



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. STATE ALLOCATION BOARD

THE STATE ALLOCATION BOARD PROPOSES TO AMEND REGULATION SECTIONS 1859.2 AND 1859.90.2, ALONG WITH AN ASSOCIATED FORM, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO LEROY F. GREENE SCHOOL FACILITIES ACT OF 1998

FORM PROPOSED FOR AMENDMENT

Fund Release Authorization, Form SAB 50-05, (Revised 12/11 06/12), referenced in Regulation Section 1859.2.

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

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend the above-referenced regulation sections under the authority provided by Section 17070.35 of the Education Code. The proposal interprets and makes specific reference Sections 17072.12, 17072.30, 17074.16, 17076.10, 17077.40, 17077.42 and 17077.45 of the Education Code.

INFORMATIVE DIGEST/POLICY OVERVIEW STATEMENT

The Leroy F. Greene School Facilities Act of 1998 established, through Senate Bill 50, Chapter 407, Statutes of 1998, the School Facility Program (SFP). The SFP provides a per-pupil grant amount to qualifying school districts for purposes of constructing school facilities and modernizing existing school facilities. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were approved by the Office of Administrative Law (OAL) and filed with the Secretary of State on October 8, 1999.

The SAB, at its meeting on June 27, 2012, approved amendments to the SFP Regulations to improve the efficiency of the priority funding process by adjusting the priority funding filing periods and extending the length of time that priority funding requests remain valid. The proposed changes will allow sufficient review and processing time in advance of SAB meetings to approve State bond apportionments, and extend the validity of participation requests so that additional SAB meetings each year could take funding action upon the requests before they expire.

The starting dates for the 30-calendar day filing period to request participation in the Priority Funding Process will change for 2013 and subsequent years as follows:

<u>Current Regulations</u>	<u>Amended Regulations</u>
January 11, 2012	No change
July 11, 2012	No change
January 9, 2013	No change
2nd Wed. of July each year	2nd Wed. of July <u>May</u> each year
2nd Wed. of Jan. each year	2nd Wed. of Jan. <u>Nov.</u> each year

In addition, requests to participate in the Priority Funding Process will no longer become invalid at the start of the next 30-calendar day filing period. Starting in May 2013, requests to participate in the priority funding period will be valid from July 1 until December 31 of that year, and requests to participate in the November filing period will be valid from January 1 until June 30 in the following year. Further, the date adjustment to the priority funding filing periods (May and November) coincides with the timing of bond sales by the State Treasurer’s Office and therefore leads to the successful synchronization of the agencies involved in this process.

Background. The priority funding process re-prioritizes SFP apportionments for school construction projects that are “construction-ready,” meaning capable of submitting their fund release requests within a short time (90 days) following approval by the SAB. Applicants must certify that their projects are construction-

ready prior to receiving State bond funds. The purpose is to provide available State bond funds from bond sales and other available funding sources to the construction projects that can most readily commence construction, thereby helping to create jobs and stimulate the economy.

There have been four Priority Funding rounds to date:

1. The first Priority Funding Round was established by the SAB through emergency regulations at its May 26, 2010 meeting, and allowed the SAB to fund **\$408.14 million** of “construction-ready” school construction projects at its August 4, 2010 meeting. The SAB then adopted emergency regulations establishing future priority funding rounds, each to commence with a 30–calendar day application filing period. All school districts and charter schools with approved projects on the Unfunded List had the opportunity to apply each time the SAB established a 30–calendar day application filing period.

2. For the second Priority Funding Round, the SAB approved 488 project apportionments from December 2010 through February 2011. All but one participant requested and/or received their project funding, for a success rate of 99.92 percent and total release of **\$1.630 billion**.

3. The third Priority Funding Round followed the State Treasurer’s Office successful sale of General Obligation Bonds on October 19, 2011, providing nearly \$1 billion of bond funding for the SFP. In turn, the SAB approved **\$923.8 million** of apportionments to 154 school districts for 377 “shovel-ready” construction projects.

4. The most recent Priority Funding Round approved by the SAB, at its meeting on June 27, 2012, totaled **\$637.6 million** for construction-ready projects — 61 new construction projects, 97 modernization projects, and 40 projects from additional programs.

