph.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier “DPH -06-009” in the subject line to facilitate timely identification and review of the comment).

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

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Nadine Feletto, P.E., Senior Sanitary Engineer of Safe Drinking Water Revolving Fund Program at (916) 449-5600.

All other inquiries concerning the action described in this notice may be directed to Barbara Gallaway of the Office of Regulations and Hearings at (916) 440-7689, or to the designated backup contact person, Miyoko Sawamura, at (916) 440-7690.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DPH -06-009.

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

Materials regarding the action described in this notice (including this public notice, the regulation text, and the

initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov by clicking on these links, in the following order: Decisions Pending and Opportunity for Public Participation, Regulations, Proposed.

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

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: None
- C. Fiscal Effect on Federal Funding of State Programs: None
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

DETERMINATIONS

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

The Department has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affect-

ing business, including the ability of California businesses to compete with businesses in other states.

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

- (1) The creation or elimination of jobs within the State of California. The proposed regulatory adoption and proposed regulatory amendments should not have any affect in this area because (1) there would not be any change in water system personnel needed as a result of these proposed regulations, and (2) there would not be any change in construction related employment directly related to these regulations since the Safe Drinking Water State Revolving Fund Program is a voluntary financing mechanism. Water systems undertake infrastructure improvement and replacement projects in response to operational and regulatory requirements, not caused by the funding mechanisms available.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California. The Safe Drinking Water State Revolving Fund Program is a voluntary financing mechanism. The intention of a community to form public water system, or to consolidate a smaller water system with a larger water system, does not depend on these proposed regulations since alternate financing mechanisms exist. The impact of these proposed regulations will be insignificant.
- (3) The expansion of businesses currently doing business within the State of California. The Safe Drinking Water State Revolving Fund Program is a voluntary financing mechanism. Alternate financing mechanisms exist. Water systems undertake infrastructure improvement and replacement projects in response to operational and regulatory requirements, not due to the funding mechanisms available.

The Department has determined that the proposed regulations would not affect small business because Government Code section 11342.610 excludes water companies and utilities from the definition of small business.

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

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in

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

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

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Barbara Gallaway, Office of Regulations and Hearings, MS 0507, P.O. Box 997377, Sacramento, CA 95899-7377, voice (916) 440-7689 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL

45-DAY PUBLIC NOTICE AND COMMENT PERIOD

Consolidated Universal Waste Regulations and Authorized Treatment of Electronic Hazardous Waste — Final Regulations

**Department Reference Number R-2006-02
Office of Administrative Law Notice File Number:
Z2008-0616-03**

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to: amend California Code of Regulations, title 22, division 4.5, sections 66260.10, 66260.23, 66261.4, 66261.9, 66261.50, appendix X of chapter 11, 66264.1, 66265.1, 66273.1 through 66273.7, 66273.8, 66273.9, 66273.30 through 66273.33, 66273.34 through 66273.41, 66273.51 through 66273.56, 66273.60 through 66273.62, 66273.70, 67100.2, and article 3; add sections: 66260.201, 66260.202, 66273.33.5, 66273.71 through 66273.77; repeal and reserve sections: 66273.7.1 through 66273.7.10 and article 2; repeal 66273.10 through 66273.21, and 66273.80 through 66273.90; repeal and amend article 6 to implement the Electronic Waste Recycling Act of 2003

(Stats. 2003, ch. 526 as amended by SB 50, Stats. 2004 ch. 863); and amend articles 4 and 7 and renumber articles 5 and 6. The proposed regulations will implement Public Resources Code, part 3, division 30, chapter 8.5 (commencing with Pub. Res. Code §42460) and Health and Safety Code, division 20, chapter 6.5, article 10.3 (commencing with Health and Safety Code §25214.9).

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

A written comment period has been established commencing on June 27, 2008, and closing on August 11, 2008. DTSC will hold a public hearing on the proposed regulations at 10:00 a.m. on August 11, 2008 in the Byron Sher Auditorium, 2nd Floor, 1001 "I" Street, Sacramento, at which time any person may present statements or arguments, orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments on the rulemaking submitted no later than 5:00 p.m. on August 11, 2008 will be considered. Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register before the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

Due to enhanced security precautions at the Cal/EPA Headquarters Building located at 1001 I Street, Sacramento, all visitors are required to sign in prior to attending any meeting. Sign-in and badge issuance occur in the Visitor and Environmental Services Center. This Center is located just inside and to the left of the building's public entrance. Visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification cards. Depending on the size and number of meetings scheduled on any given day, the security check-in could take up to 15 minutes. Please allow adequate time to sign in before being directed to the hearing room.

If you have special accommodation or language needs, please contact Ms. Laura Hayashi, Regulations Coordinator, Regulations Section, at (916) 322-6409 or by e-mail at regs@dtsc.ca.gov by August 1, 2008. TTY/TDD users may dial 7-1-1 for the California Relay Service.

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

² Statutes of 2002, Chapter 405 (AB 2973), § 70a disability. To discuss how to receive a copy of this publication in an alternative format, please contact Adrian Recio at (916) 324-3095 or by e-mail at arecio@dtsc.ca.gov.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Health and Safety Code sections 25140, 25141, 25150, 25150.2, 25159, 25201, 25214.6, 25214.9, 25214.10, 25214.10.1, 25219.1, and 58012; and Public Resources Code section 42475.

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

Health and Safety Code sections 25140, 25141, 25150, 25150.2, 25159.5, 25201, 25212, 25214.6, 25214.9, 25214.10, 25214.10.1, 25219, 25219.1, and 25219.2; Public Resources Code sections 42463, 42465.2, 42476.5, and 42479; and 40 Code of Federal Regulations sections 261.39, 261.40, 261.41, and 273.56.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing State Law

The following hazardous wastes are eligible for regulation as universal wastes under California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with §66273.1): cathode ray tube (CRT) materials; consumer electronic devices; thermostats; batteries; mercury-containing equipment; and lamps.

Senate Bill 20 (Stats. 2003, ch. 526, 2003) enacted Health and Safety Code section 25214.9. Subdivision (b) of section 25214.9 authorizes DTSC to adopt management standards, by regulation, as an alternative to standards otherwise required by the hazardous waste control law for any specified activity that involves the management of a hazardous electronic waste. Emergency regulations (R-03-19¹), adopted by DTSC on June 7, 2004, amended California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with section 66273.1) to provide alternative standards for CRT materials, including CRTs, CRT devices, CRT glass, and “consumer electronic devices,” which are referred to in the emergency regulations simply as “electronic devices.” The R-03-19 regulations were repealed on June 5, 2006, and subsequent emergency regulations, R2006-02², were adopted and will expire on June 6, 2008 if a Certificate of Compliance is not transmitted to the Office of Administrative Law by June 5, 2008. The

R-2006-02 emergency regulations combined the text of R-03-19, and two other previous emergency regulation packages, R-04-12 and R-2005-06 (discussed below), (OAL reference numbers: 04-0526-01E, 04-1216-03E, and 05-0401-21E) into one regulatory text document.

Senate Bill 20 also enacted the Electronic Waste Recycling Act of 2003 of the Public Resources Code (Stats. 2003, ch. 526). The Electronic Waste Recycling Act applies to “covered electronic devices,” as defined in Public Resources Code section 42463, subdivision (f). To identify the initial types of electronic devices subject to the Electronic Waste Recycling Act, DTSC included in the R-03-19 emergency regulations amendments to California Code of Regulations, title 22, division 4.5, chapter 11, appendix X (ten). These regulations set forth a list of the electronic devices that DTSC presumes to be hazardous wastes upon discard and designated all such devices to be covered electronic devices, unless the manufacturer of a specific device obtains DTSC’s concurrence that the device would not be a hazardous waste when discarded. This initial list of covered electronic devices with screens greater than four inches measured on the diagonal: CRTs and devices containing CRTs (CRT devices), desktop monitors, and laptops containing liquid crystal display (LCD) screens.

Senate Bill 50 (Stats. 2004, ch. 863) amended the Electronic Waste Recycling Act of 2003. This bill added Health and Safety Code section 25214.10.1. Subdivisions (b) and (e) of section 25214.10.1 established the use of the presumptive list approach that DTSC adopted in its R-03-19 emergency regulations as the statutorily required approach for identifying covered electronic devices. Pursuant to subdivision (b) of section 25214.10.1, on December 27, 2004, DTSC adopted emergency regulations (R-04-12³) to amend the chapter 11, appendix X list of covered electronic devices to include televisions containing liquid crystal displays and plasma televisions, both with screens greater than four inches measured on the diagonal. Pursuant to Health and Safety Code section 25214.10.1, subdivision (d), devices on the amended list are subject to the Electronic Waste Recycling Act of 2003, as amended. They are also eligible for management under the alternate standards adopted into California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with §66273.1) by R-03-19. The R-04-12 regulations were repealed on June 5, 2006, when DTSC adopted emergency regulations under R-2006-02 (see discussion above).

³ OAL Reference Number 04-1216-03E

¹ OAL Reference Number 04-0526-01E

² OAL Reference Number 06-0524-02E

In December 2006, DTSC adopted as emergency regulations (R-2006-05⁴) the inclusion of DVD devices as covered electronic devices, pursuant to chapter 11, appendix X.

Health and Safety Code section 25214.10 requires DTSC to adopt regulations to prohibit an electronic device from being sold or offered for sale in California if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture due to the presence of certain heavy metals. In December 2006, DTSC adopted emergency regulations (R-2006-06⁵) under the provisions established under Health and Safety Code section 25214.10; these regulations will expire in December 2008 (these emergency regulations are also part of the rulemaking, R-2006-02, see discussion above).

Health and Safety Code section 25214.10.1, subdivision (c), requires that the manufacturer of a listed electronic device notify retailers that the electronic device is a covered electronic device subject to the Electronic Waste Recycling Act of 2003, as amended, including the payment of the fee imposed by Public Resources Code, section 42464. The fee program itself is managed by the California Integrated Waste Management Board (CIWMB) under its own regulations. The Health and Safety Code section 25214.10.1, subdivision (c), notification requirements and other notification requirements necessary to implement the Electronic Waste Recycling Act of 2003, as amended, are currently implemented by the R-2006-02 emergency regulations. On April 11, 2005, DTSC adopted other emergency regulations (R-2005-06⁶) which amended the R-04-12 provisions. The R-2005-06 regulations were repealed on June 5, 2006 when DTSC adopted emergency regulations under R-2006-02 (see discussion above).

Existing Federal Law

Existing federal universal waste regulations are set forth at 40 Code of Federal Regulations part 273. These regulations provide streamlined collection and management requirements for hazardous waste batteries, pesticides, mercury-containing equipment (including thermostats) and lamps. They do not address universal waste electronic devices, CRT devices, CRTs, or CRT glass.

On June 12, 2002, (67 Fed. Reg. 40508), the United States Environmental Protection Agency (USEPA) proposed to exclude used CRTs and glass removed from CRTs for recycling from the definition of solid waste. The final rule was published on July 28, 2006 (71 Fed. Reg. 42928). The final rule excludes CRTs from the federal hazardous waste program when sent for recycling.

⁴ OAL Reference Number 06-1221-03E

⁵ OAL Reference Number 06-1221-02E

⁶ OAL Reference Number 05-0401-21E

Policy Statement Overview

Problem Statement:

Recent research has shown that devices containing CRTs are likely to exhibit the characteristic of toxicity due to lead and thus would be classified as hazardous waste, if disposed. Similar findings for other heavy metals have been shown for other electronic devices. Many discarded electronic devices are identified as hazardous wastes in California under the State's existing hazardous waste characteristic of toxicity. As such, these devices may not be disposed of in municipal solid waste landfills. The Electronic Waste Recycling Act of 2003 authorizes the CIWMB and DTSC to establish a program for recycling hazardous electronic waste in California. Implementation of the Act requires DTSC to identify the electronic devices to be included in the recycling program and to authorize the recyclers that will recycle the devices after they are collected. Once identified by DTSC, for purposes of the Act these devices are referred to as "covered electronic devices," and upon discard referred to as "covered electronic wastes."

Current law requires any person who conducts treatment of hazardous waste to first obtain a hazardous waste facility permit or other grant of authorization from DTSC. Treatment is broadly defined to mean, among other things, changing the physical or chemical form of a hazardous waste. Because covered electronic wastes are hazardous wastes, recycling activities, such as those involved with implementation of the Electronic Waste Recycling Act of 2003, constitute treatment of a hazardous waste. Consequently, covered electronic waste recyclers are currently required to obtain hazardous waste facility permits or other specified forms of authorization from DTSC.

Electronic waste recovered for recycling can pose a significant threat to public health, worker safety, and the environment if not properly managed. Consequently, the level of authorization must be commensurate with the hazards involved. Conversely, in order that the State may realize the full potential benefit to human health and the environment that will result from the collection and recycling of covered electronic devices and covered electronic wastes, the level of authorization must also be one that promotes participation by recyclers in the collection and recycling program. To assist DTSC in establishing this balance, the Legislature enacted Health and Safety Code section 25214.9, subdivision (b). This provision authorizes DTSC to adopt regulations, for any activity that involves the management of an electronic waste, which establish alternate management standards to the standards in the hazardous waste control law.

The broad objectives of these regulations are to:

- Implement the Electronic Waste Recycling Act of 2003 regarding the identification and management of covered electronic devices.
- Establish restrictions on the use of heavy metals in covered electronic devices manufactured after January 1, 2007, that contain heavy metals, including cadmium, chromium, lead, and mercury, exceeding the maximum concentrations allowed by the European Union, as required by Health and Safety Code section 25214.10.
- Reorganize California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with §66273.1) to make chapter 23 more “user friendly,” align state regulations with new federal regulations on management standards for universal waste mercury-containing equipment (MCE) and on the export of certain CRT-containing wastes, and consolidate management standards for CRT material handlers and small quantity and large quantity handlers of universal waste under a single handler category.
- Create a separate article within chapter 23 regarding authorization requirements for handlers who dismantle, drain, or treat universal wastes. In addition, add new management standards for universal waste electronic devices.

Proposed Regulations

Proposed regulations in California Code of Regulations, title 22, division 4.5, chapter 10 (commencing with §66260.1) and chapter 11 (commencing with §66261.1):

- Establish a list of “covered electronic devices” as defined in Public Resources Code section 42463, subdivision (f), that are presumed to be hazardous waste when discarded. The devices listed are subject to the requirements of the Electronic Waste Recycling Act of 2003, as amended, and may be managed under the alternate standards for universal waste electronic devices that will be incorporated into California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with §66273.1) by these proposed regulations. The listed devices are those identified in subsection (c) of appendix X of chapter 11, as amended by the R-04-12 and R-2006-05 emergency regulations. Federal regulations do not identify electronic devices that are presumed to be hazardous waste when discarded.
- Require that the manufacturer of a listed electronic device notify retailers that the electronic device is a covered electronic device subject to the Electronic Waste Recycling Act of 2003, as amended, including the payment of the fee

imposed by Public Resources Code, section 42464, pursuant to Health and Safety Code section 25214.10.1, subdivision (c), and as otherwise necessary to implement the Act.

- Provide that the manufacturer of an electronic device, who has obtained DTSC concurrence that the device, when discarded, would not be a hazardous waste, as allowed by Health and Safety Code section 25214.10.1, subdivision (e), shall not be required to manage the electronic device as a covered electronic device and shall not be subject to these regulations.
- Prohibit an electronic device, pursuant to Health and Safety Code section 25214.10, from being sold or offered for sale if the electronic device is prohibited from being sold or offered for sale in the European Union due to the presence of certain heavy metals. Existing federal regulations do not prohibit the sale of electronic devices that are prohibited from sale or being offered for sale in the European Union.

Proposed regulations in California Code of Regulations, title 22, division 4.5, chapter 23 (commencing with §66273.1):

- Establish alternate standards for treatment of electronic devices as universal wastes, as authorized by Health and Safety Code section 25214.9, subdivision (b). These standards are similar to those adopted in emergency regulations R-03-19 and R-2006-02.
- Align state regulations with new federal regulations on management standards for universal waste mercury-containing equipment (MCE). To this end, regulations pertaining to various mercury-containing devices will be consolidated under “mercury-containing equipment.”
- Consolidate management standards for CRT material handlers and small quantity and large quantity handlers of universal waste under a single set of standards. Unlike federal regulations, state regulations will not distinguish between small and large quantity handlers except for notification requirements.
- Reformat and consolidate the chapter 23 regulations applicable to other universal waste streams for clarification and internal consistency.

Note: Existing federal universal waste regulations do not address universal waste electronic devices, including CRT devices, CRTs and CRT glass.

Minor amendments are also proposed to align these sections with the proposed amendments discussed above: California Code of Regulations, title 22, division 4.5, chapters 10 (Definitions), 11 (M-listed waste),

14 (Applicability for Permitted Facilities), and 15 (Applicability for Interim Status Facilities).

Incorporated by Reference

These regulations propose to incorporate by reference the following documents, which, because of their complexity, would be impractical to duplicate in the regulatory text:

European Union Directive 2002/95/EC, "Restriction of the use of certain hazardous substances in electrical and electronic equipment," January 27, 2003.

European Union Directive 2005/618/EC, "Establishing the maximum concentration values for certain hazardous substances in electrical and electronic equipment," August 18, 2005, or as amended thereafter by the Commission of European Communities.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has prepared a Notice of Exemption (NOE) which indicates no significant effect from the project on the environment. An NOE is appropriate because the proposed regulations will result in the diversion of covered electronic wastes from land disposal to recycling facilities subject to levels of regulatory controls commensurate with the potential risks to human health and safety and the environment associated with authorized recycling activities. The NOE is available for review with the rulemaking file. A copy of the draft CEQA document is posted on the DTSC Internet site at <http://www.dtsc.ca.gov>.

PEER REVIEW

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

BUSINESS REPORT

California Code of Regulations, title 22, division 4.5, section 66273.74 of this rulemaking requires that universal waste handlers who dismantle or treat any universal waste electronic devices shall, by February 1 of each calendar year, submit a report to DTSC. Such information will include: (1) the facility name and address, name and telephone number of a contact person, an identification number (if issued), the total quantity by count or weight of universal waste electronic devices and/or CRTs treated or recycled, (2) a list of businesses to which the universal waste handler shipped metal, yokes, universal wastes, and exempt materials during the previous year, and the quantities of each, (3) a list of

businesses to which the universal waste handler shipped CRT glass during the previous year, and the quantities shipped, and (4) a list of CRT manufacturers or primary or secondary lead smelters to which the universal waste handler shipped CRT glass during the previous year.

In accordance with Government Code section 11346.3, subdivision (c), DTSC hereby makes a finding that such reports by businesses are necessary for the health and safety of the people of California.

FISCAL IMPACT ESTIMATES

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

Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement: Local agencies, acting as Certified Unified Program Agencies (CUPAs), are responsible for inspecting many of the businesses that generate hazardous waste, universal waste being a subset of hazardous waste. CUPAs are authorized by Health and Safety Code section 25404.3 to assess fees to cover the costs of these inspections and enforcement programs. DTSC has made a preliminary determination that the proposed regulations will not impose a local mandate or result in costs subject to reimbursement pursuant to part 7 of division 4, commencing with section 17500, of the Government Code or other nondiscretionary costs or savings to local agencies.

Cost or Savings to Any State Agency: The proposed regulations would allow state agencies to choose to recycle electronic devices as universal wastes instead of managing them as hazardous wastes. The savings to state agencies for being authorized under the proposed regulations could exceed hundreds of thousands of dollars, if state agencies currently pay hazardous waste permitting fees. As the regulations establish a list of electronic devices that are hazardous waste and any purchases of such devices to include a recycling fee (\$6 to \$10/device), state agencies will pay the advance recycling fees. However, whether a state agency actually incurs additional costs is unknown because the cost of managing the devices at end-of-life is typically decreasing as a result of implementation of the reimbursement provisions of the Electronic Waste Recycling Act.

Cost or Savings in Federal Funding to the State: DTSC has made a preliminary determination that the proposed regulations will have no impact on federal funding of state agencies. The proposed regulations continue to place electronic devices in the universal waste category, which is permissible for an authorized state program operating in lieu of the federal hazardous waste management program.

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

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

Significant Statewide Adverse Economic Impact on Businesses: DTSC has made a preliminary determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states.

Assessment Statement:

- (A) **Creation or elimination of jobs within California** — DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations. However, the proposed regulations may lead to some increase in the employment in the recycling of electronic devices, which is expected to be more labor intensive than disposal operations. DTSC does not expect that the regulations will lead to the elimination of any jobs at businesses involved in hazardous waste transport or disposal.
- (B) **Creation of new businesses or the elimination of existing businesses within California** — DTSC has made a preliminary determination that no businesses will be eliminated in California as a result of the proposed regulations. A few new businesses may be created to meet the demands for recycling services, although it is more likely that existing businesses will expand to accommodate this new demand. Businesses currently handling or disposing of electronic devices would not be eliminated because these waste streams comprise a minor share of the waste handled by these firms.
- (C) **Expansion of businesses currently doing business in California** — DTSC has made a preliminary determination that recycling businesses in California may expand as a result of the proposed regulations. DTSC is unable to quantify the amount of this expansion.

Effect on Small Businesses: DTSC has made a preliminary determination that provisions of this rulemaking will have a positive effect on small businesses. The proposed regulations will continue to allow small businesses to avoid the high compliance costs associated with managing waste electronic devices as hazardous wastes, i.e., hazardous waste disposal costs.

CONSIDERATION OF ALTERNATIVES

DTSC must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DTSC would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action. DTSC invites interested persons to present arguments, with respect to the various options, at the scheduled hearing, or during the written comment period.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

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

POST-HEARING CHANGES

After the close of the comment period, DTSC may adopt the proposed regulations. If substantial changes are made, the modified text will be made available for comment for at least 15 days prior to adoption. Only persons who request the specific proposed regulations, attend the hearing, or provide written comments on these specific regulations will be sent a copy of the modified text, if substantive changes are made.

Once regulations have been adopted, DTSC prepares a Final Statement of Reasons which updates the Initial Statement of Reasons, summarizes how DTSC addressed comments and includes other materials, as required by Government Code section 11346.9. Copies of the Final Statement of Reasons may be obtained from Ms. Laura Hayashi at the address listed below. A copy of the Final Statement of Reasons will also be posted on DTSC's Internet site at <http://www.dtsc.ca.gov>, along with the date the rulemaking is filed with the Secretary of State and the effective date of the regulations.

CONTACT PERSONS

Inquiries regarding technical aspects of the proposed regulations or CEQA documents may be directed to Ms. Ellen Haertle of DTSC at (916) 324-2437. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding the rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writ-

ing at the public hearing in order for them to be considered by DTSC before it adopts, amends, or repeals these regulations. To be included in this regulation package's mailing list, and to receive updates of this rulemaking, please visit <http://www.calepa.ca.gov/Listservs/dtsc/> and subscribe to the "Universal Waste" Listserv. You may also leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: regs@dtsc.ca.gov.

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

Ms. Laura Hayashi, Regulations
Coordinator
Office of Legislative and
Regulatory Policy
Department of Toxic Substances
Control

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

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

Fax Number: (916) 324-1808

Ms. Laura Hayashi's telephone number is (916) 322-6409. If Ms. Hayashi is unavailable, please contact Ms. Nicole Sotak, Senior Environmental Planner, at (916) 327-4508.

TITLE 22. EMERGENCY MEDICAL SERVICES AUTHORITY

[Notice Published June 27, 2008]

NOTICE OF PROPOSED RULEMAKING

The Emergency Medical Services Authority (EMS Authority) proposes to adopt the proposed EMT-II regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The EMS Authority will hold a public hearing to permit all interested parties the opportunity to present statements, arguments, written materials, or contentions relevant to the proposed action described in the informative digest. The public hearing will be held on:

Date: August 25, 2008

Time: 1:00 p.m. to 2:30 p.m.

Location: EMS Authority, 1930 9th Street, Sacramento, CA 95811

The facility to be used for the public hearing is accessible to persons with mobility impairments. Persons with sight or hearing impairments are asked to write Laura Little at the address above or call Ms. Little at (916) 322-4336, extension 461 to make special arrangements, if necessary.

WRITTEN COMMENT PERIOD

Interested persons are invited to submit written comments on the proposed regulatory action to the EMS Authority. The written comment period end closes at **5:00 p.m. on August 25, 2008**. The EMS Authority will consider only comments received at the EMS Authority office by that time. Submit comments to:

Laura Little, BLS Coordinator, Personnel Standards
Unit
EMS Authority
1930 9th Street
Sacramento, CA 95811
Telephone: (916) 322-4336, extension 461
Fax: (916) 324-2875
E-mail: laura.little@emsa.ca.gov

AUTHORITY AND REFERENCE

The Health and Safety Code, Section 1797.107 authorizes the EMS Authority to adopt the proposed regulations, which would implement, interpret, or make specific Sections 1797.2, 1797.53, 1797.171, 1797.176, 1797.178, 1797.206, 1797.210, 1797.218, 1797.220, 1798.2, 1798.3, and 1798.105 of the Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current law authorizes the EMS Authority to adopt minimum standards for the training and scope of practice for EMT-IIs. Current law also authorizes the EMS Authority to adopt minimum standards for the certification and recertification of EMT-IIs.

The EMS Authority proposes to amend several sections of Chapter 3 of Division 9, of Title 22. This Chapter of Regulations was last revised in 1988 and there have been numerous advances and changes in prehospital training, certification, scope of practice, and medical control pertaining to EMT-IIs both nationally and in California. These amendments are intended to:

1. Add the term "Advanced EMT".
2. Update, and clarify numerous elements of the EMT-II Chapter of Regulations pertaining to Advanced training, certification, medical control, and scope of practice requirements.

3. Make the training, certification, and medical control requirements consistent with the similar requirements contained in the EMT-I and Paramedic Regulations.
4. Offer a feasible and appropriate limited advanced life support alternative to paramedic services for those communities that have difficulty in implementing and sustaining paramedic services.

DISCLOSURES REGARDING
THE PROPOSED ACTION

The EMS Authority has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: This would only impact those statewide public safety agencies (CHP, CDF, DPR) that may wish to implement Advanced EMT services and/or EMT-II services. Costs will vary throughout the state and would include training, equipment, supplies, continuous quality improvement measures and in some cases certification fees. The standards proposed in this regulation revision are optional and not mandatory.
- Costs to any local agency or school district which must be reimbursed in accordance with the Government Code Sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: This would only impact those local agencies that may wish to implement Advanced EMT and/or EMT-II services. Costs will vary throughout the state and would include training, equipment, supplies, continuous quality improvement measures and in some cases certification fees. The standards proposed in this Regulation revision are optional and not mandatory.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
- Cost impacts on a representative private person or business: This would only impact those private businesses, such as private ambulance companies, that may wish to implement Advanced EMT

and/or EMT-II services. Costs will vary throughout the state and would include training, equipment, supplies, continuous quality improvement measures and in some cases certification fees. The standards proposed in this Regulation revision are optional and not mandatory.

- Adoption of these regulations will not:
 - (1) create or eliminate jobs within California;
 - (2) create new businesses or eliminate existing businesses with California; or
 - (3) affect the expansion of businesses currently doing business within California.
- Significant effect on housing costs: None.

SMALL BUSINESS DETERMINATION

The EMS Authority has determined that the proposed regulation may affect a small ambulance company that wishes to increase the level of service from basic life support to limited advanced life support with Advanced EMT and/or EMT-II services. Costs will vary throughout the state and would include training, equipment, supplies, continuous quality improvement measures and in some cases certification fees. The small ambulance provider will also need to seek approval from their local EMS agency to become an Advanced EMT and/or EMT-II service provider which may involve a contract and performance requirements as specified by the local EMS agency. The standards proposed in this Regulation revision are optional and not mandatory.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the EMS Authority must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the EMS Authority 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 EMS Authority invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSON

Primary Contact Person:

Laura Little
BLS Coordinator, Personnel Standards Unit
EMS Authority
1930 9th Street
Sacramento, CA 95811
e-mail: laura.little@emsa.ca.gov
Phone: (916) 322-4336, extension 461
Fax: (916) 324-2875

Alternate Contact Person:

Sean Trask
Manager, Personnel Standards Unit
EMS Authority
1930 9th Street
Sacramento, CA 95811
e-mail: sean.trask@emsa.ca.gov
Phone: (916) 322-4336, extension 408
Fax: (916) 324-2875

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

AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF PROPOSED
REGULATIONS

The EMS Authority will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. The rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Ms. Little at the address above.

AVAILABILITY OF CHANGED
OR MODIFIED TEXT

Following the public hearing and after considering all timely and relevant comments received, the Commission on Emergency Medical Services may approve for adoption and the EMS Authority may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the EMS Authority will make the modified text, with the changes clearly indicated, available to the public for at least 15-days before adoption of the regulations as revised. Please send requests for copies of any modified regulations to the attention of Laura Little at the address indicated above. The EMS Authority will accept written comments on the modified regulations for 15-days after the date on which they are made available.

AVAILABILITY OF THE FINAL
STATEMENT OF REASONS

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

AVAILABILITY OF DOCUMENTS
ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout format, can be accessed through the EMS Authority's website at www.emsa.ca.gov.

**TITLE MPP. DEPARTMENT OF
SOCIAL SERVICES**

ORD #0806-06

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

ITEM#3 Food Stamp Program (FSP) Substantial
Failure to Comply in Another Program

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held August 13, 2008, as follows:

August 13, 2008
Office Building #9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on August 13, 2008.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or

grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

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

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

CONTACT: Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814

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

CHAPTERS

Chapter 63-500 (Eligibility Determinations), Section 63-503 (Determining Household Eligibility and Benefit Levels)

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides for the Food Stamp Program, under which each county distributes food stamp benefits to eligible households. The Food Stamp Program is designed to promote the general welfare, and to safeguard the health and well-being of the nation's population by raising the levels of nutrition among low-income households. Therefore, it is necessary that the California Department of Social Services (CDSS) be in compliance with state and federal regulations to ensure the continued service to these households.

Currently, state regulations do not clarify what constitutes a substantive failure to comply with a requirement in another means tested program, in order to determine how food stamp benefits will be calculated. State regulations do not distinguish between a proce-

dural versus a substantive failure to comply. A substantive failure to comply when the other program reduces or terminates benefits, the food stamp benefits shall not increase. Failure to comply with a procedural requirement, and the other program reduces or terminates benefits, the food stamp allotment can be reduced.

The regulatory amendments are necessary to comply with the Code of Federal Regulations at 7 CFR 273.11(j) regarding the substantive failure to comply involving another programs requirements. The County Welfare Department (CWD) shall not increase the household's food stamp allotment as a result of the decrease in income.

Additional, language will be provided in the form of a handbook example to instruct the CWD that a sanction or overpayment that is a result of a substantive failure to comply shall be included in the calculation when determining food stamp benefits.

COST ESTIMATE

1. Costs or Savings to State Agencies: The Department has determined that there are no additional costs or savings because this regulation makes technical, non-substantive or clarifying changes to current laws and regulations.
2. Costs to Local Agencies or School Districts: The Department has determined that there are no additional costs or savings because this regulation makes technical, non-substantive or clarifying changes to current laws and regulations.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: The Department has determined that there are no additional costs or savings because this regulation makes technical, non-substantive or clarifying changes to current laws and regulations. The change could potentially increase federal food stamp benefits, but the state does not share in the benefit costs of this federal program.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by the federal government within the meaning of Section 17513 of the Government Code.

**STATEMENT OF SIGNIFICANT ADVERSE
ECONOMIC IMPACT ON BUSINESS**

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

**STATEMENT OF POTENTIAL COST IMPACT ON
PRIVATE PERSONS OR BUSINESSES**

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

SMALL BUSINESS IMPACT STATEMENT

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

**ASSESSMENT OF JOB CREATION
OR ELIMINATION**

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

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF ALTERNATIVES CONSIDERED

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

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553 and 10554, Welfare and Institutions Code. Subject regulations implement and make specific 7 CFR 273.11(j).

**CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION**

Contact Person: Rick Torres (916) 657-2659
Backup: Sandra Ortega (916) 657-2586

**TITLE MPP. DEPARTMENT OF
SOCIAL SERVICES**

ORD #0208-01

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

ITEM # 1 Senate Bill 1569 (Chapter 672, Statutes of 2006) Implementation

CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held August 13, 2008, as follows:

August 13, 2008
Office Building #9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on August 13, 2008.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

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

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

CONTACT: Office of Regulations Development
California Department of Social Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

California Department of Social Services, Manual of Policies and Procedures, Division 30 (Social Service Programs), Chapter 30-700 (Service Program No. 7: In-Home Supportive Services), Sections 30-755 (Persons Served by the Non-PCSP IHSS Program) and 30-770 (Eligibility Standards); Division 40 (Reception and Application), Chapter 40-000 (Implementation Schedule), Section 40-037 (Implementation of Benefits and Services to Noncitizen Victims of Human Trafficking, Domestic Violence, or Other Serious Crimes); Chapter 40-100 (General), Section 40-105 (Applicant and Recipient Responsibility); Division 42 (Nonlinking Factors of Public Assistance Eligibility), Chapter 42-400 (Residence), Sections 42-430 (Citizenship and Alienage), 42-431 (Eligibility Requirements), and 42-433 (Proof of Citizenship or Eligible Alien Status); Chapter 42-700 (Welfare-to-Work), Section 42-711 (Welfare-to-Work Participation Requirements); Division 49, Chapter 49-000 (Cash Assistance Program for Immigrants [CAPI]), Sections 49-020 (Immigration Status), 49-030 (Ineligibility for SSI/SSP), and 49-060 (Benefit Suspensions and Terminations); Division 63 (Food Stamps), Chapter 63-400 (Eligibility Standards), Section 63-403 (California Food Assistance Program [CFAP]); Division 69 (Refugee Programs), Chapter 69-200 (Refugee Resettlement Program), Sections 69-201 (General Statement), 69-202 (United States Citizenship and Immigration Services [USCIS] Status Requirement), and 69-205 (Eligibility for Refugee Cash Assistance [RCA]); and Division 70 (Special

Programs), Chapter 70-100 (Trafficking and Crime Victims Assistance Program [TCVAP]), Sections 70-101 (General Statement), 70-102 (Determination of Trafficking Victim Status), 70-103 (Determination of Trafficking Victims' Eligibility for TCVAP Benefits and Services), 70-104 (Determination of Serious Crime Victims' Eligibility for TCVAP Benefits and Services), and 70-105 (TCVAP Services and Benefits).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Senate Bill (SB) 1569 (Chapter 672, Statutes of 2006) amends and adds sections to the Welfare and Institutions Code to extend eligibility for certain public social services to noncertified, noncitizen victims of a severe form of human trafficking and noncitizen victims of domestic violence and other serious crimes, to the same extent as refugees.

In October 2000, the federal Trafficking Victims Protection Act (TVPA) created two new nonimmigrant visas, the "T" Visa, for victims of a severe form of human trafficking, and the "U" Visa, for victims of criminal activity as defined in federal statute, to allow these individuals to remain in the United States (U.S.) The U.S. Department of Health and Human Services, Office of Refugee Resettlement (ORR), after consultation with the U.S. Attorney General, may certify a victim of a severe form of trafficking who is willing to assist in every reasonable way with the investigation and prosecution of human traffickers; and has made a bona fide application to the Bureau of United States Citizenship and Immigration Services (USCIS) for a T Visa and the application has not been denied; or is a person for whom "continued presence" in the U.S. has been requested by law enforcement because s/he is assisting or willing to assist the U.S. Attorney General and/or other law enforcement agency in the prosecution of human traffickers.

Federal law defines noncitizen victims of serious crimes as aliens who have suffered substantial physical or mental abuse as a result of having been victims of severe criminal activity and possess information concerning criminal activity (or in the case of an alien child under the age of 16, the parent, guardian, or adult representing the child); and have been helpful, are being helpful, or are likely to be helpful to a federal, state, or local law enforcement official, prosecutor, or judge or to other federal, state, or local authorities investigating or prosecuting criminal activities described above (or in the case of an alien child under the age of 16, the parent, guardian, or adult representative of the alien is helpful).

Certain federal programs provide benefits and services to refugees and victims of human trafficking who meet federal eligibility criteria. Noncertified victims of

human trafficking and noncitizen victims of serious crime are not eligible for federal programs. SB 1569 provides benefits and services to the same extent as those persons eligible under the federal Refugee Act of 1980. Services include, but are not limited to the equivalent of: Refugee Cash Assistance, Refugee Medical Assistance, Refugee Employment Social Services, California Work Opportunity and Responsibility to Kids, Food Stamps, Cash Assistance Program for Immigrants, and Healthy Families Program benefits. Once the trafficking victim has been certified by ORR, he or she is eligible for federal benefits and services to the same extent as refugees.

SB 1569 requires the California Department of Social Services (CDSS) to adopt regulations to implement and administer the provisions of the bill no later than July 1, 2008 (on an emergency basis if necessary). These proposed regulations require county welfare departments to determine eligibility for this program based upon a noncitizen applicant's status as a victim of a severe form of human trafficking or a victim of domestic violence or other serious crime, as defined in the law. Once determined eligible under SB 1569, other program rules apply, provided that compliance is authorized by law.

COST ESTIMATE

1. Costs or Savings to State Agencies: Expenditures of \$2,951,000.00 have been budgeted in the current State Fiscal Year (SFY) as reflected in the November 2007 Subvention.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: Expenditures of \$7,000.00 have been budgeted in the current SFY as reflected in the November 2007 Subvention.
4. Federal Funding to State Agencies: No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not school districts. If the Commission on State mandates determines that this act contains costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

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

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

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

ASSESSMENT OF JOB CREATION OR ELIMINATION

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

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF ALTERNATIVES CONSIDERED

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

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10553 and 10554 and Senate Bill 1569 (Chapter 672, Statutes of 2006). Subject regulations implement and make specific Welfare and Institutions Code Sections 13283, 14005.2, and 18945.

CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION

Contact Person: Everardo Vaca (916) 657-2586
Backup: Sandra Ortega (916) 657-2586

EMERGENCY STATEMENT

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

**TITLE MPP. DEPARTMENT OF
SOCIAL SERVICES**

ORD #0308-02

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

ITEM#2 Emergency Regulations—Minimum
Sanction Periods and County Plan
Addendum Requirement

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

August 13, 2008
Office Building #9
744 P St. Auditorium
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on August 13, 2008.

CDSS, upon its own motion or at the instance of any interested party, may adopt the proposals substantially as described or may modify such proposals if such modifications are sufficiently related to the original text.

With the exception of nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

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

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

CONTACT: Office of Regulations Development
California Department of Social
Services
744 P Street, MS 7-192
Sacramento, California 95814
TELEPHONE: (916) 657-2586
FACSIMILE: (916) 654-3286
E-MAIL: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures Division 42 (Non-Linking Factors of Public Assistance Eligibility), Chapter 42-700 (Welfare to Work), Section 42-721 (Non-Compliance with Program Requirements), Section 42-780 (County Plans for CalWORKs), Division 44 (Standards of Assistance), Chapter 44-300 (Aid Payments), Section 44-303 (Aid Payments-Defined), Section 44-307 (Voucher/Vendor Payment), Section 44-318 (Beginning Date of Aid (BDA) For Persons Being Added to the AU); and Division 82 (Child Support Enforcement Program Regulations), Chapter 82-800 (Assistance Unit), Section 82-812 (Temporary Absence).

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Assembly Bill (AB) 1808, Chapter 75, Statutes of 2006, amends the California Work Opportunity and Responsibility to Kids (CalWORKs) Welfare-to-Work Program. The CalWORKs Welfare-to-Work Program is the employment and training component of Cal-

WORKs, California's version of the federal Temporary Assistance for Needy Families (TANF) Program.

Federal welfare reform enacted the TANF program through the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) in 1996, limiting cash aid to a family with an adult to a total of five years. The intent of the Welfare-to-Work program is to provide employment and training services to the maximum possible number of the adult CalWORKs population to aid them in achieving economic self-sufficiency within this time frame.

To further achieve this goal, the proposed regulations repeal minimum sanction periods and, instead, would allow an individual that has received a financial sanction due to an instance of noncompliance without good cause to terminate the sanction at any point. This would give more participants the opportunity to cure their sanction earlier and begin participating in Welfare-to-Work activities, which may help increase California's Work Participation Rate. The sanction will end if the noncomplying participant performs the activity or activities that he or she previously refused to perform. An individual may contact the county and request to cure his or her sanction without having to wait a minimum sanction period as previously required. Further, the proposed regulations modify the regulation on vouchers and vendor payments to eliminate a reference to minimum sanction periods, which were made obsolete by AB 1808, Section 29.3.

AB 1808, Section 27.3, also added Welfare & Institutions Code Section 10534 to require counties to submit a county plan addendum once every three years.

Additionally, the proposed regulations will make other technical, conforming changes, such as renumbering of sections and amending cross references as necessary.

COST ESTIMATE

1. Costs or Savings to State Agencies: \$0.082 million in funds have been budgeted in the 2007-08 Appropriation; no further funds will need to be budgeted.
2. Costs to Local Agencies or School Districts: None
3. Nondiscretionary Costs or Savings to Local Agencies: \$0.146 million in funds have been budgeted in the 2007-08 Appropriation; no further funds will need to be budgeted.
4. Federal Funding to State Agencies: \$5.596 million in funds have been budgeted in the 2007-08 Appropriation; no further funds will need to be budgeted.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. If the Commission on State Mandates determines that these regulations contain reimbursable costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

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

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

It is anticipated that small businesses will be impacted since they employ the majority of persons in the state and will provide services for County Welfare Departments and welfare recipients. These regulations have the potential to increase the number of welfare recipients who become employed and/or participate in other Welfare-to-Work (WTW) activities, due to the fact that recipients can cure their sanction at any time and do not have to wait for a required sanction period to end. Recipients can now reengage in WTW activities earlier, including the required participation of a minimum of 20 hours per week in core activities, such as unsubsidized employment or vocational training. However, in general, the number and type of small businesses to be impacted is not known since this information is dependent upon numerous factors, e.g., the number of recipients who meet their WTW requirements through employment, the number of recipients who meet the requirements through educational activities, the types of services that are provided at the local level by governmental versus private businesses, etc.

ASSESSMENT OF JOB CREATION OR ELIMINATION

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California

nor result in the elimination of existing businesses or create or expand businesses in the State of California.

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF ALTERNATIVES CONSIDERED

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

AUTHORITY AND REFERENCE CITATIONS

CDSS adopts these regulations under the authority granted in Sections 10553 and 10554 of the Welfare and Institutions Code.

Subject regulations implement and make specific Sections 10534 and 11327.5(d), Welfare and Institutions Code, AB 1808 (Chapter 75, Statutes of 2006), Sections 27.3 and 29.3.

**CDSS REPRESENTATIVE REGARDING
RULEMAKING PROCESS OF THE
PROPOSED REGULATION**

Contact Person: Sue Tognet (916) 657-2586
Backup: Sandra Ortega (916) 657-2586

EMERGENCY STATEMENT

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

GENERAL PUBLIC INTEREST

**TITLE 16. DEPARTMENT OF
CONSUMER AFFAIRS**

NOTICE OF CHANGE OF HEARING DATE

NOTICE IS HEREBY GIVEN that the Department of Consumer Affairs has rescheduled the regulatory hearing originally scheduled for June 30, 2008 at 9:00 a.m. regarding amendments to the Conflict of Interest Code (16 CCR 3830). (Noticed in Register 2008, No. 20-Z, published 5/16/08.)

The new date and location of the regulatory hearing is as follows:

Date of Hearing: July 2, 2008
Place: Trinity Room, Suite S 307
1625 N. Market Blvd.
Sacramento, CA 95834
Time: 9:00 a.m.

Persons who have previously submitted written comments to the Department regarding the proposed action need not submit comments again. Any comments previously submitted remain in the rulemaking file.

If you have any questions or comments, you may direct them to:

Imelda Galang
Senior Legal Analyst
Department of Consumer Affairs — Legal Office
1625 N. Market Blvd., Suite S 309
Sacramento, CA 95834
(916) 574-8220 (phone); (916) 928-7984 (fax)
imelda_galang@dca.ca.gov

OR

Albert Balingit
Staff Counsel
Department of Consumer Affairs — Legal Office
1625 N. Market Blvd., Suite S 309
Sacramento, CA 95834
(916) 574-8220 (phone); (916) 928-7984 (fax)
albert_balingit@dca.ca.gov

**CALIFORNIA DEPARTMENT OF FISH
AND GAME**

**CONSISTENCY DETERMINATION
Fish and Game Code Section 2080.1
Tracking Number 2080-2008-006-03**

PROJECT: Interstate 680 Sunol Grade Southbound High Occupancy Vehicle Widening Project
LOCATION: Interstate 680 between State Route 237 and Interstate 580 in Alameda and Santa Clara Counties
NOTIFIER: California Department of Transportation

BACKGROUND

The Interstate 680 Sunol Grade Southbound High Occupancy Vehicle Widening Project (the Project) includes construction of a southbound high occupancy vehicle (HOV) lane, auxiliary lane, ramp metering, and related improvements along a 21.7 mile stretch of I-680. The project includes a pilot Smart lane concept that will be incorporated into the HOV lane and will allow solo drivers to use the HOV lane for a fee along with the carpool drivers. The Smart lane is also known as a High Occupancy Toll lane. The overall project area begins at the interchange of I-680 with Calaveras Road/SR 237 in the City of Milpitas in Santa Clara County. It then passes through the City of Fremont in Alameda County, and ends at the Stoneridge Drive interchange in the City of Pleasanton, also in Alameda County.

The proposed Project's southbound lanes are adjacent to the Hayward Pleasanton Ridge critical habitat unit (Unit 3) for Alameda whipsnake (*Masticophis lateralis euryxanthus*). Alameda whipsnake is listed as a threatened species under both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). The project area is crossed by Alameda Creek, Vallecitos Creek and other drainages that are critical movement corridors for interchange between the Hayward Pleasanton Ridge and Sunol-Cedar Mountain Alameda whipsnake populations. Based upon this, and other information, the U.S. Fish and Wildlife Service (USFWS) has concluded it is likely the Alameda whipsnake utilizes the project area for foraging, resting, mating, and other essential behaviors and that the Project will likely result in a number of adverse effects to the Alameda whipsnake, including the potential for incidental take of individuals.

Because the Project has the potential to take a species listed under ESA, the California Department of Transportation (Caltrans), acting on behalf of the Federal Highway Administration, consulted with the USFWS under Section 7 of the ESA. On October 2, 2007, USFWS issued a Biological Opinion (Ref. No. 1-1-07-F-0358)(BO), which describes the Project, including conservation measures developed to minimize impacts to Alameda whipsnake, and sets forth measures to mitigate any remaining impacts to Alameda whipsnake or its habitat. On May 13, 2008, the BO was amended (Ref. No. 81420-2008-F-1362-6) to include additional measures regarding mitigation for impacts to Alameda whipsnake. On May 16, 2008, the Director of the Department of Fish and Game (DFG) received correspondence from Jeffrey G. Jensen, on behalf of Caltrans, requesting a determination pursuant to section 2080.1 of the Fish and Game Code that the amended

BO, including its incidental take statement (ITS), is consistent with CESA.

DETERMINATION

DFG has determined that the BO as amended on May 13, 2008, including its ITS, is consistent with CESA because the mitigation measures therein meet the conditions set forth in Fish and Game Code section 2081, subparagraphs (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, DFG finds that the take of Alameda whipsnake will be incidental to an otherwise lawful activity (i.e., construction of a southbound HOV, auxiliary lane, ramp metering, and related improvements), the mitigation measures identified in the BO will minimize and fully mitigate the impacts of the authorized take of Alameda whipsnake, and implementation of the Project will not jeopardize the continued existence of the species. The mitigation measures in the BO and the amended BO include, but are not limited to, the following:

Habitat Compensation Measures

- Caltrans will compensate for impacts to the Alameda whipsnake and its habitat through purchase of credits from a USFWS and DFG approved mitigation bank equivalent to 16.68 acres of habitat for Alameda whipsnake. The BO requires Caltrans to provide the USFWS and DFG with a copy of the credit purchase agreement for the required credits or with DFG-approved documentation that shows sufficient funding has been secured for the actual costs of the credits. As a means of complying with this measure, Caltrans executed the purchase agreement on May 30, 2008 and will, as set forth in the BO, submit a copy of the purchase agreement within 10 working days to the USFWS and DFG.

Minimization and Monitoring Measures

- A USFWS-approved biologist will be designated for the Project. The qualified biologist(s) will be on site during all activities that may result in take of the Alameda whipsnake. The biologist(s) will be given the authority, through the Resident Engineer, to stop any work that may result in the take of Alameda whipsnake.
- The Resident Engineer will halt work and immediately contact the USFWS-approved biologist if Alameda whipsnake gain access to the construction zone. The Resident Engineer will suspend all construction activities in the immediate construction zone until the animal leaves the site voluntarily or is removed by the biologist to a release site using USFWS approved transportation techniques.

Take Avoidance Measures

- To prevent Alameda whipsnake from becoming entangled or trapped plastic mono-filament netting (erosion control matting) or similar material will not be used at the project site. Acceptable substitutes include coconut coir matting or tackified hyrd-seeding compounds.

Based on this consistency determination, Caltrans does not need to obtain authorization from DFG under CESA for incidental take of Alameda whipsnake that occurs in carrying out the Project, provided Caltrans implements the Project as described in the BO as amended (including the Conservation Measures), and complies with the mitigation measures and other conditions described in the BO and ITS, including the amendment. However, if the Project as described in the BO, including the mitigation measures therein, changes after the date of the opinion, or if the USFWS again amends or replaces the BO, Caltrans will need to obtain from DFG a new consistency determination (in accordance with Fish and Game Code section 2080.1) or a separate incidental take permit (in accordance with Fish and Game Code section 2081).

DEPARTMENT OF HEALTH CARE SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

THE DEPARTMENT OF HEALTH CARE SERVICES INTENDS TO SUBMIT A STATE PLAN AMENDMENT TO CONTINUE MEDI-CAL LONG-TERM CARE REIMBURSEMENT RATES FOR SKILLED NURSING FACILITIES LEVEL-B AND SUBACUTE CARE UNITS OF FREESTANDING SKILLED NURSING FACILITIES

The Department of Health Care Services (DHCS) is issuing this public notice to provide information regarding proposed amendments to Assembly Bill (AB) 1629 Article 7.6 (commencing with Section 1324.20) Chapter 2 of Division 2 of the Health and Safety Code and Article 3.8 (commencing with Section 14126) Chapter 7 of Part 3 of Division 9 of Welfare and Institutions Code, signed into law on September 29, 2004. As the sections currently read, AB 1629 of 2004 mandates a facility-specific rate-setting methodology that will cease to be operative on and after July 31, 2008. DHCS intends to submit an amendment to California's Medicaid State Plan Amendment, to extend the operative date for the facility-specific rate methodology of AB 1629 of 2004 from July 31, 2008 to July 31, 2011.

REVISION TO EXTEND AB 1629 MEDI-CAL LONG TERM CARE REIMBURSEMENT ACT

AB 1629 of 2004 established the Medi-Cal Long Term Care Reimbursement Act and required DHCS to develop and implement a Medi-Cal cost-based facility-specific reimbursement rate methodology for Medi-Cal participating Freestanding Skilled Nursing Facilities Level-B and Subacute Care units of Freestanding Skilled Nursing Facilities.

Subject to any other changes in state or federal law, DHCS is extending the operative date to July 31, 2011. This extension is contingent on approval of a State Plan Amendment by the Federal Centers for Medicare & Medicaid Services.

PUBLIC REVIEW

Copies of the proposed changes are available for public review at local county welfare offices throughout the state. Any person may submit written comments to or request copies of the proposed changes from:

John McCraw, Chief
 Long Term Care System Development Unit
 Department of Health Care Services
 P.O. Box 942732
 Mail Stop 4601
 Sacramento, CA 95814.