The efficiencies of the proposed regulatory amendments will help the Office of Public School Construction (OPSC), on behalf of the SAB, to continue to comply with the Department of Finance (DOF) Budget Letter #10–09, which stipulates that cash need estimates will be submitted to the DOF and the State Treasurer’s Office twice a year prior to each spring and fall bond sale period. The Budget Letter also stipulates that State bond funds previously received should be expended prior to the sale of additional bonds. This means that the OPSC must effectively and efficiently manage available bond proceeds by expediting SAB apportionment approvals.

The regulatory amendments are therefore consistent and compatible with State laws and regulations.

The proposed regulatory amendments, including an associated form, are as follows:

Existing Regulation Section 1859.2 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments change the revision date of Form SAB 50–05, *Fund Release Authorization*, to reflect a revision date of “06/12.”

Existing Regulation Section 1859.90.2 is described in the following five paragraphs:

1. It authorizes the SAB to establish 30–calendar day application filing periods for school districts and charter schools to apply for apportionments of available State school bond funds. Projects under the Charter School Facilities Program (CSFP) may apply for advance release of design funds from a Preliminary Charter School Apportionment. Projects under the Critically Overcrowded School (COS) Facilities Program may apply for advance release of environmental hardship site acquisition funds.

2. School districts and charter schools must submit the Form SAB 50–05, “Fund Release Authorization,” with an original signature, within 90 calendar days of the Board’s approval of the apportionment; failure to make this submittal and have it physically received by the OPSC within 90 calendar days will result in rescission of the project without further Board action. School districts/charter schools wishing to participate must provide a written statement signed by the authorized district representative within the 30–calendar day filing period that contains all of the following:

- Request to convert the unfunded approval to an apportionment;
- Concurrence with the 90–calendar day time limit on fund release;
- Acknowledgement that failure to submit a valid Form SAB 50–05, with an original signature, to be physically received by the OPSC within the 90–calendar day time limit will result in the rescission of the apportionment without further Board action; and
- Acknowledgement that by participating in the priority funding round, the school district/charter school is waiving its right to a standard 18–month timeline for fund release submittal.

3. Projects under the CSFP may apply for advance release of site acquisition funds from a Preliminary Charter School Apportionment, subject to a timeline of 180 calendar days, for school districts/charter schools to file their request for fund release, Form SAB 50–05, with the specific requirements to provide a written statement signed by an authorized representative within the 30–calendar day filing period that contains all of the following:

- Requests to convert the advance release of funds to an approved advance release of funds,

- Concurs with the 180–calendar day timeline to submit the fund release request,
- Acknowledges the participant’s requirement to submit a valid, signed Form SAB 50–05 to be physically received by the OPSC within the 180–calendar day time limit, and failure to do so will result in the rescission of the approved advance release of funds request without further Board action, and
- Acknowledges that the participant must provide evidence of entering into the Charter School Agreements within 90 calendar days of the approval of the advance release of funds request, and failure to do so will result in the rescission of the approval without further Board action.

4. All requests to participate in the priority funding process must be physically received by the OPSC by the 30th calendar day to be valid. All submittals of fund release requests, Form SAB 50–05, must be physically received by the OPSC within the applicable 90– or 180–calendar day time periods.

5. For the purposes of this section, the word “rescinded” or “rescission” means that the apportionment or approved advance release of funds request returns to unfunded approval status with a new unfunded approval date. The new unfunded approval date will be 90 calendar days after the apportionment date. The school district/charter school will not be required to re–submit the application and no further application review will be required.

The proposed regulatory amendments to Section 1859.90.2 are described in the following nine paragraphs:

1. Requests to participate submitted during 30–calendar day filing periods are called “Requests” and no longer called “Certifications.”

2. Starting in May 2013 and annually thereafter, 30–calendar day filing periods will begin on the second Wednesday of May and November and no longer on the second Wednesday of January and July.

3. For the 30–calendar day filing period beginning on January 9, 2013, requests to participate in the priority funding process will be valid until June 30, 2013.