DEPARTMENT OF HEALTH CARE SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES INTENDS TO RELEASE THE MEDI-CAL HOME HEALTH RATE REVIEW WITH CONSIDERATION OF EFFICIENCY, ECONOMY, QUALITY OF CARE, AND ACCESS FOR YEARS 2001 THROUGH 2005.

The California Department of Health Care Services (DHCS) is issuing this notice to provide information of public interest with respect to the recent annual review of the Medi-Cal reimbursement rates paid to the providers of home health agency (HHA) care services for the years 2001 through 2005. The HHA reimbursement rate review was prepared to comply with the decision provided in *California Association for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696. In that decision the Court of Appeal held: "The trial court is directed to issue a writ of man-

date compelling the department to conduct an annual review of the Medi-Cal reimbursement rates paid to the providers of home health care services for the years 2001 through 2005.”

The Court of Appeal required DHCS to perform a rate review consistent with the language set forth in the former California State Plan at Attachment 4.19-B at page 20a.

Prior to the revision that occurred effective December 31, 2005, the California State Plan at Attachment 4.19-B at page 20a set forth the following language:

The State Agency shall perform an annual review of the Medi-Cal reimbursement rates paid to providers of home health agency services. The purpose of such review is to ensure that the rates comply with federal regulation (sic) 42 U.S.C. Section 1396a(a)(30)(A), which requires payments to be:

- (1) consistent with efficiency, economy, and quality of care; and
- (2) sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

PUBLIC HEARING PROCESS

Notice is hereby given that DHCS will hold a public hearing commencing at 10:00 a.m. on Monday, August 11, 2008 in Room 151A at 1500 Capitol Avenue, Sacramento, California, at which time any person may present both oral and written comments relevant to the reimbursement rate review described in this notice.

Written comments can be separately submitted by letter to DHCS on or before August 11, 2008 (the public hearing date and the close of the comment period) to the following address:

Ms. Marie Taketa, Chief, Rate Analysis Unit
Rate Development Branch
Department of Health Care Services
1501 Capitol Avenue, MS 4612
P.O. Box 997413
Sacramento, California, 95899-7413

CONTACT

Any interested party may review and make copies of the HHA reimbursement rate review and its attachments by going to the DHCS website at www.dhcs.ca.gov/services/medi-cal/Pages/HHAratereview.aspx.

In addition, individuals may obtain a copy of the HHA reimbursement rate review only by submitting a written request to:

Ms. Marie Taketa, Chief, Rate Analysis Unit
Rate Development Branch
Department of Health Care Services
1501 Capitol Avenue, MS 4612
P.O. Box 997413
Sacramento, California, 95899-7413
or at
Marie.Taketa@dhcs.ca.gov

DEPARTMENT OF HEALTH CARE SERVICES

NOTICE OF GENERAL PUBLIC INTEREST

Final Notice Regarding Implementation Of A 10 Percent Reduction in Provider Payments For Hospital Inpatient Services and Some Nursing Facility Services

The Department of Health Care Services is providing this final notice regarding Medi-Cal payment reductions mandated by Welfare and Institutions Code sections 14105.19 and 14166.245, which are scheduled to take effect on July 1, 2008. A previous notice concerning these payment reductions was published in the California Regulatory Notice Register on March 28, 2008 (Volume No. 13-Z, page 492.) A supplemental notice containing more detailed information on the ten percent reduction in provider payments for hospital inpatient services and some nursing facility services was published in the California Regulatory Notice Register on June 6, 2008 (Volume 23-Z, pages 917-919.) Information about these changes has also been published on the Medi-Cal website and Medi-Cal provider bulletin. To assure that this notice is published in the Notice Register prior to July 1, 2008, the Department must submit it to the Office of Administrative Law by close of business on June 17, 2008. As discussed at the end of this notice, DHCS may publish an amended final notice on the Medi-Cal website on or before July 1, 2008, if it determines that any amendment to what is stated in this notice is necessary.

Following is a description of the methodology that will be used in establishing payments for non-contract hospital inpatient services and some nursing facility services for dates of service on or after July 1, 2008. The justification for these provider payments is also described below.

Non-Contract Hospital Inpatient Services

The Medi-Cal reimbursement policy for hospital inpatient services rendered by hospitals not under con-

tract is applied to each hospital according to its own fiscal period. Each hospital decides upon its own fiscal period, with fiscal periods ending on December 31 and June 30 being the most common. When non-contract hospitals bill for services, they are initially paid an interim rate, which is stated as a percentage of the hospital's charges. Welfare and Institutions Code section 14166.245 does not change the current Medi-Cal policy for calculation of a hospital's interim rate. Thus, a hospital's interim rate may go up or go down in accordance with current interim rate policy subsequent to implementation of section 14166.245. However, effective for dates of service on or after July 1, 2008, the payments made to a hospital pursuant to the interim rate in effect at any particular time will be reduced by 10 percent.

Hospitals are required to submit a cost report within 5 months of the close of their fiscal period. The Department reviews each hospital's cost report and prepares a tentative settlement, which is a determination of the allowable reimbursable reported costs for a hospital's fiscal period. The Department compares what a hospital was paid in interim payments for the hospital's fiscal period, to the hospital's allowable reimbursable reported costs for that fiscal period. The difference may result in either an underpayment that is paid to the hospital or an overpayment that is recouped from the hospital. The methodology that the Department uses for determining a hospital's allowable reimbursable reported costs at tentative settlement is not being changed. However, because of Welfare and Institutions Code section 14166.245, subdivision (c), the Department intends to use 90 percent of a hospital's allowable reimbursable reported costs for days of care on or after July 1, 2008 in determining at tentative settlement whether there is an underpayment owed to a hospital or an overpayment that must be recouped from a hospital. Taking such action is consistent with the intent of the statute and the failure to take such action would likely necessitate much greater recoupment of money from hospitals at the final cost settlement phase of the process discussed below.

Sometime after a tentative cost settlement for a particular hospital's fiscal period, the Department's Financial Audits Branch completes a field audit of the hospital's reported costs. After the Department completes an audit of a hospital's reported costs for its fiscal period, it issues an audit report concerning the hospital's allowable costs in accordance with Medicare standards and principles of cost based reimbursement. Providers may request an administrative hearing to contest the audit findings. (Welf. & Inst. § 14171.)

The final reimbursement payable to a non-contract hospital for inpatient services provided during a hospital's fiscal period is referred to as the peer grouping in-

patient reimbursement limitation (PIRL), which is the lesser of the hospital's (1) customary charges, (2) audited allowable costs in accordance with Medicare standards and principles of cost based reimbursement, (3) an all-inclusive rate per discharge limitation (ARPD), or (4) peer grouping rate per discharge limitation (PGRPDL). (Cal. Code Regs., tit. 22, §§ 51545, subd. (a)(70) and 51546.) The Department's Hospital Recoupment Unit (HRU), Safety Net Financing Division, calculates the ARPD and PGRPDL for a hospital's fiscal period sometime after the Financial Audits Branch issues its audit report as to what the hospital's allowable costs were. The ARPD and PGRPDL are not calculated for rural hospitals and new hospitals.

Welfare and Institutions Code section 14166.245, subdivision (c) modifies item 2 of the PIRL calculation with respect to non-contract hospital inpatient services provided on or after July 1, 2008. When calculating a hospital's final cost report settlement for days of service on or after July 1, 2008, the Department will limit item (2) of the PIRL to 90 percent of audited allowable costs in accordance with Medicare standards and principles of cost based reimbursement. Thus, when calculating the amount of final reimbursement a hospital would be entitled to under item 2 of the PIRL for a hospital's fiscal period that includes any dates of service on or after July 1, 2008, the amount shall be limited for Medi-Cal covered inpatient days on or after July 1, 2008 to 90 percent of the hospital's audited allowable costs per day for those services multiplied by the number of such days within the hospital's fiscal period. Final reimbursement under item 2 of the PIRL for days of service prior to July 1, 2008 will continue to be 100 percent of audited allowable costs. There will be no change in the current Medi-Cal policy for determining the other components of the PIRL (i.e., customary charges, ARPD, and PGRPDL).

The Department is mandated by state law to implement the above change in reimbursement. Thus, the Department is also mandated by Article III, Section 3.5 of the California Constitution to implement this change in reimbursement. The Department has considered the impact of this reimbursement on providers and Medi-Cal beneficiaries. The Department's assessment is that reimbursement will continue to compensate a high percentage of hospital costs and that beneficiaries will continue to have access to hospital inpatient services consistent with title 42, United States Code, section 1396a(a)(30)(A).

Nursing Facility Services

For nursing facility services, the Medi-Cal program establishes a per diem rate of reimbursement for each day of Medi-Cal covered service rendered by a provider. Rates are established for each rate year, which runs

from August 1 through July 31. Thus, the rates currently being paid are those established for the 2007/2008 rate year that runs from August 1, 2007 through July 31, 2008. Welfare and Institutions Code section 14105.19 mandates that rates for the following nursing facility services will be reduced by 10 percent effective for dates of service on or after July 1, 2008.

- Freestanding Nursing Facility Services (Level A).
- Nursing Facility Services in a distinct part of a hospital (Level B).
- Adult Sub-acute Care Services in a distinct part of a hospital.
- Pediatric Sub-acute Care Services in a distinct part of a hospital.

The Department will implement section 14105.19 by reducing the rate that would otherwise be paid for these services under the current rate methodology by 10 percent effective for dates of service on or after July 1, 2008. Thus, for dates of service during July 2008, the rate paid will be the rate established under the current rate methodology for the 2007/2008 rate year, reduced by 10 percent. For dates of service on or after August 1, 2008, the rate paid will be the rate established for the 2008/2009 rate year reduced by 10 percent.

The Department is mandated by state law to implement the above change in reimbursement. Thus, the Department is also mandated by Article III, Section 3.5 of the California Constitution to implement this change in reimbursement. The Department has considered the impact of this reimbursement on providers and Medi-Cal beneficiaries. The Department's assessment is that reimbursement will continue to compensate a high percentage of costs incurred for these nursing facility services and that Medi-Cal beneficiaries will continue to have access to these services consistent with title 42, United States Code, section 1396a(a)(30)(A).

Public Comments

As of June 17, 2008, the Department had received substantial public comments on the ten percent reduction in payments for non-contract hospital inpatient services and some nursing facility services. The Department has reviewed and considered the public comments received as of June 17, 2008, and has not seen anything that would necessitate a change in the reimbursement methodology described in this notice. However, if the Department decides based on further consideration of the public comments received as of June 17, 2008, or based on subsequent public comments it receives, that any change in the reimbursement methodology is necessary, it will publish an amended public notice on or before July 1, 2008 on the Medi-Cal website at www.Medi-Cal.ca.gov.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

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

**NOTICE TO INTERESTED PARTIES
June 27, 2008**

ANNOUNCEMENT OF FINAL REPORT

DEVELOPMENT OF FISH CONTAMINANT GOALS AND ADVISORY TISSUE LEVELS FOR COMMON CONTAMINANTS IN CALIFORNIA SPORT FISH: CHLORDANE, DDTs, DIELDRIN, METHYLMERCURY, PCBs, SELENIUM, AND TOXAPHENE

(Formerly: DEVELOPMENT OF GUIDANCE TISSUE LEVELS AND SCREENING VALUES FOR COMMON CONTAMINANTS IN CALIFORNIA SPORT FISH: CHLORDANE, DDTs, DIELDRIN, METHYLMERCURY, PCBs, SELENIUM, AND TOXAPHENE)

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) previously made available a draft report entitled, "Development of Guidance Tissue Levels and Screening Values for Common Contaminants in California Sport Fish: Chlordane, DDTs, Dieldrin, Methylmercury, PCBs, Selenium, and Toxaphene." OEHHA has revised the report in response to comments from the public and additional review of scientific knowledge in the subject area. As such, the report has been re-titled, "Development of Fish Contaminant Goals and Advisory Tissue Levels for Common Contaminants in Sport Fish: Chlordane, DDTs, Dieldrin, Methylmercury, PCBs, Selenium, and Toxaphene." For each chemical, the toxicological literature was reviewed to establish acceptable toxicity values for cancer and non-cancer endpoints. Fish contaminant goals were then developed that can provide a starting point for OEHHA to as-

sist other agencies in their efforts to develop fish tissue-based criteria with a goal toward pollution mitigation or elimination. The scientific literature on the benefits of fish and fish oil consumption was also reviewed. Finally, OEHHA developed advisory tissue levels, which balance risks and benefits and are one component of the complex process of data evaluation and interpretation used by OEHHA in the assessment and communication of fish consumption risks and development of advisories and safe eating guidelines.

OEHHA is making the final document available at the OEHHA Web site at <http://www.oehha.ca.gov>. A copy of the report is also available by calling (916) 327-7319.

If you would like to receive further information on this announcement, or have questions, please contact Dr. Susan A. Klasing using the information provided below.

Dr. Susan A. Klasing
California Environmental Protection Agency
Office of Environmental Health Hazard Assessment
Pesticide and Environmental Toxicology Branch,
P.O. Box 4010
Sacramento, California 95812-4010
Phone: (916) 323-9667
Fax: (916) 327-7320
e-mail: sklasing@oehha.ca.gov

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

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

CHEMICALS KNOWN TO THE
STATE TO CAUSE CANCER OR
REPRODUCTIVE TOXICITY
JUNE 27, 2008

The Safe Drinking Water and Toxic Enforcement Act of 1986 requires that the Governor revise and republish at least once per year the list of chemicals known to the State to cause cancer or reproductive toxicity. The identification number indicated in the following list is the Chemical Abstracts Service (CAS) Registry Number. No CAS number is given when several substances are presented as a single listing. The date refers to the initial appearance of the chemical on the list. For easy reference, chemicals which are shown underlined are newly added. Chemicals which are shown with a ~~strikeout~~ were placed on the list with the date noted, and have subsequently been removed.

CHEMICALS KNOWN TO THE STATE TO CAUSE CANCER

<i>Chemical</i>	<i>CAS Number</i>	<i>Date</i>
A-alpha-C (2-Amino-9H-pyrido[2,3-b]indole)	26148-68-5	January 1, 1990
Acetaldehyde	75-07-0	April 1, 1988
Acetamide	60-35-5	January 1, 1990
Acetochlor	34256-82-1	January 1, 1989
2-Acetylaminofluorene	53-96-3	July 1, 1987
Acifluorfen <u>sodium</u>	62476-59-9	January 1, 1990
Acrylamide	79-06-1	January 1, 1990
Acrylonitrile	107-13-1	July 1, 1987
Actinomycin D	50-76-0	October 1, 1989
AF-2;[2-(2-furyl)-3-(5-nitro-2-furyl)]acrylamide	3688-53-7	July 1, 1987
Aflatoxins	—	January 1, 1988
Alachlor	15972-60-8	January 1, 1989
Alcoholic beverages, when associated with alcohol abuse	—	July 1, 1988
Aldrin	309-00-2	July 1, 1988
<u>Allyl chloride Delisted October 29, 1999</u>	107-05-1	January 1, 1990
2-Aminoanthraquinone	117-79-3	October 1, 1989
p-Aminoazobenzene	60-09-3	January 1, 1990
ortho-Aminoazotoluene	97-56-3	July 1, 1987
4-Aminobiphenyl (4-aminodiphenyl)	92-67-1	February 27, 1987
1-Amino-2,4-dibromoanthraquinone	81-49-2	August 26, 1997
3-Amino-9-ethylcarbazole hydrochloride	6109-97-3	July 1, 1989
2-Aminofluorene	153-78-6	January 29, 1999
1-Amino-2-methylanthraquinone	82-28-0	October 1, 1989
2-Amino-5-(5-nitro-2-furyl)-1,3,4-thiadiazole	712-68-5	July 1, 1987
4-Amino-2-nitrophenol	119-34-6	January 29, 1999
Amitrole	61-82-5	July 1, 1987
Analgesic mixtures containing phenacetin	—	February 27, 1987
Aniline	62-53-3	January 1, 1990
Aniline hydrochloride	142-04-1	May 15, 1998
ortho-Anisidine	90-04-0	July 1, 1987
ortho-Anisidine hydrochloride	134-29-2	July 1, 1987
Antimony oxide (Antimony trioxide)	1309-64-4	October 1, 1990
Anthraquinone	84-65-1	September 28, 2007
Aramite	140-57-8	July 1, 1987
Areca nut	—	February 3, 2006
Aristolochic acids	—	July 9, 2004
Arsenic (inorganic arsenic compounds)	—	February 27, 1987
Asbestos	1332-21-4	February 27, 1987
Auramine	492-80-8	July 1, 1987
Azacitidine	320-67-2	January 1, 1992
Azaserine	115-02-6	July 1, 1987
Azathioprine	446-86-6	February 27, 1987
Azobenzene	103-33-3	January 1, 1990
<u>Benthiavalicarb-isopropyl</u>	177406-68-7	July 1, 2008
Benz[a]anthracene	56-55-3	July 1, 1987
Benzene	71-43-2	February 27, 1987
Benzidine [and its salts]	92-87-5	February 27, 1987
Benzidine-based dyes	—	October 1, 1992
Benzo[b]fluoranthene	205-99-2	July 1, 1987

<i>Chemical</i>	<i>CASNumber</i>	<i>Date</i>
Benzo[j]fluoranthene	205-82-3	July 1, 1987
Benzo[k]fluoranthene	207-08-9	July 1, 1987
Benzofuran	271-89-6	October 1, 1990
Benzo[a]pyrene	50-32-8	July 1, 1987
Benzotrichloride	98-07-7	July 1, 1987
Benzyl chloride	100-44-7	January 1, 1990
Benzyl violet 4B	1694-09-3	July 1, 1987
Beryllium and beryllium compounds	—	October 1, 1987
Betel quid with tobacco	—	January 1, 1990
Betel quid without tobacco	—	February 3, 2006
2,2-Bis(bromomethyl)-1,3-propanediol	3296-90-0	May 1, 1996
Bis(2-chloroethyl)ether	111-44-4	April 1, 1988
N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlornapazine)	494-03-1	February 27, 1987
Bischloroethyl nitrosourea (BCNU) (Carmustine)	154-93-8	July 1, 1987
Bis(chloromethyl)ether	542-88-1	February 27, 1987
Bis(2-chloro-1-methylethyl) ether, technical grade	—	October 29, 1999
Bitumens, extracts of steam-refined and air refined	—	January 1, 1990
Bracken fern	—	January 1, 1990
Bromate	15541-45-4	May 31, 2002
Bromodichloromethane	75-27-4	January 1, 1990
Bromoethane	74-96-4	December 22, 2000
Bromoform	75-25-2	April 1, 1991
1,3-Butadiene	106-99-0	April 1, 1988
1,4-Butanediol dimethanesulfonate (Busulfan)	55-98-1	February 27, 1987
Butylated hydroxyanisole	25013-16-5	January 1, 1990
beta-Butyrolactone	3068-88-0	July 1, 1987
Cacodylic acid	75-60-5	May 1, 1996
Cadmium and cadmium compounds	—	October 1, 1987
Caffeic acid	331-39-5	October 1, 1994
Captafol	2425-06-1	October 1, 1988
Captan	133-06-2	January 1, 1990
Carbazole	86-74-8	May 1, 1996
Carbon black (airborne, unbound particles of respirable size)	1333-86-4	February 21, 2003
Carbon tetrachloride	56-23-5	October 1, 1987
Carbon-black extracts	—	January 1, 1990
N-Carboxymethyl-N-nitrosourea	60391-92-6	January 25, 2002
Catechol	120-80-9	July 15, 2003
Ceramic fibers (airborne particles of respirable size)	—	July 1, 1990
Certain combined chemotherapy for lymphomas	—	February 27, 1987
Chlorambucil	305-03-3	February 27, 1987
Chloramphenicol	56-75-7	October 1, 1989
Chlordane	57-74-9	July 1, 1988
Chlordecone (Kepone)	143-50-0	January 1, 1988
Chlordimeform	6164-98-3	January 1, 1989
Chlorendic acid	115-28-6	July 1, 1989
Chlorinated paraffins (Average chain length, C12; approximately 60 percent chlorine by weight)	108171-26-2	July 1, 1989
p-Chloroaniline	106-47-8	October 1, 1994
p-Chloroaniline hydrochloride	20265-96-7	May 15, 1998
Chlorodibromomethane <u>Delisted October 29, 1999</u>	124-48-1	January 1, 1990

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<u>Chemical</u>	<u>CASNumber</u>	<u>Date</u>
Chloroethane (Ethyl chloride)	75-00-3	July 1, 1990
1-(2-Chloroethyl)-3-cyclohexyl-1-nitrosourea (CCNU) (Lomustine)	13010-47-4	January 1, 1988
1-(2-Chloroethyl)-3-(4-methylcyclohexyl)-1-nitrosourea (Methyl-CCNU)	13909-09-6	October 1, 1988
Chloroform	67-66-3	October 1, 1987
Chloromethyl methyl ether (technical grade)	107-30-2	February 27, 1987
3-Chloro-2-methylpropene	563-47-3	July 1, 1989
1-Chloro-4-nitrobenzene	100-00-5	October 29, 1999
4-Chloro-ortho-phenylenediamine	95-83-0	January 1, 1988
p-Chloro-o-toluidine	95-69-2	January 1, 1990
p-Chloro-o-toluidine, strong acid salts of	—	May 15, 1998
5-Chloro-o-toluidine and its strong acid salts	—	October 24, 1997
Chloroprene	126-99-8	June 2, 2000
Chlorothalonil	1897-45-6	January 1, 1989
Chlorotrianisene	569-57-3	September 1, 1996
Chlorozotocin	54749-90-5	January 1, 1992
Chromium (hexavalent compounds)	—	February 27, 1987
Chrysene	218-01-9	January 1, 1990
C.I. Acid Red 114	6459-94-5	July 1, 1992
C.I. Basic Red 9 monohydrochloride	569-61-9	July 1, 1989
C.I. Direct Blue 15	2429-74-5	August 26, 1997
C.I. Direct Blue 218	28407-37-6	August 26, 1997
C.I. Solvent Yellow 14	842-07-9	May 15, 1998
Ciclosporin (Cyclosporin A; Cyclosporine)	59865-13-3	January 1, 1992
	79217-60-0	
Cidofovir	113852-37-2	January 29, 1999
Cinnamyl anthranilate	87-29-6	July 1, 1989
Cisplatin	15663-27-1	October 1, 1988
Citrus Red No. 2	6358-53-8	October 1, 1989
Clofibrate	637-07-0	September 1, 1996
Cobalt metal powder	7440-48-4	July 1, 1992
Cobalt [II] oxide	1307-96-6	July 1, 1992
Cobalt sulfate	10124-43-3	May 20, 2005
Cobalt sulfate heptahydrate	10026-24-1	June 2, 2000
Coke oven emissions	—	February 27, 1987
Conjugated estrogens	—	February 27, 1987
Creosotes	—	October 1, 1988
para-Cresidine	120-71-8	January 1, 1988
Cupferron	135-20-6	January 1, 1988
Cycasin	14901-08-7	January 1, 1988
Cyclophosphamide (anhydrous)	50-18-0	February 27, 1987
Cyclophosphamide (hydrated)	6055-19-2	February 27, 1987
Cytembena	21739-91-3	May 15, 1998
D&C Orange No. 17	3468-63-1	July 1, 1990
D&C Red No. 8	2092-56-0	October 1, 1990
D&C Red No. 9	5160-02-1	July 1, 1990
D&C Red No. 19	81-88-9	July 1, 1990
Dacarbazine	4342-03-4	January 1, 1988

<i>Chemical</i>	<i>CASNumber</i>	<i>Date</i>
Daminozide	1596-84-5	January 1, 1990
Dantron (Chrysazin; 1,8-Dihydroxyanthraquinone)	117-10-2	January 1, 1992
Daunomycin	20830-81-3	January 1, 1988
DDD (Dichlorodiphenyldichloroethane)	72-54-8	January 1, 1989
DDE (Dichlorodiphenyldichloroethylene)	72-55-9	January 1, 1989
DDT (Dichlorodiphenyltrichloroethane)	50-29-3	October 1, 1987
DDVP (Dichlorvos)	62-73-7	January 1, 1989
N,N' -Diacetylbenzidine	613-35-4	October 1, 1989
2,4-Diaminoanisole	615-05-4	October 1, 1990
2,4-Diaminoanisole sulfate	39156-41-7	January 1, 1988
4,4' -Diaminodiphenyl ether (4,4' -Oxydianiline)	101-80-4	January 1, 1988
2,4-Diaminotoluene	95-80-7	January 1, 1988
Diaminotoluene (mixed)	—	January 1, 1990
Diazoaminobenzene	136-35-6	May 20, 2005
Dibenz[a,h]acridine	226-36-8	January 1, 1988
Dibenz[a,j]acridine	224-42-0	January 1, 1988
Dibenz[a,h]anthracene	53-70-3	January 1, 1988
7H-Dibenzo[c,g]carbazole	194-59-2	January 1, 1988
Dibenzo[a,e]pyrene	192-65-4	January 1, 1988
Dibenzo[a,h]pyrene	189-64-0	January 1, 1988
Dibenzo[a,i]pyrene	189-55-9	January 1, 1988
Dibenzo[a,l]pyrene	191-30-0	January 1, 1988
Dibromoacetic acid	631-64-1	June 17, 2008
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	July 1, 1987
2,3-Dibromo-1-propanol	96-13-9	October 1, 1994
Dichloroacetic acid	79-43-6	May 1, 1996
p-Dichlorobenzene	106-46-7	January 1, 1989
3,3' -Dichlorobenzidine	91-94-1	October 1, 1987
3,3' -Dichlorobenzidine dihydrochloride	612-83-9	May 15, 1998
1,4-Dichloro-2-butene	764-41-0	January 1, 1990
3,3' -Dichloro-4,4' -diaminodiphenyl ether	28434-86-8	January 1, 1988
1,1-Dichloroethane	75-34-3	January 1, 1990
Dichloromethane (Methylene chloride)	75-09-2	April 1, 1988
1,2-Dichloropropane	78-87-5	January 1, 1990
1,3-Dichloropropene	542-75-6	January 1, 1989
Dieldrin	60-57-1	July 1, 1988
Dienestrol	84-17-3	January 1, 1990
Diepoxybutane	1464-53-5	January 1, 1988
Diesel engine exhaust	—	October 1, 1990
Di(2-ethylhexyl)phthalate	117-81-7	January 1, 1988
1,2-Diethylhydrazine	1615-80-1	January 1, 1988
Diethyl sulfate	64-67-5	January 1, 1988
Diethylstilbestrol (DES)	56-53-1	February 27, 1987
Diglycidyl resorcinol ether (DGRE)	101-90-6	July 1, 1989
Dihydrosafrole	94-58-6	January 1, 1988
Diisopropyl sulfate	2973-10-6	April 1, 1993
3,3' -Dimethoxybenzidine (ortho-Dianisidine)	119-90-4	January 1, 1988
3,3' -Dimethoxybenzidine dihydrochloride (ortho-Dianisidine dihydrochloride)	20325-40-0	October 1, 1990
3,3' -Dimethoxybenzidine-based dyes metabolized to 3,3' -dimethoxybenzidine	—	June 11, 2004