4. For the 30–calendar day filing period commencing on the second Wednesday of May 2013 and all filing periods thereafter, requests to participate in the priority funding process will no longer become invalid at the start of the next 30–calendar day filing period; instead, requests submitted in the May filing period will be valid from July 1 until December 31 of that year, and requests submitted in the November filing period will be valid from January 1 until June 30 of the following year.

5. Words are inserted clarifying that school districts or charter schools request funding and meet time limits

pursuant to existing subsections (a) or (b), as applicable.

6. Clarification is added that the existing criteria listed under subsections (a) and (b), respectively, are the required contents of a priority funding request.

7. Two criteria under subsection (a) describing the 90–calendar day time limit on fund release are merged into one criterion, with additional clarifying words.

8. Two criteria under subsection (b) describing the 180–calendar day time limit on fund release are merged into one criterion, with additional clarifying words.

9. Clarification is added that submitted Forms SAB 50–05 must be “valid” as well as bearing original signatures.

Existing Form SAB 50–05, *Fund Release Authorization*, is the Form submitted by school districts and charter schools requesting the State to release their approved funding, provided the project is at least 50 percent under contract and the school district has met other specific criteria. The proposed amendments change “Section 1859.90.1” to “Section 1859.90.3” in one of the Certifications (page 3, sixth bullet) because previously adopted regulatory actions have added new Sections 1859.90.1 and 1859.90.2, causing the referenced Section to be renumbered as “1859.90.3.”

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

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

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

The Executive Officer of the SAB has made the following initial determinations relative to the required statutory categories:

- The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- The proposed regulatory amendments will have a minimal impact in the creation or elimination of jobs within the State, the creation of new businesses or the elimination of existing

businesses or the expansion of businesses in California. Specifically, the proposed amendments would facilitate in expediting the apportionment of school bond funding for construction-ready projects on a more continuous basis, thereby creating or maintaining construction-related jobs that assist in the recovery of the State's economy.

- The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- The proposed regulations do not require a report to be submitted other than as required by law. However, projects participating in the Priority Funding Process must comply with the existing SFP Regulation requirements for document reviews and submittals.
- There will be no non-discretionary costs or savings to local agencies.
- The proposed regulations create no costs to school districts and charter schools beyond those required by law, except for the required school district/charter school contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.
- The proposed regulations create no costs or savings to any State agency beyond those required by law.
- The SAB has made an initial determination that there will be no impact on housing costs.
- The proposed regulatory action promotes fairness to the SAB-administered programs by providing available funding on a more accessible, continuous basis for those projects participating in priority funding rounds.

EFFECT ON SMALL BUSINESSES

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

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S.

mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax must be received at the OPSC no later than October 22, 2012, at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

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

Robert Young,
Regulations Coordinator
Office of Public
School Construction
707 Third Street, Room 1-430
West Sacramento, CA 95605
E-mail Address: robert.young@dgs.ca.gov
Fax No.: (916) 376-5332

AGENCY CONTACT PERSONS

General or substantive questions regarding this Notice of Proposed Regulatory Action may be directed to Robert Young at (916) 375-5939. If Mr. Young is unavailable, these questions may be directed to the backup contact person, Lisa Jones, Supervisor, Regulations Team, at (916) 376-1753.

ADOPTION OF REGULATIONS

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

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

SUBSTANTIAL CHANGES WILL REQUIRE A
NEW NOTICE

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

RULEMAKING FILE

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

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

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

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF THE FINAL STATEMENT
OF REASONS

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

TITLE 10. DEPARTMENT OF
INSURANCE

**January 1, 2013 Workers' Compensation Claims
Cost Benchmark and Pure Premium Rates**

File No. REG-2012-00016

Notice Date: August 28, 2012

Approval of the Workers' Compensation Advisory Pure Premium Rates and proposed revisions to the Insurance Commissioner's Regulations pertaining to the Classification of Risks, Recording and Reporting of Data, Statistical Reporting and Experience Rating to be effective January 1, 2013.