<i>Chemical</i>	<i>CASNumber</i>	<i>Date</i>
3,3' -Dimethylbenzidine-based dyes metabolized to 3,3' -dimethylbenzidine	—	June 11, 2004
Dimethyl sulfate	77-78-1	January 1, 1988
4-Dimethylaminoazobenzene	60-11-7	January 1, 1988
trans-2-[(Dimethylamino)methylimino]-5-[2-(5-nitro-2-furyl)vinyl]-1,3,4-oxadiazole	55738-54-0	January 1, 1988
7,12-Dimethylbenz(a)anthracene	57-97-6	January 1, 1990
3,3' -Dimethylbenzidine (ortho-Tolidine)	119-93-7	January 1, 1988
3,3' -Dimethylbenzidine dihydrochloride	612-82-8	April 1, 1992
Dimethylcarbamoyl chloride	79-44-7	January 1, 1988
1,1-Dimethylhydrazine (UDMH)	57-14-7	October 1, 1989
1,2-Dimethylhydrazine	540-73-8	January 1, 1988
Dimethylvinylchloride	513-37-1	July 1, 1989
3,7-Dinitrofluoranthene	105735-71-5	August 26, 1997
3,9-Dinitrofluoranthene	22506-53-2	August 26, 1997
1,6-Dinitropyrene	42397-64-8	October 1, 1990
1,8-Dinitropyrene	42397-65-9	October 1, 1990
Dinitrotoluene mixture, 2,4-/2,6-	—	May 1, 1996
2,4-Dinitrotoluene	121-14-2	July 1, 1988
2,6-Dinitrotoluene	606-20-2	July 1, 1995
Di-n-propyl isocinchomeronate (MGK Repellent 326)	136-45-8	May 1, 1996
1,4-Dioxane	123-91-1	January 1, 1988
Diphenylhydantoin (Phenytoin)	57-41-0	January 1, 1988
Diphenylhydantoin (Phenytoin), sodium salt	630-93-3	January 1, 1988
Direct Black 38 (technical grade)	1937-37-7	January 1, 1988
Direct Blue 6 (technical grade)	2602-46-2	January 1, 1988
Direct Brown 95 (technical grade)	16071-86-6	October 1, 1988
Disperse Blue 1	2475-45-8	October 1, 1990
Diuron	330-54-1	May 31, 2002
Doxorubicin hydrochloride (Adriamycin)	25316-40-9	July 1, 1987
Epichlorohydrin	106-89-8	October 1, 1987
Erionite	12510-42-8/ 66733-21-9	October 1, 1988
Estradiol 17B	50-28-2	January 1, 1988
Estragole	140-67-0	October 29, 1999
Estrogens, steroidal	—	August 19, 2005
Estrone	53-16-7	January 1, 1988
Estropipate	7280-37-7	August 26, 1997
Ethinylestradiol	57-63-6	January 1, 1988
Ethoprop	13194-48-4	February 27, 2001
Ethyl acrylate	140-88-5	July 1, 1989
Ethylbenzene	100-41-4	June 11, 2004
Ethyl methanesulfonate	62-50-0	January 1, 1988
Ethyl-4,4' -dichlorobenzilate	510-15-6	January 1, 1990
Ethylene dibromide	106-93-4	July 1, 1987
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	October 1, 1987
Ethylene oxide	75-21-8	July 1, 1987
Ethylene thiourea	96-45-7	January 1, 1988
Ethyleneimine	151-56-4	January 1, 1988
Fenoxycarb	72490-01-8	June 2, 2000
Folpet	133-07-3	January 1, 1989
Formaldehyde (gas)	50-00-0	January 1, 1988

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2-(2-Formylhydrazino)-4-(5-nitro-2-furyl)thiazole	3570-75-0	January 1, 1988
Fumonisin B ₁	116355-83-0	November 14, 2003
Furan	110-00-9	October 1, 1993
Furazolidone	67-45-8	January 1, 1990
Furmecycloz	60568-05-0	January 1, 1990
Fusarin C	79748-81-5	July 1, 1995
Ganciclovir sodium	82410-32-0	August 26, 1997
Gasoline engine exhaust (condensates/extracts)	—	October 1, 1990
Gemfibrozil	25812-30-0	December 22, 2000
Glasswool fibers (airborne particles of respirable size)	—	July 1, 1990
Glu-P-1 (2-Amino-6-methyldipyrido[1,2-a:3',2'-d]imidazole)	67730-11-4	January 1, 1990
Glu-P-2 (2-Aminodipyrido[1,2-a:3',2'-d]imidazole)	67730-10-3	January 1, 1990
Glycidaldehyde	765-34-4	January 1, 1988
Glycidol	556-52-5	July 1, 1990
Griseofulvin	126-07-8	January 1, 1990
Gyromitrin (Acetaldehyde methylformylhydrazone)	16568-02-8	January 1, 1988
HC Blue 1	2784-94-3	July 1, 1989
Heptachlor	76-44-8	July 1, 1988
Heptachlor epoxide	1024-57-3	July 1, 1988
Herbal remedies containing plant species of the genus Aristolochia	—	July 9, 2004
Hexachlorobenzene	118-74-1	October 1, 1987
Hexachlorocyclohexane (technical grade)	—	October 1, 1987
Hexachlorodibenzodioxin	34465-46-8	April 1, 1988
Hexachloroethane	67-72-1	July 1, 1990
2,4-Hexadienal (89% trans, trans isomer; 11% cis, trans isomer)	—	March 4, 2005
Hexamethylphosphoramide	680-31-9	January 1, 1988
Hydrazine	302-01-2	January 1, 1988
Hydrazine sulfate	10034-93-2	January 1, 1988
Hydrazobenzene (1,2-Diphenylhydrazine)	122-66-7	January 1, 1988
1-Hydroxyanthraquinone	129-43-1	May 27, 2005
Indeno [1,2,3-cd]pyrene	193-39-5	January 1, 1988
Indium phosphide	22398-80-7	February 27, 2001
IQ (2-Amino-3-methylimidazo[4,5-f]quinoline)	76180-96-6	April 1, 1990
Iprodione	36734-19-7	May 1, 1996
Iprovalicarb	140923-17-7	June 1, 2007
	140923-25-7	
Iron dextran complex	9004-66-4	January 1, 1988
Isobutyl nitrite	542-56-3	May 1, 1996
Isoprene	78-79-5	May 1, 1996
Isosafrole <u>Delisted December 8, 2006</u>	120-58-1	October 1, 1989
Isoxaflutole	141112-29-0	December 22, 2000
Lactofen	77501-63-4	January 1, 1989
Lasiocarpine	303-34-4	April 1, 1988
Lead acetate	301-04-2	January 1, 1988
Lead and lead compounds	—	October 1, 1992
Lead phosphate	7446-27-7	April 1, 1988
Lead subacetate	1335-32-6	October 1, 1989
Lindane and other hexachlorocyclohexane isomers	—	October 1, 1989

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Lynestrenol	52-76-6	February 27, 2001
Mancozeb	8018-01-7	January 1, 1990
Maneb	12427-38-2	January 1, 1990
Me-A-alpha-C (2-Amino-3-methyl-9H-pyrido[2,3-b]indole)	68006-83-7	January 1, 1990
Medroxyprogesterone acetate	71-58-9	January 1, 1990
MeIQ(2-Amino-3,4-dimethylimidazo[4,5-f]quinoline)	77094-11-2	October 1, 1994
MeIQx(2-Amino-3,8-dimethylimidazo[4,5-f]quinoxaline)	77500-04-0	October 1, 1994
Melphalan	148-82-3	February 27, 1987
Mepanipyrim	110235-47-7	July 1, 2008
Merphalan	531-76-0	April 1, 1988
Mestranol	72-33-3	April 1, 1988
Metham sodium	137-42-8	November 6, 1998
8-Methoxypsoralen with ultraviolet A therapy	298-81-7	February 27, 1987
5-Methoxypsoralen with ultraviolet A therapy	484-20-8	October 1, 1988
2-Methylaziridine (Propyleneimine)	75-55-8	January 1, 1988
Methylazoxymethanol	590-96-5	April 1, 1988
Methylazoxymethanol acetate	592-62-1	April 1, 1988
Methyl carbamate	598-55-0	May 15, 1998
3-Methylcholanthrene	56-49-5	January 1, 1990
5-Methylchrysene	3697-24-3	April 1, 1988
4,4' -Methylene bis(2-chloroaniline)	101-14-4	July 1, 1987
4,4' -Methylene bis(N,N-dimethyl)benzenamine	101-61-1	October 1, 1989
4,4' -Methylene bis(2-methylaniline)	838-88-0	April 1, 1988
4,4' -Methylenedianiline	101-77-9	January 1, 1988
4,4' -Methylenedianiline dihydrochloride	13552-44-8	January 1, 1988
Methyleugenol	93-15-2	November 16, 2001
Methylhydrazine and its salts	—	July 1, 1992
Methyl iodide	74-88-4	April 1, 1988
Methylmercury compounds	—	May 1, 1996
Methyl methanesulfonate	66-27-3	April 1, 1988
2-Methyl-1-nitroanthraquinone (of uncertain purity)	129-15-7	April 1, 1988
N-Methyl-N' -nitro-N-nitrosoguanidine	70-25-7	April 1, 1988
N-Methylolacrylamide	924-42-5	July 1, 1990
Methylthiouracil	56-04-2	October 1, 1989
Metiram	9006-42-2	January 1, 1990
Metronidazole	443-48-1	January 1, 1988
Michler's ketone	90-94-8	January 1, 1988
Mirex	2385-85-5	January 1, 1988
Mitomycin C	50-07-7	April 1, 1988
Monocrotaline	315-22-0	April 1, 1988
5-(Morpholinomethyl)-3-[(5-nitro-furfurylidene)-amino]-2-oxazolidinone	139-91-3	April 1, 1988
Mustard Gas	505-60-2	February 27, 1987
MX (3-chloro-4-(dichloromethyl)-5-hydroxy-2(5H)-furanone)	77439-76-0	December 22, 2000
Nafenopin	3771-19-5	April 1, 1988
Nalidixic acid	389-08-2	May 15, 1998
Naphthalene	91-20-3	April 19, 2002
1-Naphthylamine	134-32-7	October 1, 1989
2-Naphthylamine	91-59-8	February 27, 1987
Nickel (Metallic)	7440-02-0	October 1, 1989
Nickel acetate	373-02-4	October 1, 1989
Nickel carbonate	3333-67-3	October 1, 1989

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Nickel carbonyl	13463-39-3	October 1, 1987
Nickel compounds	—	May 7, 2004
Nickel hydroxide	12054-48-7; 12125-56-3	October 1, 1989
Nickelocene	1271-28-9	October 1, 1989
Nickel oxide	1313-99-1	October 1, 1989
Nickel refinery dust from the pyrometallurgical process	—	October 1, 1987
Nickel subsulfide	12035-72-2	October 1, 1987
Niridazole	61-57-4	April 1, 1988
Nitrapyrin	1929-82-4	October 5, 2005
Nitrilotriacetic acid	139-13-9	January 1, 1988
Nitrilotriacetic acid, trisodium salt monohydrate	18662-53-8	April 1, 1989
5-Nitroacenaphthene	602-87-9	April 1, 1988
5-Nitro-o-anisidine <u>Delisted December 8, 2006</u>	99-59-2	October 1, 1989
o-Nitroanisole	91-23-6	October 1, 1992
Nitrobenzene	98-95-3	August 26, 1997
4-Nitrobiphenyl	92-93-3	April 1, 1988
6-Nitrochrysene	7496-02-8	October 1, 1990
Nitrofen (technical grade)	1836-75-5	January 1, 1988
2-Nitrofluorene	607-57-8	October 1, 1990
Nitrofurazone	59-87-0	January 1, 1990
1-[(5-Nitrofurfurylidene)-amino]-2-imidazolidinone	555-84-0	April 1, 1988
N-[4-(5-Nitro-2-furyl)-2-thiazolyl]acetamide	531-82-8	April 1, 1988
Nitrogen mustard (Mechlorethamine)	51-75-2	January 1, 1988
Nitrogen mustard hydrochloride (Mechlorethamine hydrochloride)	55-86-7	April 1, 1988
Nitrogen mustard N-oxide	126-85-2	April 1, 1988
Nitrogen mustard N-oxide hydrochloride	302-70-5	April 1, 1988
Nitromethane	75-52-5	May 1, 1997
2-Nitropropane	79-46-9	January 1, 1988
1-Nitropyrene	5522-43-0	October 1, 1990
4-Nitropyrene	57835-92-4	October 1, 1990
N-Nitrosodi-n-butylamine	924-16-3	October 1, 1987
N-Nitrosodiethanolamine	1116-54-7	January 1, 1988
N-Nitrosodiethylamine	55-18-5	October 1, 1987
N-Nitrosodimethylamine	62-75-9	October 1, 1987
p-Nitrosodiphenylamine	156-10-5	January 1, 1988
N-Nitrosodiphenylamine	86-30-6	April 1, 1988
N-Nitrosodi-n-propylamine	621-64-7	January 1, 1988
N-Nitroso-N-ethylurea	759-73-9	October 1, 1987
3-(N-Nitrosomethylamino)propionitrile	60153-49-3	April 1, 1990
4-(N-Nitrosomethylamino)-1-(3-pyridyl)1-butanone	64091-91-4	April 1, 1990
N-Nitrosomethylethylamine	10595-95-6	October 1, 1989
N-Nitroso-N-methylurea	684-93-5	October 1, 1987
N-Nitroso-N-methylurethane	615-53-2	April 1, 1988
N-Nitrosomethylvinylamine	4549-40-0	January 1, 1988
N-Nitrosomorpholine	59-89-2	January 1, 1988
N-Nitrosornicotine	16543-55-8	January 1, 1988
N-Nitrosopiperidine	100-75-4	January 1, 1988
N-Nitrosopyrrolidine	930-55-2	October 1, 1987
N-Nitrososarcosine	13256-22-9	January 1, 1988
o-Nitrotoluene	88-72-2	May 15, 1998
Norethisterone (Norethindrone)	68-22-4	October 1, 1989

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Norethynodrel	68-23-5	February 27, 2001
Ochratoxin A	303-47-9	July 1, 1990
Oil Orange SS	2646-17-5	April 1, 1988
Oral contraceptives, combined	—	October 1, 1989
Oral contraceptives, sequential	—	October 1, 1989
Oxadiazon	19666-30-9	July 1, 1991
Oxazepam	604-75-1	October 1, 1994
Oxymetholone	434-07-1	January 1, 1988
Oxythioquinox (Chinomethionat)	2439-01-2	August 20, 1999
Palygorskite fibers (> 5µm in length)	12174-11-7	December 28, 1999
Panfuran S	794-93-4	January 1, 1988
Pentachlorophenol	87-86-5	January 1, 1990
Phenacetin	62-44-2	October 1, 1989
Phenazopyridine	94-78-0	January 1, 1988
Phenazopyridine hydrochloride	136-40-3	January 1, 1988
Phenesterin	3546-10-9	July 1, 1989
Phenobarbital	50-06-6	January 1, 1990
Phenolphthalein	77-09-8	May 15, 1998
Phenoxybenzamine	59-96-1	April 1, 1988
Phenoxybenzamine hydrochloride	63-92-3	April 1, 1988
o-Phenylenediamine and its salts	95-54-5	May 15, 1998
Phenyl glycidyl ether	122-60-1	October 1, 1990
Phenylhydrazine and its salts	—	July 1, 1992
o-Phenylphenate, sodium	132-27-4	January 1, 1990
o-Phenylphenol	90-43-7	August 4, 2000
PhiP(2-Amino-1-methyl-6-phenylimidazol[4,5-b]pyridine)	105650-23-5	October 1, 1994
Polybrominated biphenyls	—	January 1, 1988
Polychlorinated biphenyls	—	October 1, 1989
Polychlorinated biphenyls (containing 60 or more percent chlorine by molecular weight)	—	January 1, 1988
Polychlorinated dibenzo-p-dioxins	—	October 1, 1992
Polychlorinated dibenzofurans	—	October 1, 1992
Polygeenan	53973-98-1	January 1, 1988
Ponceau MX	3761-53-3	April 1, 1988
Ponceau 3R	3564-09-8	April 1, 1988
Potassium bromate	7758-01-2	January 1, 1990
Pirimicarb	23103-98-2	July 1, 2008
Primidone	125-33-7	August 20, 1999
Procarbazine	671-16-9	January 1, 1988
Procarbazine hydrochloride	366-70-1	January 1, 1988
Procymidone	32809-16-8	October 1, 1994
Progesterone	57-83-0	January 1, 1988
Pronamide	23950-58-5	May 1, 1996
Propachlor	1918-16-7	February 27, 2001
1,3-Propane sultone	1120-71-4	January 1, 1988
Propargite	2312-35-8	October 1, 1994
beta-Propiolactone	57-57-8	January 1, 1988
Propoxur	114-26-1	August 11, 2006
Propylene glycol mono-t-butyl ether	57018-52-7	June 11, 2004
Propylene oxide	75-56-9	October 1, 1988
Propylthiouracil	51-52-5	January 1, 1988
Pyridine	110-86-1	May 17, 2002

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Quinoline and its strong acid salts	—	October 24, 1997
Radionuclides	—	July 1, 1989
Reserpine	50-55-5	October 1, 1989
Residual (heavy) fuel oils	—	October 1, 1990
<u>Resmethrin</u>	<u>10453-86-8</u>	<u>July 1, 2008</u>
Riddelliine	23246-96-0	December 3, 2004
Saccharin <u>Delisted April 6, 2001</u>	81-07-2	October 1, 1989
Saccharin, sodium <u>Delisted January 17, 2003</u>	128-44-9	January 1, 1988
Safrole	94-59-7	January 1, 1988
Selenium sulfide	7446-34-6	October 1, 1989
Shale-oils	68308-34-9	April 1, 1990
Silica, crystalline (airborne particles of respirable size)	—	October 1, 1988
Soots, tars, and mineral oils (untreated and mildly treated oils and used engine oils)	—	February 27, 1987
Spironolactone	52-01-7	May 1, 1997
Stanozolol	10418-03-8	May 1, 1997
Sterigmatocystin	10048-13-2	April 1, 1988
Streptozotocin (streptozocin)	18883-66-4	January 1, 1988
Strong inorganic acid mists containing sulfuric acid	—	March 14, 2003
Styrene oxide	96-09-3	October 1, 1988
Sulfallate	95-06-7	January 1, 1988
Sulfasalazine (Salicylazosulfapyridine)	599-79-1	May 15, 1998
Talc containing asbestiform fibers	—	April 1, 1990
Tamoxifen and its salts	10540-29-1	September 1, 1996
Terrazole	2593-15-9	October 1, 1994
Testosterone and its esters	58-22-0	April 1, 1988
2,3,7,8-Tetrachlorodibenzo-para-dioxin (TCDD)	1746-01-6	January 1, 1988
1,1,2,2-Tetrachloroethane	79-34-5	July 1, 1990
Tetrachloroethylene (Perchloroethylene)	127-18-4	April 1, 1988
p-a,a,a-Tetrachlorotoluene	5216-25-1	January 1, 1990
Tetrafluoroethylene	116-14-3	May 1, 1997
Tetranitromethane	509-14-8	July 1, 1990
Thioacetamide	62-55-5	January 1, 1988
4,4'-Thiodianiline	139-65-1	April 1, 1988
Thiodicarb	59669-26-0	August 20, 1999
Thiouracil	141-90-2	June 11, 2004
Thiourea	62-56-6	January 1, 1988
Thorium dioxide	1314-20-1	February 27, 1987
Tobacco, oral use of smokeless products	—	April 1, 1988
Tobacco smoke	—	April 1, 1988
Toluene diisocyanate	26471-62-5	October 1, 1989
ortho-Toluidine	95-53-4	January 1, 1988
ortho-Toluidine hydrochloride	636-21-5	January 1, 1988
<u>para-Toluidine Delisted October 29, 1999</u>	<u>406-49-0</u>	<u>January 1, 1990</u>
Toxaphene (Polychlorinated camphenes)	8001-35-2	January 1, 1988
Treosulfan	299-75-2	February 27, 1987
Trichlormethine (Trimustine hydrochloride)	817-09-4	January 1, 1992
Trichloroethylene	79-01-6	April 1, 1988
2,4,6-Trichlorophenol	88-06-2	January 1, 1988
1,2,3-Trichloropropane	96-18-4	October 1, 1992
Trimethyl phosphate	512-56-1	May 1, 1996
2,4,5-Trimethylaniline and its strong acid salts	—	October 24, 1997

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Triphenyltin hydroxide	76-87-9	July 1, 1992
Tris(aziridinyl)-para-benzoquinone (Triaziuone) <u>Delisted December 8, 2006</u>	68-76-8	October 1, 1989
Tris(1-aziridinyl)phosphine sulfide (Thiotepa)	52-24-4	January 1, 1988
Tris(2-chloroethyl) phosphate	115-96-8	April 1, 1992
Tris(2,3-dibromopropyl)phosphate	126-72-7	January 1, 1988
Trp-P-1 (Tryptophan-P-1)	62450-06-0	April 1, 1988
Trp-P-2 (Tryptophan-P-2)	62450-07-1	April 1, 1988
Trypan blue (commercial grade)	72-57-1	October 1, 1989
Unleaded gasoline (wholly vaporized)	—	April 1, 1988
Uracil mustard	66-75-1	April 1, 1988
Urethane (Ethyl carbamate)	51-79-6	January 1, 1988
Vanadium pentoxide (orthorhombic crystalline form)	1314-62-1	February 11, 2005
Vinclozolin	50471-44-8	August 20, 1999
Vinyl bromide	593-60-2	October 1, 1988
Vinyl chloride	75-01-4	February 27, 1987
4-Vinylcyclohexene	100-40-3	May 1, 1996
4-Vinyl-1-cyclohexene diepoxide (Vinyl cyclohexene dioxide)	106-87-6	July 1, 1990
Vinyl fluoride	75-02-5	May 1, 1997
Vinyl trichloride (1,1,2-Trichloroethane)	79-00-5	October 1, 1990
2,6-Xylidine (2,6-Dimethylaniline)	87-62-7	January 1, 1991
Zileuton	111406-87-2	December 22, 2000
Zineb <u>Delisted October 29, 1999</u>	12122-67-7	January 1, 1990

CHEMICALS KNOWN TO THE STATE TO CAUSE REPRODUCTIVE TOXICITY

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Acetazolamide	developmental	59-66-5	August 20, 1999
Acetohydroxamic acid	developmental	546-88-3	April 1, 1990
Actinomycin D	developmental	50-76-0	October 1, 1992
All-trans retinoic acid	developmental	302-79-4	January 1, 1989
Alprazolam	developmental	28981-97-7	July 1, 1990
Altretamine	developmental, male	645-05-6	August 20, 1999
Amantadine hydrochloride	developmental	665-66-7	February 27, 2001
Amikacin sulfate	developmental	39831-55-5	July 1, 1990
Aminoglutethimide	developmental	125-84-8	July 1, 1990
Aminoglycosides	developmental	—	October 1, 1992
Aminopterin	developmental, female	54-62-6	July 1, 1987
Amiodarone hydrochloride	developmental, female, male	19774-82-4	August 26, 1997
Amitraz	developmental	33089-61-1	March 30, 1999
Amoxapine	developmental	14028-44-5	May 15, 1998
Anabolic steroids	female, male	—	April 1, 1990
Angiotensin converting enzyme (ACE) inhibitors	developmental	—	October 1, 1992
Anisindione	developmental	117-37-3	October 1, 1992
Arsenic (inorganic oxides)	developmental	—	May 1, 1997

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Aspirin (NOTE: It is especially important not to use aspirin during the last three months of pregnancy, unless specifically directed to do so by a physician because it may cause problems in the unborn child or complications during delivery.)	developmental, female	50-78-2	July 1, 1990
Atenolol	developmental	29122-68-7	August 26, 1997
Auranofin	developmental	34031-32-8	January 29, 1999
Azathioprine	developmental	446-86-6	September 1, 1996
Barbiturates	developmental	—	October 1, 1992
Beclomethasone dipropionate	developmental	5534-09-8	May 15, 1998
Benomyl	developmental, male	17804-35-2	July 1, 1991
Benzene	developmental, male	71-43-2	December 26, 1997
Benzodiazepines	developmental	—	October 1, 1992
Benzphetamine hydrochloride	developmental	5411-22-3	April 1, 1990
Bischloroethyl nitrosourea (BCNU) (Carmustine)	developmental	154-93-8	July 1, 1990
Bromacil lithium salt	developmental	53404-19-6	May 18, 1999
1-Bromopropane	male		January 17, 2003
2-Bromopropane	developmental, female, male	106-94-5	December 7, 2004
Bromoxynil	female, male	75-26-3	May 31, 2005
Bromoxynil octanoate	developmental	1689-84-5	October 1, 1990
Butabarbital sodium	developmental	1689-99-2	May 18, 1999
1,3-Butadiene	developmental	143-81-7	October 1, 1992
1,4-Butanediol dimethane-sulfonate (Busulfan)	developmental, female, male	106-99-0	April 16, 2004
Butyl benzyl phthalate (BBP)	developmental	55-98-1	January 1, 1989
	developmental	85-68-7	December 2, 2005
Cadmium	developmental, male	—	May 1, 1997
Carbamazepine	developmental	298-46-4	January 29, 1999
Carbon disulfide	developmental, female, male	75-15-0	July 1, 1989
Carbon monoxide	developmental	630-08-0	July 1, 1989
Carboplatin	developmental	41575-94-4	July 1, 1990
Chenodiol	developmental	474-25-9	April 1, 1990
Chlorambucil	developmental	305-03-3	January 1, 1989
Chlorcyclizine hydrochloride	developmental	1620-21-9	July 1, 1987
Chlordecone (Kepone)	developmental	143-50-0	January 1, 1989
Chlordiazepoxide	developmental	58-25-3	January 1, 1992
Chlordiazepoxide hydrochloride	developmental	438-41-5	January 1, 1992
1-(2-Chloroethyl)-3-cyclohexyl-1-nitrosourea (CCNU) (Lomustine)	developmental	13010-47-4	July 1, 1990
Chlorsulfuron	developmental, female, male	64902-72-3	May 14, 1999
Cidofovir	developmental, female, male	113852-37-2	January 29, 1999
Cladribine	developmental	4291-63-8	September 1, 1996
Clarithromycin	developmental	81103-11-9	May 1, 1997
Clobetasol propionate	developmental, female	25122-46-7	May 15, 1998
Clomiphene citrate	developmental	50-41-9	April 1, 1990
Clorazepate dipotassium	developmental	57109-90-7	October 1, 1992

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Cocaine	developmental, female	50-36-2	July 1, 1989
Codeine phosphate	developmental	52-28-8	May 15, 1998
Colchicine	developmental, male	64-86-8	October 1, 1992
Conjugated estrogens	developmental	—	April 1, 1990
Cyanazine	developmental	21725-46-2	April 1, 1990
Cycloate	developmental	1134-23-2	March 19, 1999
Cyclohexanol	male	108-93-0	November 6, 1998
<u>Delisted January 25, 2002</u>			
Cycloheximide	developmental	66-81-9	January 1, 1989
Cyclophosphamide (anhydrous)	developmental, female, male	50-18-0	January 1, 1989
Cyclophosphamide (hydrated)	developmental, female, male	6055-19-2	January 1, 1989
Cyhexatin	developmental	13121-70-5	January 1, 1989
Cytarabine	developmental	147-94-4	January 1, 1989
Dacarbazine	developmental	4342-03-4	January 29, 1989
Danazol	developmental	17230-88-5	April 1, 1990
Daunorubicin hydrochloride	developmental	23541-50-6	July 1, 1990
2,4-D butyric acid	developmental, male	94-82-6	June 18, 1999
o,p' -DDT	developmental, female, male	789-02-6	May 15, 1998
p,p' -DDT	developmental, female, male	50-29-3	May 15, 1998
2,4DP (dichloroprop)	developmental	120-36-5	April 27, 1999
<u>Delisted January 25, 2002</u>			
Demeclocycline hydrochloride (internal use)	developmental	64-73-3	January 1, 1992
Diazepam	developmental	439-14-5	January 1, 1992
Diazoxide	developmental	364-98-7	February 27, 2001
1,2-Dibromo-3-chloropropane (DBCP)	male	96-12-8	February 27, 1987
Di-n-butyl phthalate (DBP)	developmental, female, male	84-74-2	December 2, 2005
Dichlorophene	developmental	97-23-4	April 27, 1999
Dichlorophenamide	developmental	120-97-8	February 27, 2001
Diclofop methyl	developmental	51338-27-3	March 5, 1999
Dicumarol	developmental	66-76-2	October 1, 1992
Di(2-ethylhexyl)phthalate (DEHP)	developmental, male	117-81-7	October 24, 2003
Diethylstilbestrol (DES)	developmental	56-53-1	July 1, 1987
Diflunisal	developmental, female	22494-42-4	January 29, 1999
Di-n-hexyl phthalate (DnHP)	female, male	84-75-3	December 2, 2005
Dihydroergotamine mesylate	developmental	6190-39-2	May 1, 1997
Di-isodecyl phthalate (DIDP)	developmental	68515-49-1/ 26761-40-0	April 20, 2007
Diltiazem hydrochloride	developmental	33286-22-5	February 27, 2001
m-Dinitrobenzene	male	99-65-0	July 1, 1990
o-Dinitrobenzene	male	528-29-0	July 1, 1990
p-Dinitrobenzene	male	100-25-4	July 1, 1990
2,4-Dinitrotoluene	male	121-14-2	August 20, 1999
2,6-Dinitrotoluene	male	606-20-2	August 20, 1999
Dinitrotoluene (technical grade)	female, male	—	August 20, 1999
Dinocap	developmental	39300-45-3	April 1, 1990
Dinoseb	developmental, male	88-85-7	January 1, 1989
Diphenylhydantoin (Phenytoin)	developmental	57-41-0	July 1, 1987
Disodium cyanodithioimidocarbonate	developmental	138-93-2	March 30, 1999

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Doxorubicin hydrochloride (Adriamycin)	developmental, male	25316-40-9	January 29, 1999
Doxycycline (internal use)	developmental	564-25-0	July 1, 1990
Doxycycline calcium (internal use)	developmental	94088-85-4	January 1, 1992
Doxycycline hyclate (internal use)	developmental	24390-14-5	October 1, 1991
Doxycycline monohydrate (internal use)	developmental	17086-28-1	October 1, 1991
Endrin	developmental	72-20-8	May 15, 1998
Environmental tobacco smoke (ETS)	developmental	—	June 9, 2006
Epichlorohydrin	male	106-89-8	September 1, 1996
Ergotamine tartrate	developmental	379-79-3	April 1, 1990
Estropipate	developmental	7280-37-7	August 26, 1997
Ethionamide	developmental	536-33-4	August 26, 1997
Ethyl alcohol in alcoholic beverages	developmental	—	October 1, 1987
Ethyl dipropylthiocarbamate	developmental	759-94-4	April 27, 1999
Ethylene dibromide	developmental, male	106-93-4	May 15, 1998
Ethylene glycol monoethyl ether	developmental, male	110-80-5	January 1, 1989
Ethylene glycol monomethyl ether	developmental, male	109-86-4	January 1, 1989
Ethylene glycol monoethyl ether acetate	developmental, male	111-15-9	January 1, 1993
Ethylene glycol monomethyl ether acetate	developmental, male	110-49-6	January 1, 1993
Ethylene oxide	female	75-21-8	February 27, 1987
Ethylene thiourea	developmental	96-45-7	January 1, 1993
Etodolac	developmental, female	41340-25-4	August 20, 1999
Etoposide	developmental	33419-42-0	July 1, 1990
Etretinate	developmental	54350-48-0	July 1, 1987
Fenoxaprop ethyl	developmental	66441-23-4	March 26, 1999
Filgrastim	developmental	121181-53-1	February 27, 2001
Fluazifop butyl	developmental	69806-50-4	November 6, 1998
Flunisolide	developmental, female	3385-03-3	May 15, 1998
Fluorouracil	developmental	51-21-8	January 1, 1989
Fluoxymesterone	developmental	76-43-7	April 1, 1998
Flurazepam hydrochloride	developmental	1172-18-5	October 1, 1992
Flurbiprofen	developmental, female	5104-49-4	August 20, 1999
Flutamide	developmental	13311-84-7	July 1, 1990
Fluticasone propionate	developmental	80474-14-2	May 15, 1998
Fluvalinate	developmental	69409-94-5	November 6, 1998
Ganciclovir	developmental, male	82410-32-0	August 26, 1997
Ganciclovir sodium	developmental, male	107910-75-8	August 26, 1997
Gemfibrozil	female, male	25812-30-0	August 20, 1999
Goserelin acetate	developmental, female, male	65807-02-5	August 26, 1997
Halazepam	developmental	23092-17-3	July 1, 1990
Halobetasol propionate	developmental	66852-54-8	August 20, 1999
Haloperidol	developmental, female	52-86-8	January 29, 1999
Halothane	developmental	151-67-7	September 1, 1996
Heptachlor	developmental	76-44-8	August 20, 1999
Hexachlorobenzene	developmental	118-74-1	January 1, 1989
Hexamethylphosphoramide	male	680-31-9	October 1, 1994
Histrelin acetate	developmental	—	May 15, 1998
Hydramethylnon	developmental, male	67485-29-4	March 5, 1999

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Hydroxyurea	developmental	127-07-1	May 1, 1997
Idarubicin hydrochloride	developmental, male	57852-57-0	August 20, 1999
Ifosfamide	developmental	3778-73-2	July 1, 1990
Iodine-131	developmental	10043-66-0	January 1, 1989
Isotretinoin	developmental	4759-48-2	July 1, 1987
Lead	developmental, female, male	—	February 27, 1987
Leuprolide acetate	developmental, female, male	74381-53-6	August 26, 1997
Levodopa	developmental	59-92-7	January 29, 1999
Levonorgestrel implants	female	797-63-7	May 15, 1998
Linuron	developmental	330-55-2	March 19, 1999
Lithium carbonate	developmental	554-13-2	January 1, 1991
Lithium citrate	developmental	919-16-4	January 1, 1991
Lorazepam	developmental	846-49-1	July 1, 1990
Lovastatin	developmental	75330-75-5	October 1, 1992
Mebendazole	developmental	31431-39-7	August 20, 1999
Medroxyprogesterone acetate	developmental	71-58-9	April 1, 1990
Megestrol acetate	developmental	595-33-5	January 1, 1991
Melphalan	developmental	148-82-3	July 1, 1990
Menotropins	developmental	9002-68-0	April 1, 1990
Meprobamate	developmental	57-53-4	January 1, 1992
Mercaptopurine	developmental	6112-76-1	July 1, 1990
Mercury and mercury compounds	developmental	—	July 1, 1990
Methacycline hydrochloride	developmental	3963-95-9	January 1, 1991
Metham sodium	developmental	137-42-8	May 15, 1998
Methazole	developmental	20354-26-1	December 1, 1999
Methimazole	developmental	60-56-0	July 1, 1990
Methotrexate	developmental	59-05-2	January 1, 1989
Methotrexate sodium	developmental	15475-56-6	April 1, 1990
Methyl bromide as a structural fumigant	developmental	74-83-9	January 1, 1993
Methyl chloride	developmental	74-87-3	March 10, 2000
Methyl mercury	developmental	—	July 1, 1987
N-Methylpyrrolidone	developmental	872-50-4	June 15, 2001
Methyltestosterone	developmental	58-18-4	April 1, 1990
Metiram	developmental	9006-42-2	March 30, 1999
Midazolam hydrochloride	developmental	59467-96-8	July 1, 1990
Minocycline hydrochloride	developmental	13614-98-7	January 1, 1992
(internal use) Misoprostol	developmental	59122-46-2	April 1, 1990
Mitoxantrone hydrochloride	developmental	70476-82-3	July 1, 1990
Myclobutanol	developmental, male	88671-89-0	April 16, 1999
Nabam	developmental	142-59-6	March 30, 1999
Nafarelin acetate	developmental	86220-42-0	April 1, 1990
Neomycin sulfate (internal use)	developmental	1405-10-3	October 1, 1992
Netilmicin sulfate	developmental	56391-57-2	July 1, 1990
Nickel carbonyl	developmental	13463-39-3	September 1, 1996
Nicotine	developmental	54-11-5	April 1, 1990
Nifedipine	developmental, female, male	21829-25-4	January 29, 1999
Nimodipine	developmental	66085-59-4	April 24, 2001
Nitrapyrin	developmental	1929-82-4	March 30, 1999
Nitrofurantoin	male	67-20-9	April 1, 1991
Nitrogen mustard (Mechlorethamine)	developmental	51-75-2	January 1, 1989

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Nitrogen mustard hydrochloride (Mechlorethamine hydrochloride)	developmental	55-86-7	July 1, 1990
Norethisterone (Norethindrone)	developmental	68-22-4	April 1, 1990
Norethisterone acetate (Norethindrone acetate)	developmental	51-98-9	October 1, 1991
Norethisterone (Norethindrone) /Ethinyl estradiol	developmental	68-22-4/ 57-63-6	April 1, 1990
Norethisterone (Norethindrone)/Mestranol	developmental	68-22-4/ 72-33-3	April 1, 1990
Norgestrel	developmental	6533-00-2	April 1, 1990
Oxadiazon	developmental	19666-30-9	May 15, 1998
Oxazepam	developmental	604-75-1	October 1, 1992
Oxydemeton methyl	female, male	301-12-2	November 6, 1998
Oxymetholone	developmental	434-07-1	May 1, 1997
Oxytetracycline (internal use)	developmental	79-57-2	January 1, 1991
Oxytetracycline hydrochloride (internal use)	developmental	2058-46-0	October 1, 1991
Oxythioquinox (Chinomethionat)	developmental	2439-01-2	November 6, 1998
Paclitaxel	developmental, female, male	33069-62-4	August 26, 1997
Paramethadione	developmental	115-67-3	July 1, 1990
Penicillamine	developmental	52-67-5	January 1, 1991
Pentobarbital sodium	developmental	57-33-0	July 1, 1990
Pentostatin	developmental	53910-25-1	September 1, 1996
Phenacemide	developmental	63-98-9	July 1, 1990
Phenprocoumon	developmental	435-97-2	October 1, 1992
Pimozide	developmental, female	2062-78-4	August 20, 1999
Pipobroman	developmental	54-91-1	July 1, 1990
Plicamycin	developmental	18378-89-7	April 1, 1990
Polybrominated biphenyls	developmental	—	October 1, 1994
Polychlorinated biphenyls	developmental	—	January 1, 1991
Potassium dimethyldithiocarbamate	developmental	128-03-0	March 30 1999
Pravastatin sodium	developmental	81131-70-6	March 3, 2000
Prednisolone sodium phosphate	developmental	125-02-0	August 20, 1999
Procarbazine hydrochloride	developmental	366-70-1	July 1, 1990
Propargite	developmental	2312-35-8	June 15, 1999
Propylthiouracil	developmental	51-52-5	July 1, 1990
Pyrimethamine	developmental	58-14-0	January 29, 1999
Quazepam	developmental	36735-22-5	August 26, 1997
Quizalofop-ethyl	male	76578-14-8	December 24, 1999
Resmethrin	developmental	10453-86-8	November 6, 1998
Retinol/retinyl esters, when in daily dosages in excess of 10,000 IU, or 3,000 retinol equivalents. (NOTE: Retinol/retinyl esters are required and essential for maintenance of normal reproductive function. The recommended daily level during pregnancy is 8,000 IU.)	developmental	—	July 1, 1989

<u>Chemical</u>	<u>Type of Reproductive Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
Ribavirin	developmental	36791-04-5	April 1, 1990
	male	36791-04-5	February 27, 2001
Rifampin	developmental, female	13292-46-1	February 27, 2001
Secobarbital sodium	developmental	309-43-3	October 1, 1992
Sermorelin acetate	developmental	—	August 20, 1999
Sodium dimethyldithiocarbamate	developmental	128-04-1	March 30, 1999
Sodium fluoroacetate	male	62-74-8	November 6, 1998
Streptomycin sulfate	developmental	3810-74-0	January 1, 1991
Streptozocin (streptozotocin)	developmental, female, male	18883-66-4	August 20, 1999
Sulfasalazine (Salicylazosulfapyridine)	male	599-79-1	January 29, 1999
Sulindac	developmental, female	38194-50-2	January 29, 1999
Tamoxifen citrate	developmental	54965-24-1	July 1, 1990
Temazepam	developmental	846-50-4	April 1, 1990
Teniposide	developmental	29767-20-2	September 1, 1996
Terbacil	developmental	5902-51-2	May 18, 1999
Testosterone cypionate	developmental	58-20-8	October 1, 1991
Testosterone enanthate	developmental	315-37-7	April 1, 1990
2,3,7,8-Tetrachlorodibenzo-para-dioxin (TCDD)	developmental	1746-01-6	April 1, 1991
Tetracycline (internal use)	developmental	60-54-8	October 1, 1991
Tetracyclines (internal use)	developmental	—	October 1, 1992
Tetracycline hydrochloride (internal use)	developmental	64-75-5	January 1, 1991
Thalidomide	developmental	50-35-1	July 1, 1987
Thioguanine	developmental	154-42-7	July 1, 1990
Thiophanate methyl	female, male	23564-05-8	May 18, 1999
Tobacco smoke (primary)	developmental, female, male	—	April 1, 1988
Tobramycin sulfate	developmental	49842-07-1	July 1, 1990
Toluene	developmental	108-88-3	January 1, 1991
Triadimefon	developmental, female, male	43121-43-3	March 30, 1999
Triazolam	developmental	28911-01-5	April 1, 1990
Tributyltin methacrylate	developmental	2155-70-6	December 1, 1999
Trientine hydrochloride	developmental	38260-01-4	February 27, 2001
Triforine	developmental	26644-46-2	June 18, 1999
Trilostane	developmental	13647-35-3	April 1, 1990
Trimethadione	developmental	127-48-0	January 1, 1991
Trimetrexate glucuronate	developmental	82952-64-5	August 26, 1997
Triphenyltin hydroxide	developmental	76-87-9	March 18, 2002
Uracil mustard	developmental, female, male	66-75-1	January 1, 1999
Urethane	developmental	51-79-6	October 1, 1994
Urofollitropin	developmental	97048-13-0	April 1, 1990
Valproate (Valproic acid)	developmental	99-66-1	July 1, 1987
Vinblastine sulfate	developmental	143-67-9	July 1, 1990
Vinclozolin	developmental	50471-44-8	May 15, 1998
Vincristine sulfate	developmental	2068-78-2	July 1, 1990
Warfarin	developmental	81-81-2	July 1, 1987
Zileuton	developmental, female	111406-87-2	December 22, 2000

Date: June 27, 2008

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

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

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(Proposition 65)**

**NOTICE TO INTERESTED PARTIES
June 27, 2008**

**CHEMICALS LISTED EFFECTIVE July 1, 2008
AS KNOWN TO THE STATE OF CALIFORNIA
TO CAUSE CANCER**

The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is adding *benthiavalicarb-isopropyl* (CAS No. 177406-68-7), *mepanipyrim* (CAS No. 110235-47-7), *pirimicarb* (CAS No. 23103-98-2) and *resmethrin* (CAS No. 10453-86-8) to the list of chemicals known to the state to cause cancer for purposes of

the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code section 25249.5 et seq., commonly known as Proposition 65). The listing date of the four chemicals is effective **July 1, 2008**.

Benthiavalicarb-isopropyl (CAS No. 177406-68-7), *mepanipyrim* (CAS No. 110235-47-7), *pirimicarb* (CAS No. 23103-98-2) and *resmethrin* (CAS No. 10453-86-8) are being listed as chemicals known to the State of California to cause cancer. The listing of the four chemicals is based on formal identification by an authoritative body (i.e., the U.S. Environmental Protection Agency (U.S. EPA)), that the chemicals cause cancer. The criteria used by OEHHA for the listing of chemicals under the “authoritative bodies” mechanism can be found in Title 22, Cal. Code of Regs., section 12306.

The reader is directed to the Notice of Intent to List *Benthiavalicarb-isopropyl* (CAS No. 177406-68-7), *Mepanipyrim* (CAS No. 110235-47-7), *Pirimicarb* (CAS No. 23103-98-2) and *Resmethrin* (CAS No. 10453-86-8) published in the May 2, 2008 issue of the *California Regulatory Notice Register* (Register 2008, No. 18-Z) for the documentation supporting OEHHA’s determination that the criteria for administrative listing have been satisfied for this chemical.

A complete, updated Proposition 65 list is published elsewhere in this issue of the *California Regulatory Notice Register*.

Chemical	CAS No.	Toxicological Endpoint	Listing Mechanism ¹
Benthiavalicarb-isopropyl	177406-68-7	cancer	AB
Mepanipyrim	110235-47-7	cancer	AB
Pirimicarb	23103-98-2	cancer	AB
Resmethrin	10453-86-8	cancer	AB

¹ Listing mechanism: AB — “authoritative bodies” mechanism (Title 22, Cal. Code of Regs. section 12306)

OEHHA analysis of dose-response data to establish the no significant risk levels (NSRLs) for *benthiavalicarb-isopropyl* (CAS No. 177406-68-7), *mepanipyrim* (CAS No. 110235-47-7), *pirimicarb* (CAS No. 23103-98-2) and *resmethrin* (CAS No. 10453-86-8) under Proposition 65 has not yet been conducted. OEHHA anticipates proposing a “No Significant Risk Level” (NSRL) for *resmethrin* within a year of its listing. In the case of *benthiavalicarb-isopropyl* and *mepanipyrim*, which are not currently registered for use in the U.S., and *pirimicarb*, which is not currently registered

for use in California, OEHHA does not anticipate proposing NSRLs on these chemicals within the next few years.

Any member of the public who would like OEHHA to develop NSRLs for *benthiavalicarb-isopropyl*, *mepanipyrim* or *pirimicarb* may submit a request to OEHHA in writing. Requests may be submitted to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
E-mail: coshita@oehha.ca.gov

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**California Environmental Protection Agency
Office of Environmental Health Hazard
Assessment
Notice to Interested Parties**

June 27, 2008

**ANNOUNCEMENT OF PUBLICATION OF THE
FINAL PUBLIC HEALTH GOAL FOR
MOLINATE IN DRINKING WATER**

The Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is announcing the availability of the final technical support document and responses to comments for the Public Health Goal (PHG) for molinate in drinking water. The first draft of this document was posted on the OEHHA Web site (www.oehha.ca.gov) on September 7, 2007 and a one-day public workshop was held on October 9, 2007 to discuss the scientific basis and recommendations in the draft technical support document. OEHHA follows the requirements set forth in Health and Safety Code, Sections 57003(a) and 116365, for conducting the workshop and obtaining public input. Following the workshop, OEHHA revised the document as appropriate, and made it available on January 4, 2008 for a 30-day public review and comment period. OEHHA has now finalized the PHG document. The final document and responses to comments are posted on the OEHHA Web site (www.oehha.ca.gov/water/phg/index.html).

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe Drinking Water Act of 1996 (Health and Safety Code Section 116365) requires OEHHA to develop PHGs based exclusively on public health considerations. PHGs published by OEHHA will be considered by the California Department of Health Services in setting drinking water standards (Maximum Contaminant Levels, or MCLs).

If you would like to receive further information on this announcement or have questions, please contact our office at (510) 622-3170 or the address below.

Michael Baes (mbaes@oehha.ca.gov)
Pesticide and Environmental Toxicology Branch
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1515 Clay St., 16th floor
Oakland, California 94612

Attention: PHG Project

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

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

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)**

**NOTICE OF INTENT TO LIST CHEMICAL
AVERMECTIN B1 (CAS NO 71751-41-2)
June 27, 2008**

The Safe Drinking Water and Toxic Enforcement Act of 1986¹ establishes mechanisms for administratively listing chemicals that are known to the State to cause cancer or reproductive toxicity². A chemical may be listed under Proposition 65 when a body considered to be authoritative by the state's qualified experts has formally identified the chemical as causing cancer or reproductive toxicity. The following entities are identified as authoritative bodies for purposes of Proposition 65, as it pertains to chemicals known to cause reproductive toxicity: the U.S. Environmental Protection Agency (U.S. EPA), the International Agency for Research on Cancer, solely as to transplacental carcinogenicity, the U.S. Food and Drug Administration, the National Institute for Occupational Safety and Health, and the National Toxicology Program (NTP), solely as to final reports of the NTP's Center for Evaluation of Risks to Human Reproduction. The criteria for listing chemicals through the authoritative bodies mechanism are set forth in Title 22, California Code of Regulations, section 12306³.

¹Health and Safety Code section 25249.5 et seq., hereafter referred to as Proposition 65 or the Act

²Health and Safety Code section 25249.8

³All further references are to sections of Title 22 of the California Code of Regulations

As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA), within the California Environmental Protection Agency, intends to list avermectin B1, as identified in the table below, as known to the State to cause reproductive toxicity, pursuant to the administrative mechanism. This chemical has been determined by OEHHA to meet the criteria set forth in Section 12306 for such listing under the authoritative bodies mechanism.

Chemical	CAS No.	Reference
Avermectin B1 (abamectin)	71751-41-2	U.S. EPA (1994a,b; 2005)

Relevant information related to the possible listing of avermectin B1 was requested in a notice published in the California Regulatory Notice Register on October 9, 1998. A public forum was held on November 20, 1998. OEHHA reviewed and responded to the comments received and has determined that the criteria for listing under Section 12306 had been met for this chemical.

On April 23, 1999, OEHHA issued a notice of intent to list avermectin B1. Subsequent to publication of that notice the U.S. EPA determined that data derived from studies in the CF-1 strain of mice were not suitable for use in the human health risk assessment of avermectin B1. Since U.S. EPA is the authoritative body whose formal identification of avermectin B1 as causing reproductive toxicity supports listing under Proposition 65, OEHHA re-evaluated the data contained in the administrative record for the U.S. EPA's identification of avermectin B1 that were derived from species and strains other than the CF-1 mouse. OEHHA determined that the criteria for listing in Section 12306 were still met for this chemical. In addition, the 2005 U.S. EPA document "Avermectin B1 and its delta-8,9-isomer; Pesticide Tolerance. Final Rule" formally identifies avermectin B1 as causing developmental toxicity in a final document. (U.S. EPA, 2005). Therefore, OEHHA is re-issuing the notice of intent to list avermectin B1 to clarify the record for the basis for listing this chemical and to invite comments relevant to the current body of data and documents providing the basis for listing.

A document providing more detail on the basis for the listing of this chemical can be obtained from OEHHA's Proposition 65 Implementation Office at the address and telephone number indicated below, or from the OEHHA Web site at: <http://www.oehha.ca.gov/>. Interested parties or members of the public wishing to provide comments as to whether the listing of this chemical meets the criteria for listing provided in Section 12306 should send it to the address given below.

Cynthia Oshita
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation
P.O. Box 4010
1001 I Street, 19th Floor
Sacramento, California 95812-4010
FAX: (916) 323-8803
Or via e-mail to coshita@oehha.ca.gov

It is requested that all hard-copy materials be submitted in triplicate.