NOTICE AND SUBJECT OF PUBLIC HEARING

Notice is hereby given that the Insurance Commissioner will hold a public hearing in response to a filing, submitted on August 21, 2012, by the Workers' Compensation Insurance Rating Bureau of California ("WCIRB") to consider the following:

- Approval of the Workers' Compensation Claims Cost Benchmark and advisory pure premium rates developed by the WCIRB as a rating organization on behalf of its member insurers.
- Approval of amendments to the California Workers' Compensation Uniform Statistical Reporting Plan — 1995 as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.
- Approval of amendments to the Miscellaneous Regulations for the Recording and Reporting of Data — 1995 as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.
- Approval of amendments to the California Workers' Compensation Experience Rating Plan — 1995 as proposed by the WCIRB as the Insurance Commissioner's designated statistical agent.

HEARING DATE AND LOCATION

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 matters proposed in the WCIRB's filing, at the following date, time and place:

September 24, 2012 — 9:30 a.m.

California Department of Insurance

22nd Floor Hearing Room

45 Fremont Street

San Francisco, California

AUTHORITY AND REFERENCE

Uniform Plans and Regulations

The workers' compensation classification of risks and statistical reporting rules are set forth in Title 10, California Code of Regulations, Section 2318.6. The miscellaneous regulations for the recording and reporting of data are set forth in Title 10, California Code of Regulations, Section 2354. The workers' compensation experience rating regulations are set forth in Title 10, California Code of Regulations, Section 2353.1. The regulations are promulgated by the Insurance Commissioner pursuant to the authority granted by Insurance Code Section 11734.

Workers' Compensation Claims Cost Benchmark and Pure Premium Rates

Pursuant to Insurance Code Section 11750.3, a rating organization is permitted to develop pure premium rates for each employee classification on behalf of its member insurers for submission to the Insurance Commissioner for issuance or approval. In addition to the proposed changes to the individual classification pure premium rates, the WCIRB submits an average pure premium rate for all employer classifications that is intended to measure the overall costs in the California worker's compensation system that is designated as the Workers' Compensation Claims Cost Benchmark.

The Insurance Code provisions regarding State workers' compensation insurance rate supervision state that the pure premium rates issued or approved by the Insurance Commissioner are advisory only and do not authorize the Insurance Commissioner to require insurers to use the pure premium rates issued or approved by the Insurance Commissioner. These pure premium rates are an estimate of future workers' compensation claims costs. However, all insurers must submit their rates for review to the Insurance Commissioner prior to their use, and an insurer's filed workers' compensation rates are public information.

Advisory Rating Plans

Pursuant to Insurance Code Sections 11750.3(a) and 11750.3(c), a licensed rating organization may promulgate advisory plans in connection with pure premium rates and the administration of classification and rating systems and present them to the Insurance Commissioner for review.

INFORMATIVE DIGEST

Pursuant to Insurance Code Sections 11750 and 11750.3, the WCIRB has developed and submitted for the Insurance Commissioner's approval pure premium rates for use by its member insurers. The pure premium rates are advisory only, and insurers may use any set of

pure premium rates that are identified in the insurer's rate filing.

Pursuant to Insurance Code Sections 11734 and 11751.5, the Insurance Commissioner has designated the WCIRB as a statistical agent. As the designated statistical agent, the WCIRB collects insurer data and recommends revisions to the California Workers' Compensation Uniform Statistical Reporting Plan — 1995; the Miscellaneous Regulations for the Recording and Reporting of Data — 1995; and the California Workers' Compensation Experience Rating Plan — 1995 for approval. Adherence to the regulations contained in the California Workers' Compensation Uniform Statistical Reporting Plan — 1995, the Miscellaneous Regulations for the Recording and Reporting of Data — 1995, and the California Workers' Compensation Experience Rating Plan — 1995 is mandatory for insurers. However, with regard to the standard classification system developed by the WCIRB and approved by the Insurance Commissioner, Insurance Code Section 11734 provides that an insurer may develop its own classification system if it is filed with the Insurance Commissioner 30 days prior to its use and is not disapproved by the Insurance Commissioner for failure to demonstrate that the data produced by the insurer's classification system can be reported consistently with the California Workers' Compensation Uniform Statistical Reporting Plan — 1995 or the standard classification system developed by the WCIRB and approved by the Insurance Commissioner.