Submissions may also be delivered in person or by courier to the above address. In order to be considered, the relevant information must be received at OEHHA (if delivered in person or sent by FAX) by 5:00 p.m. on Monday, July 28, 2008.

REFERENCES

U.S. Environmental Protection Agency (U.S. EPA, 1994a). Proposed Rule: Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right to Know. *Federal Register* **59**: 1788.

U.S. Environmental Protection Agency (U.S. EPA, 1994b). Final Rule: Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right to Know. *Federal Register* **59**(229): 61432.

U.S. Environmental Protection Agency (U.S. EPA, 2005). Avermectin B1 and its delta8,9-isomer; Pesticide Tolerance. Final Rule. *Federal Register* **70**(31):7876-7886.

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

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

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65)**

**NOTICE OF INTENT TO LIST CHEMICAL
MOLINATE (CAS NO 2212-67-1)
June 27, 2008**

The Safe Drinking Water and Toxic Enforcement Act of 1986¹ establishes mechanisms for administratively

¹Health and Safety Code section 25249.5 et seq., hereafter referred to as Proposition 65 or the Act

listing chemicals that are known to the State to cause cancer or reproductive toxicity². A chemical may be listed under Proposition 65 when a body considered to be authoritative by the state's qualified experts has formally identified the chemical as causing cancer or reproductive toxicity. The following entities are identified as authoritative bodies for purposes of Proposition 65, as it pertains to chemicals known to cause reproductive toxicity: the U.S. Environmental Protection Agency (U.S. EPA), the International Agency for Research on Cancer, solely as to transplacental carcinogenicity, the U.S. Food and Drug Administration, the National Institute for Occupational Safety and Health, and the National Toxicology Program (NTP), solely as to final reports of the NTP's Center for Evaluation of Risks to Human Reproduction. The criteria for listing chemicals through the authoritative bodies mechanism are set forth in Title 22, California Code of Regulations, section 12306³.

As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA), within the California Environmental Protection Agency, intends to list molinate, as identified in the table below, as known to the State to cause reproductive toxicity, pursuant to the administrative mechanism. This chemical has been determined by OEHHA to meet the criteria set forth in Section 12306 for such listing under the authoritative bodies mechanism.

Chemical	CAS No.	Reference
Molinate	2212-67-1	U.S. EPA (1994a,b; 2002)

Relevant information related to the possible listing of molinate was requested in a notice published in the *California Regulatory Notice Register* on April 10, 1998 (Register 98, No. 15-Z). A public forum was held on May 20, 1998, and additional written comments were received. After careful consideration of all comments received, OEHHA has determined that molinate meets the criteria for listing under Section 12306. Therefore OEHHA is issuing this notice of intent to list molinate under Proposition 65.

The U.S. EPA has identified molinate as causing reproductive toxicity (developmental, male reproductive, and female reproductive toxicity endpoints) (U.S. EPA, 1994a,b). Subsequent to OEHHA's initial review of the basis for listing molinate, U.S. EPA released additional documents providing support for the listing of this chemical (e.g., U.S. EPA (2002)). OEHHA notes that on April 7, 2004, the U.S. EPA issued a cancellation or-

der based on its approval of requests from the molinate registrants, for voluntary cancellation of their registered pesticide products containing molinate effective June 30, 2008 (U.S. EPA, 2004; 2006). The cancellation requests ended the re-registration process for molinate and there was no need for the U.S. EPA to further revise its risk assessment document (U.S. EPA, 2006).

A document providing more detail on the basis for the listing of this chemical can be obtained from OEHHA's Proposition 65 Implementation Office at the address and telephone number indicated below, or from the OEHHA Web site at: <http://www.oehha.ca.gov/>. Interested parties or members of the public wishing to provide comments as to whether the listing of this chemical meets the criteria for listing provided in Section 12306 should send it to the address given below.

Cynthia Oshita
 Office of Environmental Health Hazard Assessment
 Proposition 65 Implementation
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 1001 I Street, 19th Floor
 Sacramento, California 95812-4010
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 Or via e-mail to coshita@oehha.ca.gov

It is requested that all hard-copy materials be submitted in triplicate.

Submissions may also be delivered in person or by courier to the above address. In order to be considered, the relevant information must be received at OEHHA (if delivered in person or sent by FAX) by 5:00 p.m. on Monday, July 28, 2008.

REFERENCES

U.S. Environmental Protection Agency (U.S. EPA, 1994a), Proposed Rule: Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right to Know. *Federal Register* **59**: 1788.

U.S. Environmental Protection Agency (U.S. EPA, 1994h). Final Rule: Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right to Know. *Federal Register* **59**(229): 61432.

U.S. Environmental Protection Agency (U.S. EPA, 2002). Molinate — Review of 60-Day Comments and Revised Human Health Risk Assessment. Document I.D. EPA-HQ-OPP-2003-0397-0003.

U.S. Environmental Protection Agency (U.S. EPA, 2004). Molinate; Cancellation Order. *Federal Register* **69**(67): 18368.

U.S. Environmental Protection Agency (U.S. EPA, 2006). U.S. EPA Office of Prevention, Pesticides and Toxic Substances; Molinate Questions & Answers: Voluntary Cancellation Requests. June 23, 2006.

² Health and Safety Code section 25249.8

³ All further references are to sections of Title 22 of the California Code of Regulations

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

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

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(Proposition 65)**

**IMAZALIL UNDER CONSIDERATION FOR
POSSIBLE LISTING VIA THE
AUTHORITATIVE BODIES MECHANISM:
REQUEST FOR RELEVANT INFORMATION
June 27, 2008**

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 or the Act) which is codified at Health and Safety Code section 25249.5 et seq., requires the Governor to publish, and update at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. The Act describes the mechanisms for administratively listing chemicals as known to the State to cause cancer or reproductive toxicity (Health and Safety Code section 25249.8.)

One mechanism by which a chemical is listed is if a body considered to be authoritative by the state's qualified experts has formally identified it as causing cancer or reproductive toxicity. The U.S. Environmental Protection Agency (U.S. EPA), the International Agency for Research on Cancer (IARC), the National Toxicology Program (NTP), the U.S. Food and Drug Administration (FDA), and the National Institute for Occupational Safety and Health (NIOSH) have been identified as authoritative bodies for purposes of the Act. For reproductive toxicity the designation of NTP holds solely for the final reports of the NTP's Center for Evaluation of Risks to Human Reproduction. The criteria for listing chemicals through the "authoritative bodies" mechanism are set forth in Title 22, California Code of Regulations, section 12306¹.

As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is investigating the possible listing of imazalil based upon information in the references cited in the table below. Documentation summarizing the rationale for considering the evaluation of this chemical for possible administrative listing is available from OEHHA's Proposition 65 Implementation Office at the address and telephone number indicated below, or from the Internet at the following address:
<http://www.oehha.ca.gov/prop65.html>.

Chemical which may meet the criteria set forth in Section 12306 for listing under Proposition 65 via the "authoritative bodies" mechanism

Chemical	CAS No.	Chemical Use	Toxicological Endpoints	Reference
Imazalil	35554-44-0	Systemic fungicide used post-harvest on bananas, citrus; pre-planting to treat barley and wheat seed; and in nonfood use for chicken hatchery treatments.	Cancer Developmental toxicity	U.S. EPA (1999a, 1999b, 2002, 2003, 2005)

Imazalil has previously been the subject of a request for relevant information pertaining to consideration for listing as known to cause reproductive toxicity under Proposition 65 (California Regulatory Notice Register 98, No. 52-Z). This chemical was under consideration for listing based on possible formal identification as

causing reproductive toxicity by the U.S. EPA. OEHHA did not proceed with listing this chemical on the basis of the documents identified in the prior notices.

¹All further citations are to Title 22 of the California Code of Regulations unless otherwise indicated.

More recent documents identified below appear to provide the basis for listing imazalil as causing cancer and as causing reproductive toxicity under Proposition 65.

OEHHA is committed to public participation and external scientific peer review in its implementation of Proposition 65, and welcomes public input on this listing process. As part of its efforts to ensure that regulatory decisions are based upon a thorough consideration of all relevant information, OEHHA is soliciting information concerning whether the criteria set out in Section 12306 have been met for this chemical.

This announcement initiates a 60-day public comment period on this chemical. The comment period closes on **Tuesday, August 26, 2008**. A public forum to present oral comments and to discuss the scientific data and other information concerning whether this chemical meets the criteria for listing set forth in Section 12306 will be scheduled only upon request. Such request must be submitted in writing by July 28, 2008. This date is approximately 30 days before the close of the comment period on August 26, 2008. The written request to hold a public forum must be sent to OEHHA at the address listed below. A notice for the public forum, if one is requested, will be posted on the OEHHA Web site at least ten days in advance of the forum date. The notice will provide the date, time, location and subject matter to be heard. Notices will also be sent to those individuals requesting such notification. Interested parties or members of the public wishing to provide information relevant to these chemicals should send it to the address given below.

Cynthia Oshita
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation
P.O. Box 4010
1001 I Street, 19th Floor
Sacramento, California 95812-4010
FAX: (916) 323-8803
Or via e-mail to: coshita@oehha.ca.gov

It is requested that all hard-copy materials be submitted in triplicate.

Submissions may also be delivered in person or by courier to the above address. In order to be considered, the relevant information must be received at OEHHA (if delivered in person or sent by FAX) by 5:00 p.m. on Tuesday, August 26, 2008.

Following the review of all comments received, OEHHA will announce its intention to proceed with the listing of the candidate chemical if it meets the regulatory criteria for administrative listing in a *Notice of Intent to List Chemicals*.

REFERENCES

U.S. EPA (U.S. Environmental Protection Agency) 1999a. Imazalil — Report of the Hazard Identification Assessment Review Committee. HED DOC. No. 013539. U.S. EPA Office of Pesticide Programs, Washington DC.

U.S. EPA (U.S. Environmental Protection Agency) 1999b. Cancer Assessment Document. Evaluation of the Carcinogenic Potential of Imazalil (Third Review). Cancer Assessment Review Committee. Health Effects Division. Office of Pesticide Programs. December 7, 1999.

U.S. EPA (U.S. Environmental Protection Agency) 2002. Imazalil: The Revised HED Toxicology Chapter for the Reregistration Eligibility Decision Document (RED). PC Code 111901, Case 816389. HED Document No. 0050434. U.S. EPA, Office of Pesticide Programs, Washington DC, 20460, January 31, 2002.

U.S. EPA (U.S. Environmental Protection Agency) 2003. Reregistration Eligibility Decision for Imazalil. Chemical List B. Case No. 2325. Office of Prevention, Pesticides and Toxic Substances, U.S. EPA, Washington DC.

U.S. EPA (U.S. Environmental Protection Agency) 2005. R.E.D. Facts. Imazalil. EPA-738-F-04-011. Office of Prevention, Pesticides and Toxic Substances, U.S. EPA, Washington DC.

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE TO INTERESTED PARTIES June 27, 2008

Request for Relevant Information on Chemicals to be Considered by the OEHHA Science Advisory Board's Developmental and Reproductive Toxicant (DART) Identification Committee

The California Environmental Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of

the Safe Drinking Water and Toxic Enforcement Act of 1986¹ (Proposition 65). The Developmental and Reproductive Toxicant Identification Committee (DART-IC) of OEHHA's Science Advisory Board serves as the State's qualified experts for rendering an opinion as to whether a chemical has been clearly shown through scientifically valid testing according to generally accepted principles to cause reproductive toxicity. The chemicals identified by the DARTIC are added to the Proposition 65 list, which must be updated annually.

On January 18, 2008, OEHHA announced in a public notice published in the *California Regulatory Notice Register* (Register 08, No. 3) the selection of eight chemicals for the Committee's review for possible listing under Proposition 65 and initiated the development of hazard identification materials for five of the eight chemicals (bisphenol A, chlorpyrifos, chromium (hexavalent), DDE, and sulfur dioxide).

By today's notice, OEHHA is providing the public an opportunity to provide information relevant to the assessment of the evidence of developmental and reproductive toxicity for the three remaining chemicals: bromodichloromethane, caffeine, and methylisocyanate.

Table 1. Chemicals Selected for Preparation of Reproductive Toxicity Hazard Identification Materials and Review for Possible Listing by the Developmental and Reproductive Toxicant Identification Committee

Chemical	CAS No.
Bromodichloromethane	75-27-4
Caffeine	58-08-2
Methylisocyanate	624-83-9

These chemicals were selected using the procedure described in the document entitled: "Process for Prioritizing Chemicals for Consideration under Proposition 65 by the State's Qualified Experts," adopted in 2004, and available on the Internet at www.oehha.ca.gov.

The publication of this notice marks the start of a 60-day data call-in period. This period will end on **Tuesday, August 26, 2008**. The information received during this data call-in period will be reviewed and considered by OEHHA as it prepares the reproductive toxicity hazard identification materials on these chemicals. This request for information is the next step in the process described in the 2004 prioritization procedure.

OEHHA will prepare hazard identification materials for the three chemicals identified in Table 1 to be presented at a future Committee meeting no earlier than 2009 for consideration of possible listing under Proposition 65.

Notification of the availability of the hazard identification materials and of the time, date, location, and agenda for the Developmental and Reproductive Identification

Committee meetings where these chemicals will be considered will be provided in subsequent notices published in the *California Regulatory Notice Register* and will also be posted on OEHHA's website. It is anticipated that the hazard identification materials will be made available for a 60-day comment period prior to the Committee meetings at which these chemicals will be considered.

Interested parties or members of the public wishing to provide information relevant to these chemicals should send it to the address given below.

Cynthia Oshita
 Office of Environmental Health Hazard Assessment
 Proposition 65 Implementation
 P.O. Box 4010
 1001 I Street, 19th Floor
 Sacramento, California 95812-4010
 FAX: (916) 323-8803
 Or via e-mail to coshita@oehha.ca.gov

It is requested that all hard-copy materials be submitted in triplicate.

Submissions may also be delivered in person or by courier to the above address. In order to be considered, the relevant information must be received at OEHHA (if delivered in person or sent by FAX) by 5:00 p.m. on Tuesday, August 26, 2008.

**OFFICE OF ENVIRONMENTAL
 HEALTH HAZARD ASSESSMENT**

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

**SAFE DRINKING WATER AND TOXIC
 ENFORCEMENT ACT OF 1986
 (Proposition 65)**

**THIABENDAZOLE AND ITS
 HYPOPHOSPHITE SALT UNDER
 CONSIDERATION FOR POSSIBLE LISTING
 VIA THE AUTHORITATIVE BODIES
 MECHANISM:
 REQUEST FOR RELEVANT INFORMATION
 June 27, 2008**

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65 or the Act) which is codified at Health and Safety Code section 25249.5 et seq., requires the Governor to publish, and update at least annually, a list of chemicals known to the State to cause cancer or reproductive toxicity. The Act describes the mechanisms for administratively listing chemicals as

¹ Health and Safety Code section 25249.5 et seq.

known to the State to cause cancer or reproductive toxicity (Health and Safety Code section 25249.8.)

One mechanism by which a chemical is listed is if a body considered to be authoritative by the state's qualified experts has formally identified it as causing cancer or reproductive toxicity. The U.S. Environmental Protection Agency (U.S. EPA), the International Agency for Research on Cancer (IARC), the National Toxicology Program (NTP), the U.S. Food and Drug Administration (FDA), and the National Institute for Occupational Safety and Health (NIOSH) have been identified as authoritative bodies for purposes of the Act. For reproductive toxicity the designation of NTP holds solely for the final reports of the NTP's Center for Evaluation of Risks to Human Reproduction. The criteria for listing chemicals through the "authoritative bo-

odies" mechanism are set forth in Title 22, California Code of Regulations, section 12306¹.

As the lead agency for the implementation of Proposition 65, the Office of Environmental Health Hazard Assessment (OEHHA) within the California Environmental Protection Agency is investigating the possible listing of thiabendazole and thiabendazole hypophosphite salt based upon information in the references cited in the table below. Documentation summarizing the rationale for considering the evaluation of these chemicals for possible administrative listing is available from OEHHA's Proposition 65 Implementation Office at the address and telephone number indicated below, or from the Internet at the following address: <http://www.oehha.ca.gov/prop65.html>.

Chemicals which may meet the criteria set forth in Section 12306 for listing under Proposition 65 via the "authoritative bodies" mechanism

Chemical	CAS No.	Chemical Use	Toxicological Endpoints	Reference
Thiabendazole	148-79-8	Used to control a variety of fruit and vegetable diseases caused by various fungi. Registered for use: as a pre-planting dust treatment to potato seed-pieces, sweet potato seed pieces, soybean, and wheat; post-harvest as a dip or spray on citrus fruits, apples, pears, bananas, mangos, papaya, plantain, carrots, avocados, peas, and potatoes; on mushrooms.	Developmental toxicity	U.S. EPA (1999a, 1999b, 2002)
Thiabendazole hypophosphite salt	28558-32-9	Uses include as a preservative in paints, carpets, adhesives and textiles, and in ready-to-use formulation on ornamental bulbs and elm and sycamore trees.	Developmental toxicity	U.S. EPA (2002)

Thiabendazole has previously been the subject of a request for relevant information pertaining to consideration for listing as known to cause reproductive toxicity under Proposition 65 (California Regulatory Notice Register; October 9, 1998, Register 98, No. 41-Z). This chemical was under consideration for listing based on

possible formal identification as causing reproductive toxicity by the U.S. EPA. OEHHA did not proceed with listing this chemical on the basis of the documents iden-

¹ All further citations are to Title 22 of the California Code of Regulations unless otherwise indicated.

tified in the prior notices. More recent documents identified below appear to provide the basis for listing thiabendazole and thiabendazole hypophosphite salt under Proposition 65.

OEHHA is committed to public participation and external scientific peer review in its implementation of Proposition 65, and welcomes public input on this listing process. As part of its efforts to ensure that regulatory decisions are based upon a thorough consideration of all relevant information, OEHHA is soliciting information concerning whether the criteria set out in Section 12306 have been met for these chemicals.

This announcement initiates a 60-day public comment period on these chemicals. The comment period closes on **Tuesday, August 26, 2008**. A public forum to present oral comments and to discuss the scientific data and other information concerning whether these chemicals meet the criteria for listing set forth in Section 12306 will be scheduled only upon request. Such request must be submitted in writing by July 28, 2008. This date is approximately 30 days before the close of the comment period on August 26, 2008. The written request to hold a public forum must be sent to OEHHA at the address listed below. A notice for the public forum, if one is requested, will be posted on the OEHHA Web site at least ten days in advance of the forum date. The notice will provide the date, time, location and subject matter to be heard. Notices will also be sent to those individuals requesting such notification. Interested parties or members of the public wishing to provide information relevant to these chemicals should send it to the address given below.

Cynthia Oshita
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It is requested that all hard-copy materials be submitted in triplicate.

Submissions may also be delivered in person or by courier to the above address. In order to be considered, the relevant information must be received at OEHHA (if delivered in person or sent by FAX) by 5:00 p.m. on Tuesday, August 26, 2008.

Following the review of all comments received, OEHHA will announce its intention to proceed with the listing of the candidate chemicals if they meet the regulatory criteria for administrative listing in a *Notice of Intent to List Chemicals*.

REFERENCES

U.S. EPA (U.S. Environmental Protection Agency) 1999a. Thiabendazole — Report of the Hazard Identification Assessment Review Committee. HED DOC. No. 013601. Office of Pesticide Programs, U.S. EPA, Washington DC.

U.S. EPA (U.S. Environmental Protection Agency) 1999b. Thiabendazole; P.C.Code 060101. The HED toxicology chapter for the Reregistration Eligibility Decision document (RED). DP Barcode: D251076. Office of Pesticide Programs, U.S. EPA, Washington DC.

U.S. EPA (U.S. Environmental Protection Agency) 2002. Reregistration Eligibility Decision for Thiabendazole and Salts. Case No. 2670. Office of Prevention, Pesticides and Toxic Substances, U.S. EPA, Washington DC.

OAL REGULATORY DETERMINATIONS

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATION (Summary Disposition)

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

DEPARTMENT OF CONSERVATION, DIVISION OF RECYCLING

Date: June 11, 2008
To: Leonard Lang
From: Chapter Two Compliance Unit
Subject: **2008 OAL DETERMINATION NO. 9(S) (CTU 2008-0421-02)**
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging the amendment to California Code of Regulations, title 14, section 2530(f)(4) by the Department of Conservation, Division of Recycling

On April 21, 2008, you submitted a petition to the Office of Administrative Law (OAL) asking for a deter-

mination as to whether the amendment by the Department of Conservation, Division of Recycling (Department) to California Code of Regulations, title 14, section 2530(f)(4) is an underground regulation.

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

California Code of Regulations, title 14, section 2530 deals with the reports recycling centers must submit. The current version of section 2530(f)(4) requires the recycler to report, for specified material, the “received weight” of recycling material. Your petition alleges that a previous version of the subsection required the “total weight” to be reported and that the amendment to “received weight” is not consistent with the intent of the previous version.

If a rule meets the definition of a regulation in Government Code section 11342.600, but was not adopted pursuant to the APA, it may be an “underground regulation” as defined in California Code of Regulations, title 1, section 250:

The following definitions shall apply to the regulations contained in this chapter:

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

The section you challenge as an underground regulation, California Code of Regulations, title 14, section 2530(f)(4), was originally adopted and filed with the Secretary of State on June 12, 1991. Subsection (f)(4)

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

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

was subsequently amended to read “received weight,” which is the current language of the subsection. This amendment was made pursuant to the requirements of the APA, and was filed with the Secretary of State on May 21, 1993.

Section 2530(f)(4) has been adopted as a regulation and filed with the Secretary of State pursuant to the APA. The challenged rule is not, therefore, an underground regulation.²

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

Date: June 11, 2008

/s/
Susan Lapsley
Director

/s/
Kathleen Eddy
Senior Staff Counsel

²A rule which is contained in a properly adopted regulation is the proper subject of a summary disposition letter. California Code of Regulations, Title 1, section 270, subdivision (f) provides:

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

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

- (A) The challenged rule has been superseded,
- (B) The challenged rule is contained in a California statute.
- (C) *The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.*
- (D) The challenged rule has expired by its own terms.

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATION (Summary Disposition)

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

DEPARTMENT OF CONSERVATION, DIVISION OF RECYCLING

Date: June 11, 2008
 To: Leonard Lang
 From: Chapter Two Compliance Unit
 Subject: **2008 OAL DETERMINATION NO. 10(S) (CTU 2008-0421-06)**
 (Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging the imposition of a no-baling condition on a recycler's certificate by the Department of Conservation, Division of Recycling

On April 21, 2008, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether the imposition on the recycler's certificate of a no-baling condition by the Department of Conservation, Division of Recycling (Department), is an underground regulation.

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

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

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

On January 9, 2008, the Department sent Mr. Joshua Laureano a letter in which the Department required that "All shipments of beverage container material for CRV reimbursement may not be delivered in any baled condition." You allege in your petition that the imposition of this condition is an underground regulation.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, §11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. Public Resources Code section 14591.2(c)(3) provides:

(c) The department may take disciplinary action pursuant to this section, by taking any one of, or any combination of, the following:

-
- (3) Imposition on the certificate or registration of any condition that the department determines would further the goals of this division.

In the case involving Mr. Laureano, the letter from the Department indicates that Department staff found rejected containers in a load of baled PET #1 plastic delivered by LAUR Metals. As a result, the Department imposed a no-baling condition on LAUR Metals pursuant to Public Resources Code section 14591.2. Based on the facts before us, the Department's disciplinary action against Mr. Laureano does not constitute a rule of general application but, rather, appears to be the exercise of disciplinary authority on a case by case basis. Because no rule of general application has been established, we find that no underground regulation exists.²

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

Date: June 11, 2008

² The demonstration that the challenged rule is not an underground regulation is the proper subject of a summary disposition letter. California Code of Regulations, Title 1, section 270, subdivision (f) provides:

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

/s/
Susan Lapsley
Director

/s/
Kathleen Eddy
Senior Staff Counsel

OFFICE OF ADMINISTRATIVE LAW

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

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

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Date: June 10, 2008
To: Scott Yelenich
From: Chapter Two Compliance Unit
Subject: **2008 OAL DETERMINATION NO. 8(S)
(CTU 2008-0422-01)**
Summary Disposition issued pursuant to
Gov. Code, sec. 11340.5;
Cal. Code Regs. tit. 1, sec. 270(f))

Petition challenging as an underground
regulation an Addendum to DOM 52020
Inmate Count and Movement issued January
16, 2008, by the Sierra Conservation Center

On April 22, 2008, you submitted a petition to the Of-
fice of Administrative Law (OAL) asking for a deter-
mination as to whether the document you challenge is
an underground regulation. The document is titled,
“Addendum to DOM¹ 52020 Inmate Count and Move-
ment” (Addendum), issued by the Sierra Conservation
Center, a prison within the California Department of
Corrections and Rehabilitation (CDCR) system, that
says in part:

Effective immediately, all inmates will be
prohibited from exposing their upper torso (body)

while outside of their respective dormitory and/or
housing unit.

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

Generally, a rule which meets the definition of a “reg-
ulation” in Government Code section 11342.600³ is re-
quired to be adopted pursuant to the APA. In some
cases, however, the Legislature has chosen to establish
exemptions from the requirements of the APA. Penal
Code section 5058 establishes exemptions expressly for
the CDCR:

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

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

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

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

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

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

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

³ “Regulation” means every rule, regulation, order, or standard of
general application or the amendment, supplement, or revision of
any rule, regulation, order, or standard adopted by any state
agency to implement, interpret, or make specific the law enforced
or administered by it, or to govern its procedure.

¹ The DOM is the Department Operations Manual issued by the
California Department of Corrections and Rehabilitation.

...

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

Similarly, the Addendum at issue here applies solely to the inmates of the Sierra Conservation Center. It was issued by the warden at the Sierra Conservation Center, L.D. Clay. Inmates housed at other institutions are controlled by those other institution's criteria for exposure of inmate torsos. While the DOM is issued by CDCR and applies statewide, the Addendum you challenge is issued by the Sierra Conservation Center, and by its own terms, applies only to inmates at the Sierra Conservation Center. Therefore, the Addendum is a "local rule" and is exempt from compliance with the APA.⁴

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

Date: June 10, 2008

/s/

Susan Lapsley
Director

/s/

Kathleen Eddy
Senior Staff Counsel

⁴ For this reason, pursuant to subdivision (f)(2)(E) of section 270, this rule which is included in a statutory exemption is the proper subject of a summary disposition letter. California Code of Regulations, Title 1, section 270, subdivision (f) provides:

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

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

- (A) The challenged rule has been superseded.
- (B) The challenged rule is contained in a California statute.
- (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
- (D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. (Emphasis added.)

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED
UNDERGROUND REGULATION
(Summary Disposition)

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

DEPARTMENT OF CORRECTIONS AND
REHABILITATION

Date: June 11, 2008
To: Derrick Dale Martin
From: Chapter Two Compliance Unit
Subject: **2008 OAL DETERMINATION NO. 11(S)**
(CTU 08-0124-01)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as underground regulations Operation Procedure bulletins #11 (issued June 1, 2007), #34 (issued April 3, 2006, with Addendum issued June 21, 2006), and #40 (issued October 12, 2007) regarding inmate count and movement of Close B male inmates issued by the Soledad Correctional Training Facility

On January 24, 2008, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether provisions in Operation Procedure (OP) bulletins #11, #34, and #40, issued by the Soledad Correctional Training Facility, are underground regulations. You allege that these provisions were not adopted in accordance with the California Administrative Procedure Act (APA). The specific provisions you challenge in OP bulletins #11, #34, and #40 are only those pertaining to inmate count and movement of Close B male inmates, not the entirety of each OP. The following summarizes the OP provisions you challenge:

- (1) Additional Close B inmate custody counts at 1215 and 2000 hours. (OP bulletin #11, page 1.) This challenged provision is supplemented by your factual allegation related to OP bulletin #11 that, although not a written provision, the Soledad Correctional Training Facility conducts lockups of Close B inmates at 1130 hours for custody counts.)
- (2) Housing of Close B inmates in an area separate from the general inmate population. (OP bulletin #34, page 3.)

- (3) Restriction of Close B inmates from working in certain areas where the general inmate population is allowed. (OP bulletin #34, pages 3 and 4.)
- (4) Restriction of Close B inmates on hours and access to the library, yard, and other programs and activities compared to the general inmate population. (OP bulletin #34, page 3 and OP bulletin #40, pages 7, 8, and 10.)

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

Generally, a rule that meets the definition of a “regulation” in Government Code section 11342.600² is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c) establishes exemptions expressly for the CDCR:

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

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

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

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

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

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

² “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

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

....

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

Similarly, the OP bulletins at issue here apply solely to the inmates of the Soledad Correctional Training Facility. Ben Curry, Warden of the Soledad Correctional Training Facility, issued the three OP bulletins. Close B male inmates housed at other institutions are controlled by those other institution’s criteria for inmate count and movement. The OP provisions you challenge are issued solely by the Soledad Correctional Training Facility. By their own terms, the provisions apply only to inmates at the Soledad Correctional Training Facility. Therefore, the challenged provisions in OP bulletins #11, #34, and #40 are “local rules” and are exempt from compliance with the APA.

For the reasons discussed above, we find that the rules challenged by your petition are not underground regulations.³

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

Date: June 11, 2008

/s/

Susan Lapsley
Director

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

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

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

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

OFFICE OF ADMINISTRATIVE LAW

ISSUE

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATION**

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

**OFFICE OF THE STATE FIRE
MARSHAL**

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

**2008 OAL DETERMINATION NO. 12
(OAL FILE # CTU 2007-1203-02)**

REQUESTED BY: Randy D. Roxson
**CONCERNING: Office of State Fire Marshal,
Certification Fees for
CFSTES and FSTEP**
**DETERMINATION ISSUED
PURSUANT TO
GOVERNMENT CODE
SECTION 11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a “regulation” as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of a “regulation,” but was not adopted pursuant to the APA and should have been, it is an “underground regulation” as defined in California Code of Regulations, title 1, section 250. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

On December 3, 2007, Mr. Roxson (Petitioner) submitted a petition to OAL challenging the increase in fees for the California Fire Service Training and Education System (CFSTES) and Fire Service Training and Education Program (FSTEP). The fee increases were imposed by the Office of the State Fire Marshal (OSFM) in a document titled “Notice of Postponement of Fee Increase (Correction to original notice released May 2007)” in which the previously noticed fee increase was postponed until January 1, 2008. The Petitioner challenges this fee increase as an alleged underground regulation¹ issued in violation of Government Code section 11340.5.² In this Determination, we will not limit our discussion to the increase in fees, but rather will examine the fees themselves.

DETERMINATION

OAL determines that the fees for the CFSTES and FSTEP programs meet the definition of a “regulation” as defined in section 11342.600 and that they should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

In an undated memorandum titled “Notice of Postponement of Fee Increase (Correction to original notice released May 2007)” the OSFM notified the public that fees for two programs would be increased effective January 1, 2008. It is not clear from the documents submitted when the underlying fees were established.

OSFM did not submit a response to this petition. It did, however, publish a Notice of Proposed Action on January 29, 2008, in the California Regulatory Notice Register, in which OSFM proposes to adopt the fees as regulations. After receiving public comments on the proposed regulatory text, OSFM made changes to the text pursuant to a 15-day notice as required by section 11346.8. The new notice was sent to all commenters on June 5, 2008, and the comment period will close on June 20, 2008.

¹ An underground regulation is defined in title 1, California Code of Regulations, section 250:

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

² Unless otherwise specified code references are to the California Government Code.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA. It states as follows:

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency issues, utilizes, enforces, or attempts to enforce a rule that meets the definition of a “regulation” as defined in section 11342.600 and should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to “due deference” in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 268 Cal.Rptr. 244.

ANALYSIS

A determination of whether the challenged rule is a “regulation” subject to the APA depends on (1) whether the challenged rule contains a “regulation” within the meaning of section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in section 11342.600 as:

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

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally,

rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. The fees apply to all fire department personnel who take the courses and exams. As *Tidewater* pointed out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. The fees apply to such a clearly defined class of persons — fire department personnel. The first element is, therefore, met.

The second element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure. The CFSTES and FSTEP programs are established pursuant to the California Fire Service Training and Education Program Act.³ Pursuant to Health and Safety Code section 13156, the purposes of the Act are:

- (a) To reduce the costs in suffering and property loss resulting from fire through standardized fire training and education programs.
- (b) To provide professional fire service training and education programs to personnel in fire departments that rely extensively on volunteers.
- (c) To develop new methods and practices in the area of fire protection.
- (d) To disseminate information relative to fires, techniques of firefighters, and other related subjects to all interested agencies and individuals throughout the state.
- (e) To enhance the coordination of fire service training and education.
- (f) To develop a coordinated and standardized plan for the control of fires and the safety of firefighters where hazardous materials are involved.

Health and Safety Code section 13157 states that to achieve the goals of the Act, the OSFM is required to:

- (a) Promulgate and adopt rules and regulations necessary for implementation of the program.
- (b) Establish the courses of study and curriculum to be used in the program.
- (c) Establish prerequisites for the admission of personnel who attend courses offered in the program.
- (d) *Establish and collect admission fees and other fees that may be necessary to be charged for*

³ Health and Safety Code section 13155 and following.

seminars, conferences, and specialized training given, which shall not be deducted from state appropriations for the purposes of this program.

(e) *Collect such fees as may be established pursuant to subdivision (d) of Section 13142.4.*⁴ (Emphasis added.)

Health and Safety Code section 13159.8 (renumbered from 13142.4) states:

The State Fire Marshal, with policy guidance and advice from the State Board of Fire Services, shall:

(a) Establish and validate recommended minimum standards for fire protection personnel and fire protection instructors at all career levels.

(b) Develop course curricula for arson, fire technology, and apprenticeship training for use in academies, colleges, and other educational institutions.

(c) Develop, validate, update, copyright, and maintain security over a complete series of promotional examinations based on the minimum standards established pursuant to subdivision (a).

(d) Have the authority to make the examinations developed pursuant to subdivision (c) available to any agency of the state, to any political subdivision within the state, or to any other testing organization, as he or she deems appropriate.

(e) *Establish any fees which are necessary to implement this section.* However, the State Fire Marshal shall not establish or collect any fees for training classes provided by the State Fire Marshal to fire protection personnel relating to state laws and regulation which local fire services are authorized or required to enforce.⁵

(f) Promote, sponsor, and administer the California Fire Academy System.

(g) Establish procedures for seeking, accepting, and administering gifts and grants for use in implementing the intents and purposes of the California Fire and Arson Training Act.

(h) The recommended minimum standards established pursuant to subdivision (a) shall not apply to any agency of the state or any agency of

any political subdivision within the state unless that agency elects to be subject to these standards. (Emphasis added.)

The CFSTES and FSTEP programs are part of the State Fire Marshal's mandate to provide educational programs for fire department personnel, and to adopt fees for those programs. The fees for the programs, therefore, implement, interpret or make specific the California Fire Service Training and Education Program Act. The second element in *Tidewater* is therefore met.

The fees for the CFSTES and FSTEP programs, therefore, meet the definition of a "regulation" as defined in section 11342.600.

The final issue to examine is whether the fee imposed by OSFM falls within an exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies.⁶ Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to section 11346, the procedural requirements established in the APA "shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly."

We find no APA exemptions that would apply to these fees.⁷ OSFM has not identified any express exemption from the APA that would include the fees challenged in this petition.

CONCLUSION

The fees detailed in "Notice of Postponement of Fee Increase (Correction to original notice released May 2007)" issued by OSFM meet the definition of a "regulation" as defined in section 11342.600. They do not fall within any express APA exemption, and should, therefore, have been adopted pursuant to the APA.

Date: June 16, 2008

/s/

Kathleen Eddy
Senior Staff Counsel

/s/

Susan Lapsley
Director

⁴ Health and Safety Code section 13142.4 was renumbered in 1988 to section 13159.8. This reference has not been updated in the text of section 13157.

⁵ We note that the fees challenged as underground regulations are for voluntary programs, and are not prohibited by Health and Safety Code section 13159.8(e) "relating to state laws and regulation which local fire services are authorized or required to enforce."

⁶ See Government Code section 11340.9.

⁷ A rule requiring the payment of fees or increasing the amount of fees does not fall within the "rate, price or tariff" exemption of Government Code section 11340.9(g). See e.g. *California State Advertising Association, Inc v. State of California, Department of Transportation*, (2006), Not Reported in F.Supp.2d, 2006 WL 662747 (E.D.Cal.)

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

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

File# 2008-0502-03
AIR RESOURCES BOARD

Vapor Recovery Aboveground Storage Tanks

The Air Resources Board has the authority to certify for sale and installation vapor recovery equipment used at gasoline dispensing facilities (GDF) throughout California. The certified GDF equipment controls hydrocarbon emissions present in gasoline vapor to reduce the formation of ozone and controls benzene, a constituent of gasoline vapor that has been identified as a toxic air contaminant. This regulatory action establishes new performance standards and specifications to control standing loss emissions unique to aboveground storage tanks, which account for approximately 90 percent of the total statewide emissions for this category.

Title 17
California Code of Regulations
ADOPT: 94016, 94168 AMEND: 94010, 94011
Filed 06/12/2008
Effective 07/12/2008
Agency Contact: Amy Whiting (916) 322-6533

File# 2008-0502-02
AIR RESOURCES BOARD

Smog Index Vehicle Emissions Label

In this regulatory action, the Air Resources Board establishes the requirements for "environmental performance labels" which will be required for certified new 2009 and subsequent model year passenger cars, light-duty trucks, and medium-duty passenger vehicles which are manufactured on or after January 1, 2009 and which are sold and registered in California. An environmental performance label will provide information on each vehicle's "smog score" and "global warming score" in comparison to other vehicles. These regulations principally implement Health and Safety Code

sections 43200 and 43200.1 as contained in AB 1229, Chapter 575, Statutes of 2005.

Title 13
California Code of Regulations
AMEND: 1961, 1965
Filed 06/16/2008
Effective 06/16/2008
Agency Contact: Trini Balcazar (916) 445-9564

File# 2008-0613-01
BOARD OF GOVERNORS, CALIFORNIA COMMUNITY COLLEGES
Educational Centers and Growth Funding
(Implementation of SB 361)

These regulations concern Educational Centers and Growth Funding (Implementation of SB 361). These regulations are exempt from the Administrative Procedure Act pursuant to Education Code section 70901.5(b). They are submitted to OAL for printing only.

Title 5
California Code of Regulations
ADOPT: 55185, 57017 AMEND: 55180, 57001.7, 58003.4, 58770, 58771, 58774
Filed 06/13/2008
Effective 07/14/2008
Agency Contact: Jonathan Lee (916) 445-6272

File# 2008-0602-02
BOARD OF PODIATRIC MEDICINE
Review of Applications

The Board of Podiatric Medicine is repealing section 1399.664 pursuant to the repeal of the Permit Reform Act of 1981 (Gov. Code sections 15374-15378) by Statutes of 2003, Chapter 229.

Title 16
California Code of Regulations
REPEAL: 1399.664
Filed 06/11/2008
Agency Contact: Kathleen Cook (916) 263-0315

File# 2008-0505-02
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
Training Specifications for Peace Officer Basic Courses

This regulatory action re-distributes course hours between learning domains, re-aligns the Modular Format to the proper levels of training, incorporates a requalification process for modules III and II, adds end of course proficiency tests for modules III and II, and makes additional updates to curriculum.

Title 11
 California Code of Regulations
 AMEND: 1005, 1007, 1008, 1080
 Filed 06/17/2008
 Effective 07/01/2008
 Agency Contact: Patricia Cassidy (916) 227-4847

Title 3
 California Code of Regulations
 AMEND: 3434(b)
 Filed 06/16/2008
 Effective 06/16/2008
 Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0508-02
 DEPARTMENT OF FOOD AND AGRICULTURE
 Setting the Commercial Feed License Fee

This regulatory action sets the annual commercial feed license fee at \$300, effective July 1, 2008. The purpose of this fee is to provide sufficient funds to support program operations and broaden the responsibility for support of the inspection program.

Title 3
 California Code of Regulations
 AMEND: 2751
 Filed 06/17/2008
 Effective 07/01/2008
 Agency Contact: Kent Kitade (916) 445-0444

File# 2008-0502-01
 DEPARTMENT OF INSURANCE
 Workers' Compensation Pure Program Rates

This action amends the California Workers' Compensation Unit Statistical Reporting Plan and the California Workers' Compensation Experience Rating Plan.

Title 10
 California Code of Regulations
 AMEND: 2318.6, 2353.1
 Filed 06/16/2008
 Effective 06/16/2008
 Agency Contact:
 Christopher A. Citko (415) 538-4010

File# 2008-0602-03
 DEPARTMENT OF FOOD AND AGRICULTURE
 Light Brown Apple Moth Interior Quarantine

This proposed emergency amendment expands the existing regulated quarantine area in San Mateo County by approximately seventeen square miles with respect to the light brown apple moth (LBAM; *Epiphyas postvittana*) pursuant to the finding of new pests. Boundary lines for the quarantine areas have been changed.

Title 3
 California Code of Regulations
 AMEND: 3434(b)
 Filed 06/11/2008
 Effective 06/11/2008
 Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0519-01
 DEPARTMENT OF MOTOR VEHICLES
 Clean Air Vehicle Stickers: Transfers and Replacements

This regulatory action establishes a process for obtaining replacement Clean Air Vehicle Stickers.

Title 13
 California Code of Regulations
 ADOPT: 156.01
 Filed 06/16/2008
 Effective 07/16/2008
 Agency Contact: Randi Calkins (916) 657-8898

File# 2008-0612-02
 DEPARTMENT OF FOOD AND AGRICULTURE
 Light Brown Apple Moth Interior Quarantine

This emergency regulatory action will expand (approximately 65 square miles) the contiguous regulated areas existing in Contra Costa, Marin, and Santa Clara counties and expand the Vallejo area (approximately three square miles) of Solano County as areas of quarantine for the light brown apple moth ("*Epiphyas postvittana*") due to recent findings of the pest.

File# 2008-0522-03
 FAIR POLITICAL PRACTICES COMMISSION
 Reporting an Expenditure for a Gift, a Meal, or Travel; Recordkeeping

This action amends 2 Cal. Code Regs. section 18401 and adopts section 18421.7 regarding how expenditures for gifts, meals or travel are to be reported for candidate controlled committees. Additional grammatical changes and clarifications are made to section 18401.

OAL's review of FPPC proposed regulations is limited to the provisions of the APA as it was enacted on June 4, 1974, when voters adopted the California Political Reform Act. (Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, (April 27, 1992, C010924 [nonpub. opn.].) As such, OAL's review is limited to determining if the proposed regulations comply with "the form and style prescribed by the secretary of State. If the department approves the

regulation or order of repeal for filing, it shall endorse on the certified copy thereof its approval for filing and shall transmit such copy to the Secretary of State.” (Former Gov. Code, section 11380.2, repealed by Stats. 1979, ch. 467, § 2.)

Title 2
California Code of Regulations
ADOPT: 18421.7 AMEND: 18401
Filed 06/11/2008
Effective 07/01/2008
Agency Contact:
Virginia Latteri-Lopez (916) 324-3854

File# 2008-0522-04
FAIR POLITICAL PRACTICES COMMISSION
Gifts to an Agency

This action adopts new section 2 Cal. Code Regs. section 18944.2 in place of existing section 18944.2. The new section reorganizes the previously existing section, “Gifts to an Agency,” and explains when a gift to a public agency, although controlled by an individual public official, is not considered a reportable or limited gift to an individual public official, despite the personal benefit derived by the official from the payment.

OAL’s review of FPPC proposed regulations is limited to the provisions of the APA as it was enacted on June 4, 1974, when voters adopted the California Political Reform Act. (Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, (April 27, 1992, C010924 [nonpub. opn.].) As such, OAL’s review is limited to determining if the proposed regulations comply with “the form and style prescribed by the secretary of State. If the department approves the regulation or order of repeal for filing, it shall endorse on the certified copy thereof its approval for filing and shall transmit such copy to the Secretary of State.” (Former Gov. Code, section 11380.2, repealed by Stats. 1979, ch. 467, § 2.)

Title 2
California Code of Regulations
ADOPT: 18944.2 REPEAL: 18944.2
Filed 06/11/2008
Effective 07/01/2008
Agency Contact:
Virginia Latteri-Lopez (916) 324-3854

File# 2008-0522-02
FAIR POLITICAL PRACTICES COMMISSION
Complaints: Delegation by Executive Director — Enforcement Proceedings

This action amends 2 Cal. Code Regs. section 18360 regarding complaints made to the Commission. Among other changes, the regulation now requires the complainant have personal knowledge of the violations of the Political Reform Act alleged, the complaint must now be signed under penalty of perjury. New reporting requirements of the staff to the Commission are also included.

OAL’s review of FPPC proposed regulations is limited to the provisions of the APA as it was enacted on June 4, 1974, when voters adopted the California Political Reform Act. (Fair Political Practices Commission v. Office of Administrative Law, Linda Stockdale Brewer, (April 27, 1992, C010924 [nonpub. opn.].) As such, OAL’s review is limited to determining if the proposed regulations comply with “the form and style prescribed by the secretary of State. If the department approves the regulation or order of repeal for filing, it shall endorse on the certified copy thereof its approval for filing and shall transmit such copy to the Secretary of State.” (Former Gov. Code, section 11380.2, repealed by Stats. 1979, ch. 467, § 2.)

Title 2
California Code of Regulations
AMEND: 18360, 18361
Filed 06/11/2008
Effective 06/11/2008
Agency Contact:
Virginia Latteri-Lopez (916) 324-3854

File# 2008-0519-03
FISH AND GAME COMMISSION
Ammunition Certification

AB 821 (Added by Stats. 2007, c. 570, § 3), mandated that nonlead centerfire rifle and pistol ammunition be required when taking big game with a rifle or pistol within the Department of Fish and Game’s deer hunting zone A South, excluding Santa Cruz, Alameda, Contra Costa, San Mateo and San Joaquin Counties and other areas. AB 821 also mandated that the Fish and Game Commission adopt regulations to establish a public process to certify centerfire rifle and pistol ammunition as nonlead ammunition and establish a definition of nonlead ammunition. Additionally, AB 821 requires the commission to establish and update a list of certified centerfire rifle and pistol ammunition. New section 355 accomplishes the mandates of AB 821.

Title 14
 California Code of Regulations
 ADOPT: 355
 Filed 06/18/2008
 Effective 07/01/2008
 Agency Contact: Sheri Tiemann (916) 654-9872

File# 2008-0506-02
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
 Proposition 65 Regulatory Update — Move from Title 22 to Title 27

This is a nonsubstantive action renumbering and moving regulations from title 22 (division 2, subdivision 1, chapters 3 and 4) to title 27 (division 4, chapters 1 and 2). Because of reorganizations in state agencies several years ago, these regulations are better placed in a different title and subject area.

Title 22, 27
 California Code of Regulations
 ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503, 25504, 25505, 25601, 25701, 25703, 25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026, 28027, 28028, 28029, 28030, 28031, 28032, 28033, 28034, 28035, 25036, 28037, 28038, 28039, 28040 REPEAL: 12000, 12102, 12103, 12104, 12201, 12203, 12204, 12301, 12302, 12303, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12505, 12601, 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, 12821, 12900, 12901, 12902, 12903, 14000, 15001, 15002, 15003, 15004, 15006, 15007, 15008, 15009, 15010, 15011, 15012, 15013, 15014, 15015, 15016, 15017, 15018, 15019, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032, 15033, 15034, 15035, 15036, 15037, 15038, 15039, 15040
 Filed 06/17/2008
 Effective 06/17/2008
 Agency Contact: Fran Kammerer (916) 445-4693

File# 2008-0521-01
PROFESSIONAL FIDUCIARIES BUREAU
 Fees

This filing is a certificate of compliance for an emergency regulatory action which established fees for professional fiduciary licensing.

Title 16
 California Code of Regulations
 ADOPT: 4580
 Filed 06/17/2008
 Agency Contact: Mellonie Yang (916) 574-7340

File# 2008-0528-06
PROFESSIONAL FIDUCIARIES BUREAU
 Application and Licensing Requirements

Senate Bill 1550 (Figueroa, Chapter 491, Stats. 2006) created the new Professional Fiduciaries Bureau (Bureau) within the Department of Consumer Affairs (Department). The Bureau is required to license and regulate specified fiduciaries under the Professional Fiduciaries Act (Act) that represent a particularly vulnerable consumer population. This filing is a certificate of compliance for an emergency regulatory action which adopted application, licensing, and renewal requirements for these professional fiduciaries.

Title 16
 California Code of Regulations
 ADOPT: 4400, 4402, 4404, 4406, 4420, 4422, 4424, 4426, 4428, 4500, 4520, 4522, 4540, 4542, 4560, 4562
 Filed 06/16/2008
 Agency Contact: Mellonie Yang (916) 574-7340

File# 2008-0516-04
SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
 Dredging Regulations

These amendments double the time between applications for dredging permits and doubles the amount of material that may be dredged in that amount of time, reduces the limit of disposal of dredged material at Alcatraz Island and makes other nonsubstantive changes, including correcting a reference citation.

Title 14
 California Code of Regulations
 AMEND: 10602, 10800
 Filed 06/16/2008
 Effective 07/16/2008
 Agency Contact: Ellen M. Sampson (415) 352-3600

File# 2008-0603-01
SONOMA COUNTY WINEGRAPE COMMISSION
 Conflict of Interest Code

The Sonoma County Winegrape Commission is adopting their conflict of interest code. The aforementioned code was approved for filing by the Fair Political Practices Commission on May 16, 2008.