The pure premium rates recommended by the WCIRB to be effective January 1, 2013, as well as amendments to the California Workers' Compensation Uniform Statistical Reporting Plan — 1995, the Miscellaneous Regulations for the Recording and Reporting of Data — 1995, and the California Workers' Compensation Experience Rating Plan — 1995 are detailed in the WCIRB's filing and summarized below.

APPROVAL OF PURE PREMIUM RATES

Pursuant to California Insurance Code Section 11750.3, the WCIRB has proposed advisory pure premium rates for approval by the Insurance Commissioner to be effective January 1, 2013 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2013. The WCIRB has compared the proposed 2013 pure premium rates to the industry average filed pure premium rates as directed by the Insurance Commissioner. The proposed advisory pure premium rates for the 493 standard classifications proposed to be effective January 1, 2013 average \$2.68 per \$100 of payroll; this is 12.6% higher than the corresponding industry average filed pure premium rate of \$2.38 as of July 1, 2013.

The proposed January 1, 2013 pure premium rates do not reflect any provision for the comprehensive workers' compensation legislation that is currently under consideration by the California Legislature. To the extent legislation is enacted that significantly impacts the cost of losses and loss adjustment expenses on policies incepting in 2013, the WCIRB will evaluate the cost impact of the legislation and submit an amended set of proposed January 1, 2013 advisory pure premium rates by the time of the public hearing on this filing. Similarly, the WCIRB will be reviewing accident-year experience valued as of June 30, 2012 once it is received and, if appropriate, will amend the pure premium rates proposed in this filing.

The proposed pure premium rates for each classification are based on (1) insurer losses incurred during 2011 and prior accident years valued as of March 31, 2012; (2) insurer loss-adjustment expenses for 2011 and prior years; (3) the experience rating off-balance correction factor; and (4) classification payroll and loss experience reported for policies issued in 2009 and prior years.

AMENDMENTS TO THE CALIFORNIA WORKERS' COMPENSATION UNIFORM STATISTICAL REPORTING PLAN — 1995

The WCIRB recommends that the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan — 1995 become effective January 1, 2013 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2013.

- Amend Part 2, *Policy Document Filing Requirements*, Section I, *General Instructions*, Rule 3, *Cancellations or Reinstatements*, for consistency with standard national data reporting specifications.
- Amend the *Special Industry Classification Procedures* for clarity and to provide that an employee's unpaid meal break does not need to be recorded in time cards or time books if the meal period represents a time in which all of the employer's operations at the job location cease for a uniform unpaid break period.
- Amend the minimum and maximum payroll limitations for executive officers, partners, individual employers and members of a limited liability company, as well as other payroll limitations relevant to specific classifications (e.g., athletic teams and entertainment classifications) to reflect the increase in wage levels that has occurred since the minimum and maximum payroll limitations were amended on January 1, 2012.

- Amend the dual wage construction classifications noted below to increase the wage threshold based on the WCIRB's 2011 and 2012 studies of dual wage classification thresholds:
 - a. *Carpentry* (Classifications 5403/5432) from \$26 to \$29 (2011 study)
 - b. *Electrical Wiring* (Classifications 5190/5140) from \$28 to \$30 (2011 study)
 - c. *Glaziers* (Classifications 5467/5470) from \$26 to \$29 (2012 study)
 - d. *Masonry* (Classifications 5027/5028) from \$24 to \$27 (2012 study)
 - e. *Plumbing* (Classifications 5183(1)/5187(1)) from \$24 to \$29 (2011 study)
 - f. *Refrigeration Equipment* (Classifications 5183(2)/5187(2)) from \$24 to \$29 (2011 study)
 - g. *Sheet Metal Work* (Classifications 5538/5542) from \$25 to \$28 (2011 study)
 - h. *Steel Framing* (Classifications 5632/5633) from \$26 to \$29 (2011 study)
 - i. *Wallboard Application* (Classifications 5446/5447) from \$26 to \$31 (2012 study)
- Amend Classification 7428(3), *Aircraft Remanufacture, Conversion, Modification and Repair Companies — not engaged in the original manufacturing of aircraft*, to clarify that it includes the repair and rebuilding of aircraft components when the employer works directly on the aircraft.
- Establish a cross-reference for *Alcohol and Drug Recovery Homes* for ease of reference.
- Amend the cross-references for Classifications 8804(1) *Alcoholic and Drug Recovery Homes*, 8807, *Newspaper, Magazine or Book Publishing — no printing* and 4354, *Printed Circuit Board Mfg.*, for consistency.
- Amend Classification 8391, *Automobile or Automobile Truck Dealers — all employees other than automobile or automobile truck salespersons*, to specify the classification procedure applicable to automobile dealers that do not have a separate clerical office and a regular sales force in addition to proprietors and for clarity.
- Amend Classification 8748, *Automobile or Automobile Truck Salespersons*, for clarity and consistency.
- Amend Classification 8078(2), *Beverage Preparation Shops*, to add tea or tea-based beverages to the list of beverages that are typically served by firms assigned to this classification.