Title 2
 California Code of Regulations
 ADOPT: div. 8, ch. 112, sec. 59570
 Filed 06/17/2008
 Effective 07/17/2008
 Agency Contact: Jill S. England (916)452-2602

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN JANUARY 16, 2008 TO
 JUNE 18, 2008**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

04/24/08 AMEND: Appendix A
 02/25/08 ADOPT: 48, 50, 52 AMEND: 55
 01/29/08 AMEND: 1, 6, 90, and Appendix A (Std. Form 400)

Title 2

06/17/08 ADOPT: div. 8, ch. 112, sec. 59570
 06/11/08 AMEND: 18360, 18361
 06/11/08 ADOPT: 18421.7 AMEND: 18401
 06/11/08 ADOPT: 18944.2 REPEAL: 18944.2
 05/21/08 ADOPT: 59580
 05/14/08 ADOPT: 18413
 05/13/08 ADOPT: 59620
 05/06/08 AMEND: 43000, 43001, 43002, 43003, 43004, 43005, 43006, 43007, 43008, 43009
 04/30/08 AMEND: 1859.2, 1859.61, 1859.81, 1859.82, 1859.83, 1859.202, 1866, Form SAB 50-04 (Rev. 01/08)
 04/29/08 ADOPT: 1859.190, 1859.191, 1859.192, 1859.193, 1859.193.1, 1859.194, 1859.195, 1859.196, 1859.197, 1859.198, 1859.199 AMEND: 1859.2, 1859.51, 1859.81, Form SAB 50-04 (Revised 01/08), Form SAB 50-05 (Revised 01/08), Form SAB 50-10 (Revised 01/08)
 04/24/08 ADOPT: 1183.081, 1183.131, 1183.30, 1183.31, 1183.32 AMEND: 1181.1, 1181.2, 1181.3, 1183, 1183.01, 1183.04, 1183.08, 1183.11, 1183.13, 1183.14, 1183.3, 1188.3

04/10/08 AMEND: 1866, 1866.4.3, 1866.13, Form SAB 40-22 (Rev. 10/07)
 04/09/08 AMEND: 18997
 03/28/08 ADOPT: 59630
 03/24/08 AMEND: 18735
 03/19/08 AMEND: 55300
 03/19/08 AMEND: 549.90
 03/19/08 AMEND: 18200
 03/03/08 AMEND: 1859.76, 1859.83, 1859.104.3
 02/25/08 AMEND: 549.80
 02/25/08 AMEND: 714

Title 3

06/17/08 AMEND: 2751
 06/16/08 AMEND: 3434(b)
 06/11/08 AMEND: 3434(b)
 06/09/08 AMEND: 3700
 06/04/08 AMEND: 3434(b)
 05/23/08 AMEND: 3434(b)
 05/23/08 AMEND: 1438.7, 1438.17
 05/07/08 AMEND: 3434(b)
 05/05/08 AMEND: 3406(b)
 05/02/08 AMEND: 3417(b)
 05/02/08 AMEND: 3434
 04/30/08 AMEND: 3591.20
 04/23/08 AMEND: 6550
 04/21/08 AMEND: 3700
 04/18/08 AMEND: 3434(b)
 04/16/08 AMEND: 3434(b) & (c)
 04/15/08 AMEND: 3433(b)
 04/08/08 AMEND: 3434(b)
 04/02/08 AMEND: 3433(b)
 04/02/08 AMEND: 3433(b)
 04/01/08 ADOPT: 821, 821.1, 821.2, 821.3, 821.4, 821.5 REPEAL: 784, 784.1, 784.2, 800, 800.1, 801, 802
 03/26/08 AMEND: 3434(b)
 03/21/08 AMEND: 3434(b)
 03/19/08 AMEND: 6620
 03/17/08 AMEND: 3434(b)
 03/17/08 AMEND: 3406(b)
 03/17/08 AMEND: 3700(c)
 03/13/08 AMEND: 6860
 03/12/08 AMEND: 3434(b)
 03/12/08 AMEND: 3406(b)
 03/05/08 AMEND: 3875
 03/04/08 AMEND: 3867
 03/03/08 AMEND: 3591.20
 02/22/08 AMEND: 3434(b)
 02/21/08 AMEND: 6393
 02/11/08 AMEND: 3434(b)
 02/08/08 AMEND: 3591.20
 02/04/08 AMEND: 3434(b)
 01/29/08 AMEND: 3700(c)
 01/28/08 AMEND: 3433(b)

01/28/08 AMEND: 4500
 01/25/08 ADOPT: 6445, 6445.5, 6448, 6448.1, 6449, 6449.1, 6450, 6450.1, 6450.2, 6451, 6451.1, 6452, 6452.1, 6452.2, 6452.3(a), 6452.3(b), 6452.3(c), 6452.3(d), 6452.3(e), 6452.3(f), 6452.4, 6536(a), 6536(b)(1-3), 6536(b)(4)
 AMEND: 6000, 6400, 6450, 6450.1, 6450.2, 6450.3, 6452, 6453, 6502, 6624, 6626, 6784
 01/24/08 AMEND: 1391, 1391.1
 01/22/08 AMEND: 3591.6
 01/22/08 AMEND: 3591.6
 01/22/08 AMEND: 3591.2(a)
 01/22/08 AMEND: 3591.5(a)
 01/18/08 AMEND: 3423(b)
 01/18/08 ADOPT: 3152

Title 4

05/23/08 ADOPT: 1843.3 AMEND: 1843.2
 05/01/08 AMEND: 1844
 04/08/08 AMEND: 1467
 03/24/08 AMEND: 10177, 10178, 10181, 10182, 10187, 10188, 10189
 02/29/08 ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101
 01/22/08 AMEND: 8070, 8072, 8073

Title 5

06/13/08 ADOPT: 55185, 57017 AMEND: 55180, 57001.7, 58003.4, 58770, 58771, 58774
 06/10/08 AMEND: 30910, 30911, 30912, 30913, 30914, 30916
 06/10/08 AMEND: 30920, 30921, 30922, 30923, 30924, 30925, 30927
 06/09/08 ADOPT: 19828.3, 19837.2 AMEND: 19816, 19816.1, 19828.2, 19837.1, 19846
 05/28/08 ADOPT: 18085.5, 18086.1 AMEND: 18086, 18087, 18088, 18091, 18101, 18102, 18104
 05/21/08 ADOPT: 6105 AMEND: 6100, 6104
 05/13/08 AMEND: 15440, 15441, 15442, 15443, 15444, 15445, 15446, 15447, 15448, 15449, 15450, 15451, 15452, 15453, 15454, 15455, 15456, 15457, 15458, 15459, 15460, 15461, 15462, 15463, 15464, 15467, 15468, 15469, 15471, 15471.1, 15471.2, 15472, 15473, 15474, 15475, 15476, 15477, 15478, 15479, 15479.5, 15480, 15481, 15483, 15484,

15485, 15486, 15487, 15488, 15489, 15490, 15493
 05/05/08 ADOPT: 11315.5 and 11315.6 AMEND: 11315
 05/01/08 AMEND: 80440, 80443
 04/21/08 ADOPT: 18134
 04/21/08 ADOPT: 18134
 03/03/08 ADOPT: 9510.5, 9512, 9513, 9514, 9525 AMEND: 9510, 9511, 9515, 9516, 9517, 9518, 9519, 9521, 9522, 9523, 9524, 9527, 9528, 9529, 9530 REPEAL: 9517.1, 9520
 02/28/08 ADOPT: 11969.10, 11969.11 AMEND: 11969.1, 11969.2, 11969.3, 11969.4, 11969.6, 11969.7, 11969.8, 11969.9
 02/25/08 AMEND: 41301
 02/22/08 AMEND: 3051.16, 3065

Title 7

06/10/08 ADOPT: 236.1

Title 8

06/06/08 AMEND: 1710(k)(2)
 05/19/08 AMEND: 1529, 5208, 8358
 05/19/08 AMEND: 1710
 05/19/08 AMEND: 797, 1604.10, 1601.21, 1662
 05/05/08 ADOPT: 2340.2, 2340.5, 2340.8, 2340.10, 2340.12, 2340.14; Article 6, Sections 2360.1 through 2360.5; Sections 2375.7, 2375.25, 2380.1, 2390.10, 2390.20, Article 12, Sections 2400.1, 2400.2; Sections 2418.2, 2418.3, 2418.4, 2418.5, 2418.6, 2420.4, 2420.5, 2420.6, 2420.7, 2473.1, 2473.2, 2480.5, 2480.9, 2484.5, 2484.6; Article 48.1, Sections 2485.1, 2485.2; Sections 2505.2, 2510.8, 2522.20, 2530.120, 2530.121; Article 58.1, Section 2535.1; Sections 2540.11, 2540.11 Figure S-1, 2560.3; Article 74.1, Sections 2562.1 through 2562.7; Article 77.1, Sections 2566.1 through 2566.3; Article 77.2, Sections 2567.1 through 2567.3; Sections 2569.5, 2571.9, 2571.30; Article 83, Sections 2583.1 through 2583.8; Article 84, Sections 2584.1 through 2584.8; Article 85, Sections 2585.1 through 2585.3; Article 86, Sections 2586.1 through 2586.4; Article 87, Sections 2587.1 through 2587.5; Article 88, Sections 2588.1 through 2588.3; Article 89, Sections 2589.1 and 2589.2. AMEND: 2300, 2305.2, 2305.4, 2340.9, 2340.11, 2340.13, 2340.16, Table 2340.16, 2340.17, 2340.18, 2340.21, 2340.22;

Article 5, Section 2350.2; Sections 2375.1, 2375.18, Table 2375.18, Sections 2375.19, 2390.1, 2390.24, 2390.41, 2390.81, 2395.3, 2395.5, 2395.6, 2395.23, 2395.25, 2395.32, 2395.42, 2395.44, 2395.45, 2395.57, 2395.58, 2405.1, 2405.2; Article 16, Sections 2420.3; Article 45; Sections 2480.6, 2480.7, 2484.24, 2500.7, 2500.8, 2500.9, 2500.10, 2500.11, 2500.23, 2505.10, 2505.11, 2510.4, 2510.5, 2510.6, 2510.7, 2510.56, 2510.58, 2522.2, 2530.4, 2530.102, 2530.103, 2530.104, 2530.107, 2530.112, 2533.1, 2534.6, 2534.8, 2540.1, 2540.2, 2540.3, 2540.4, 2560.2, 2561.1, 2561.3, 2561.31, 2561.32, 2563.23, 2563.33; Article 77, Section 2565.3; Sections 2568.8, 2568.15, 2569.1, 2569.6, 2569.7, 2569.20, 2569.51; Article 80, Sections 2571.1 and 2571.16. REPEAL: 2340.23, 2350.11, 2390.83, 2395.7, 2395.33, 2395.43, 2395.50, 2480.8, 2522.8 and 2561.50.

- 04/11/08 AMEND: 7016(c)
- 04/07/08 AMEND: 10116, 10116.1, 10117.1, 10118.1, 10119, 10120, 10121, 10136, 10137, 10225, 10225.1, 10225.2
- 04/01/08 ADOPT: 3140, 3141, 3141.1, 3141.2, 3141.3, 3141.4, 3141.5, 3141.6, 3141.7, 3141.8, 3141.9, 3141.10, 3141.11, 3141.12, 3141.13, 3142, 3142.1, 3142.2, 3143, 3144, 3145, 3146 AMEND: 3000, 3001, 3009, 3094.2, 3120.6, 3137
- 03/05/08 AMEND: 1504, 1597
- 03/05/08 AMEND: 3228
- 02/29/08 AMEND: 3270

Title 9

- 03/06/08 AMEND: 10025, 10057, 10515, 10518, 10524, 10545, 10550, 10606, 11014, 11017, 11024, 13070
- 02/28/08 ADOPT: 7024.9, 7025.4, 7136.4, 7136.5, 7136.6, 7136.7, 7136.8, 7136.9, 7137, 7138, 7179.4, 7179.5 REPEAL: 7136.5
- 02/13/08 ADOPT: 3100, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.225, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300,

3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3410, 3500, 3505, 3510, 3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650 REPEAL: 3100, 3200.000, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3310, 3400, 3405, 3410, 3415

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- 06/16/08 AMEND: 2318.6, 2353.1
- 06/02/08 ADOPT: 10.190202
- 05/27/08 AMEND: 2249.2-2249.9, 2249.12, 2249.15
- 05/16/08 ADOPT: 2642.8, 2644.28 AMEND: 2642.6, 2642.7, 2644.2, 2644.3, 2644.6, 2644.7, 2644.8, 2644.12, 2644.16, 2644.17, 2644.19, 2644.20, 2644.21, 2644.23, 2644.25, 2644.27
- 04/30/08 AMEND: 2697.6, 2697.61
- 04/29/08 ADOPT: 10.19900, 10.19901
- 04/28/08 AMEND: 310.111
- 03/27/08 AMEND: 2699.6500, 2699.6805, 2699.6803
- 03/20/08 AMEND: 1950.314.8
- 03/18/08 AMEND: 2498.6
- 03/12/08 ADOPT: 2699.402 AMEND: 2699.100, 2699.205, 2699.6600, 2699.6607, 2699.6608, 2699.6613, 2699.6625, 2699.6629, 2699.6813
- 03/06/08 AMEND: 260.241, 260.241.2 REPEAL: 260.218.5, 260.241.1
- 02/22/08 ADOPT: 2695.20, 2695.21, 2695.22, 2695.23, 2695.24, 2695.25, 2695.26, 2695.27, 2695.28
- 02/14/08 ADOPT: 2790.8, 2790.9
- 02/11/08 AMEND: 5101

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- 06/17/08 AMEND: 1005, 1007, 1008, 1080
- 05/28/08 AMEND: 2000, 2001, 2010, 2020, 2030, 2037, 2038, 2050, 2051, 2052, 2053, 2060, 2070, 2071, 2072, 2140
- 04/14/08 AMEND: 1081
- 02/29/08 AMEND: 1009, 1070, 1071, 1082, 1083
- 01/16/08 REPEAL: 1305

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- 06/16/08 ADOPT: 156.01
- 06/16/08 AMEND: 1961, 1965
- 06/10/08 AMEND: 2222
- 06/02/08 AMEND: 1141

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05/16/08 ADOPT: 2449, 2449.1, 2449.2, 2449.3
 05/01/08 AMEND: 1
 04/28/08 AMEND: 120.00, 120.01, 120.02, 124.93, 124.95 REPEAL: 120.04
 04/10/08 AMEND: 1202.1, 1202.2, 1232
 04/07/08 AMEND: 2451, 2452, 2453, 2458, 2461
 03/07/08 AMEND: 345.02, 345.06, 345.21, 345.22
 03/04/08 AMEND: 2485
 02/08/08 AMEND: 621, 691, 693, 699
 02/01/08 ADOPT: 1300, 1400, 1401, 1402, 1403, 1404, 1405 REPEAL: 1300, 1301, 1302, 1303, 1304, 1304.1, 1305, 1310, 1311, 1312, 1313, 1314, 1315, 1320, 1321, 1322, 1323, 1324, 1325, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1339.1, 1339.2, 1339.3, 1339.4, 1339.5, 1339.6, 1340, 1341, 1342, 1343, 1344, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1370, 1371, 1372, 1373, 1374, 1375, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1420, 1421, 1422, 1423, 1424, 1425 and Article 15 text.

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06/18/08 ADOPT: 355
 06/16/08 AMEND: 10602, 10800
 05/15/08 AMEND: 353, 475
 05/09/08 AMEND: 27.20, 27.25, 27.30, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57, 28.58
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 04/28/08 AMEND: 815.05
 04/25/08 AMEND: 17210.2, 17210.4, 17855.2, 17862, 17867
 04/07/08 AMEND: 228(b)(1)
 04/04/08 AMEND: 27.80
 03/26/08 AMEND: 630
 03/14/08 ADOPT: 13255.1 AMEND: 13055, 13111, 13169, 13255.0, 13255.1, 13255.2, 13576
 03/14/08 ADOPT: 5.79, 5.88, 29.16, 29.91 AMEND: 1.74, 5.80, 5.81, 5.87, 27.90, 27.91, 27.92, 29.15, 29.90, 701
 03/13/08 AMEND: 671
 03/10/08 ADOPT: 18218, 18218.1, 18218.2, 18218.3, 18218.4, 18218.5, 18218.6, 18218.7, 18218.8, 18218.9

02/28/08 AMEND: 17211.1, 17211.4, 17211.7, 17211.9
 02/28/08 ADOPT: 749.3
 02/19/08 AMEND: 7.50
 02/13/08 ADOPT: 704
 02/11/08 ADOPT: 787.0, 787.1, 787.2, 787.3, 787.4, 787.5, 787.6, 787.7, 787.8, 787.9
 01/29/08 ADOPT: 25202, 25203, 25204, 25205, 25206, 25207, 25208, 25209, 25210, 25211
 01/28/08 ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5
 01/17/08 AMEND: 890

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06/04/08 AMEND: 3190, 3191
 05/23/08 ADOPT: 1417 AMEND: 1029, 1206, 1248, 1357, 1358, 1461
 04/18/08 AMEND: 3291, 3293
 04/07/08 AMEND: 3173.2
 03/27/08 ADOPT: 2536.1
 03/18/08 ADOPT: 3269 AMEND: 3315
 03/18/08 ADOPT: 3486 AMEND: 3482, 3484, 3485
 03/06/08 ADOPT: 3355.2 AMEND: 3030, 3050, 3268.2, 3355, 3355.1
 02/25/08 ADOPT: 3075.4 AMEND: 3000
 02/04/08 ADOPT: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.5, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1756, 1757, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792
 01/23/08 AMEND: 3190, 3191
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06/17/08 ADOPT: 4580
 06/16/08 ADOPT: 4400, 4402, 4404, 4406, 4420, 4422, 4424, 4426, 4428, 4500, 4520, 4522, 4540, 4542, 4560, 4562
 06/11/08 REPEAL: 1399.664
 06/04/08 AMEND: 931
 05/21/08 AMEND: 4141
 05/20/08 AMEND: 905
 05/19/08 ADOPT: 4440, 4442, 4443, 4444, 4446, 4448, 4450, 4452, 4470, 4472, 4474, 4476, 4478, 4480, 4482, 4484
 05/16/08 AMEND: 1399.696, 1399.697
 05/12/08 AMEND: 1399.523
 05/08/08 REPEAL: 3300
 05/07/08 ADOPT: 1364.32 AMEND: 1364.30
 05/02/08 AMEND: 1079.2
 04/29/08 AMEND: 1970, 1970.4(a), 1973(b)
 04/24/08 AMEND: 1387.3
 04/24/08 AMEND: 3000

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04/17/08 AMEND: 1399.660
 04/16/08 ADOPT: 973, 973.1, 973.2, 973.3, 973.4, 973.5, 973.6
 04/14/08 AMEND: 1380.1
 04/10/08 AMEND: 4123
 04/01/08 AMEND: 1381.5, 1388, 1388.6, 1392
 03/26/08 AMEND: 3065
 03/24/08 AMEND: 974
 03/18/08 AMEND: 1399.651
 03/12/08 AMEND: 1435.2
 02/19/08 AMEND: 1887.2, 1887.3
 02/15/08 AMEND: 30, 95, 95.2, 95.6
 02/04/08 AMEND: 2751
 02/01/08 ADOPT: 1028.2, 1028.3, 1028.4, 1028.5
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 05/30/08 AMEND: 100080, 100085, 100090, 100100
 04/30/08 ADOPT: 35004, 35005.1, 35031, 35088, 36050 AMEND: 35001, 35002, 35003, 35005, 35006, 35007, 35008, 35009, 35010, 35012, 35013, 35014, 35015, 35016, 35018, 35019, 35020, 35021, 35022, 35025, 35026, 35027, 35028, 35029, 35030, 35032, 35033, 35034, 35035, 35036, 35037, 35038, 35039, 35040, 35041, 35042, 35043, 35044, 35045, 35046, 35047, 35048, 35049, 35050, 35051, 35052, 35053, 35054, 35055, 35056, 35057, 35061, 35065, 35066, 35067, 35070, 35072, 35076, 35078, 35080, 35081, 35082, 35083, 35085, 35087, 35089, 35091, 35093, 35095, 35096, 35097, 35099, 36000, 36100 REPEAL: 35023
 04/21/08 AMEND: 54355
 04/21/08 AMEND: 93115.4, 93115.6, 93115.10
 04/18/08 ADOPT: 93120, 93120.1, 93120.2, 93120.3, 93120.4, 93120.5, 93120.6, 93120.7, 93120.8, 93120.9, 93120.10, 93120.11, 93120.12
 04/11/08 ADOPT: 30333.05, 30333.07, 30333.3, 30335.1, 30335.2, 30335.3, 30335.4, 30335.5, 30335.6, 30335.10, 30336.1, 30336.5, 30336.6, 30336.7, 30336.8, 30338 AMEND: 30195.3, 30295, 30330, 30331, 30332, 30332.1, 30332.2, 30332.3, 30332.4, 30332.5, 30332.6, 30332.7, 30332.8, 30333, 30333.1, 30333.2, 30334, 30336, 30337 REPEAL: 30335
 04/03/08 AMEND: 6508

04/02/08 AMEND: 93119
 04/02/08 AMEND: 93119
 03/17/08 ADOPT: 100700
 03/10/08 ADOPT: 30704, 30712, 30713 AMEND: 30700, 30701, 30702, 30703, 30710, 30711, 30714, 30720, 30721, 30722, 30723, 30730, 30735, 30736, 30740, 30741, 30750, 30751, 30752, 30753 REPEAL: 30715, 30724, 30734.1
 03/04/08 ADOPT: 100400, 100401, 100402, 100403, 100404, 100405, 100406, 100407, 100408, 100409, 100410
 02/19/08 AMEND: 70100.1, 70200
 02/14/08 ADOPT: 30410, 30410.2 AMEND: 30421, 30424, 30445, 30447
 02/13/08 AMEND: 2500, 2502
 02/06/08 ADOPT: 2641.56, 2641.57 AMEND: 2641.5, 2641.30, 2641.35, 2641.45, 2641.55, 2643.5, 2643.10, 2643.15 REPEAL: 2641.75, 2641.77
 02/06/08 ADOPT: 2641.56, 2641.57 AMEND: 2641.5, 2641.30, 2641.35, 2641.45, 2641.55, 2643.5, 2643.10, 2643.15 REPEAL: 2641.75, 2641.77

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06/10/08 ADOPT: 2558, 2559, 2559.1, 2559.3, 2559.5
 06/04/08 AMEND: 23038(b)-2, 23038(b)-3
 04/29/08 AMEND: 25137(c)(1)(D)
 04/23/08 AMEND: 1620
 04/10/08 AMEND: 1570
 02/29/08 AMEND: 25128-1
 01/24/08 AMEND: 1699
 01/23/08 AMEND: 101, 171
 01/23/08 AMEND: 101, 171

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06/06/08 AMEND: 200, 203, 204, 206, 207, 208, 209, 211, 212, 214, 215, 216, 217
 04/23/08 ADOPT: 2660 AMEND: 2720, 2723, 2724, 2725, 2726, 2728
 02/20/08 AMEND: Division 2, Chapter 4, Article 4, Section 2729.2 and Appendices A I, II, III and Appendices B I, II, III
 02/05/08 REPEAL: 3.33
 02/04/08 AMEND: 208, 209

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05/20/08 AMEND: 2323(a), 2323(b), 2323(c), 2323(d), 2323(e), 2323(f), 2325(a), 2329(c), 2329(e), 2330(a), 2332(d), 2333(a), 2335(b)
 04/15/08 ADOPT: 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330,

	2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, Appendix A	03/18/08 AMEND: 12000
		03/03/08 AMEND: 926-3, 926-4, 926-5
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02/15/08	AMEND: 1575	02/08/08 ADOPT: 64551.10, 64551.20, 64551.30, 64551.35, 64551.40, 64551.60, 64551.70, 64551.100, 64552, 64554, 64556, 64558, 64560, 64560.5, 64561, 64570, 64572, 64573, 64575, 64576, 64577, 64578, 64580, 64582, 64583, 64585, 64591, 64600, 64602, 64604 AMEND: 64590, 64593, 64654, 64658 REPEAL: 64417, 64555, 64560, 64562, 64563, 64564, 64566, 64568, 64570, 64600, 64602, 64604, 64612, 64622, 64624, 64626, 64628, 64630, 64632, 64634, 64636, 64638, 64640, 64642, 64644
Title 22		02/06/08 AMEND: 2708(c)-1
06/17/08	ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503, 25504, 25505, 25601, 25701, 25703, 25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026, 28027, 28028, 28029, 28030, 28031, 28032, 28033, 28034, 28035, 25036, 28037, 28038, 28039, 28040 REPEAL: 12000, 12102, 12103, 12104, 12201, 12203, 12204, 12301, 12302, 12303, 12304, 12305, 12306, 12401, 12403, 12405, 12501, 12502, 12503, 12504, 12505, 12601, 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, 12821, 12900, 12901, 12902, 12903, 14000, 15001, 15002, 15003, 15004, 15006, 15007, 15008, 15009, 15010, 15011, 15012, 15013, 15014, 15015, 15016, 15017, 15018, 15019, 15020, 15021, 15022, 15023, 15024, 15025, 15026, 15027, 15028, 15029, 15030, 15031, 15032, 15033, 15034, 15035, 15036, 15037, 15038, 15039, 15040	02/06/08 AMEND: 2708(c)-1
05/08/08	ADOPT: 66260.201 AMEND: 66260.10, 66261.9, 66273.1, 66273.3, 66273.6, 66273.8, 66273.9, 66273.12, 66273.13, 66273.14, 66273.20, 66273.32, 66273.33, 66273.34, 66273.40, 66273.51, 66273.53, 66273.56, 66273.82, 66273.83, 66273.90, Appendix X to Chapter 11	Title 22, MPP
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04/18/08	AMEND: 4410 REPEAL: 4410.5	Title 23
04/15/08	AMEND: 50960.2, 50960.4, 50960.6, 50960.9, 50960.12, 50960.15, 50960.21, 50960.23, 50960.26, 50960.29, 50960.32, 50960.34, 50960.36, 50962, 50963, 50964, 50965, 50966	05/13/08 ADOPT: 3919.3
03/27/08	AMEND: 12705(b)	05/12/08 AMEND: 3947

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03/10/08 ADOPT: 3919.2 28032, 28033, 28034, 28035, 25036,
02/28/08 ADOPT: 3919.1 28037, 28038, 28039, 28040 REPEAL:
02/11/08 ADOPT: 3939.27 12000, 12102, 12103, 12104, 12201,
02/08/08 ADOPT: 3939.28 12203, 12204, 12301, 12302, 12303,
02/08/08 ADOPT: 3939.30 12304, 12305, 12306, 12401, 12403,
02/05/08 ADOPT: 3939.29 12405, 12501, 12502, 12503, 12504,
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12707, 12709, 12711, 12713, 12721,
12801, 12803, 12805, 12821, 12900,
12901, 12902, 12903, 14000, 15001,
15002, 15003, 15004, 15006, 15007,
15008, 15009, 15010, 15011, 15012,
15013, 15014, 15015, 15016, 15017,
15018, 15019, 15020, 15021, 15022,
15023, 15024, 15025, 15026, 15027,
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04/02/08 ADOPT: 7201, 7205, 7205.1, 7205.2,
7205.3, 7206, 7207, 7209, 7211, 7215,
7225, 7231 AMEND: 7200, 7202, 7204,
7206 (renumbered to 7209.5), 7208,
7210, 7212, 7218 (renumbered to 7217),
7220, 7222, 7224, 7226, 7228, 7230,
7232, 7234, 7239 (renumbered to 7201)
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28007, 28008, 28009, 28010, 28011,
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28022, 28023, 28024, 28025, 28026,

03/21/08 AMEND: 15100, 15110, 15140, 15150,
15160, 15170, 15185, 15186, 15187,
15187.1, 15190, 15200, 15210, 15220,
15230, 15240, 15241, 15250, 15260,
15280, 15290, 15300, 15310, 15330,
15400.2, 15600

02/25/08 ADOPT: 21815 AMEND: 21780, 21790,
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21865, 22234, 22240, 22243, 22244,
22246, 22247, 22248, 22249, 22249.5,
22251, 22252, 22253, Division
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06/04/08 AMEND: 63-301