- Amend Classification 5146(1), *Cabinet or Fixtures — portable; interior trim*, to direct that the installation of doors, door frames and sash shall be assigned to Classification 5107, *Door, Door Frame or Pre-Glazed Window Installation — not overhead doors*.
- Amend Classifications 8840, *Churches — clergy, professional assistants, organists, or members of choir*, and 9015(4), *Churches — all employees other than clergy, professional assistants, organists, members of choir or Clerical Office Employees*, to direct that overnight camps, including clerical office employees at the camp locations, shall be separately classified as 9048(1), *Camps — recreational or educational*, and that child day care centers whereby services are provided to the public for a fee shall be separately classified as 9059, *Day Care Centers*.
- Amend a number of classifications related to clubs to include front desk employees for clarity and consistency.
- Establish Classification 3724(3), *Concrete Sawing or Drilling — N.O.C.*, for specialty contractors engaged exclusively in concrete sawing or drilling at a specific job site or location.
- Eliminate Classification 5207, *Dam Construction — concrete*, as it is no longer statistically credible.
- Amend Classification 6011, *Dam Construction — N.O.C.*, to remove the N.O.C. reference and provide that this classification includes dam repair, alteration, seismic retrofitting and demolition.
- Establish a cross-reference to indicate that Classification 8019(2), *Document Duplication or Photocopying Service — all employees*, is listed under the *Printing, Publishing and Duplicating* Industry Group.
- Amend Classifications 2586(1), *Dry Cleaning or Dyeing — N.O.C.*, 2589, *Dry Cleaning or Laundry — retail*, and 2585, *Laundries — N.O.C.*, for clarity and consistency.
- Amend Classification 8804(1), *Alcoholic and Drug Recovery Homes — all employees*, within the *Health and Human Services* Industry Group, to reflect terminology currently used in the health and human services industry.
- Amend Classification 8851, *Congregate Living Facilities for the Elderly — no care or supervision*, within the *Health and Human Services* Industry Group, to describe the principal types of assisted care services that are provided by employers assigned to Classification 9070(1), *Residential Care Facilities for the Elderly*.
- Amend Classifications 9070(1) *Residential Care Facilities for the Elderly — N.O.C.*, and 9070(3), *Residential Care Facilities for Adults — N.O.C.*, within the *Health and Human Services* Industry Group, for clarity and consistency.
- Amend Classification 8804(2), *Social Rehabilitation Facilities for Adults — all employees*, within the *Health and Human Services* Industry Group, to include the specific types of facilities that are assigned to this classification.
- Amend Classifications 9050(1), *Hotels*, and 9050(2), *Motels*, to clarify that they include concierge services and retail operations; that employees who prepare and serve hot food in connection with complimentary breakfasts, work in food and beverage departments, and deliver food or restock in-room refrigerators, provided such employees perform no hotel or motel duties are assignable to Classification 9079(1), *Restaurants or Taverns*; and that employees who perform restaurant or tavern activities and hotel or motel activities shall be assigned to Classification 9050.
- Establish cross-references to indicate that Classifications 9410, *Municipal, State or Other Public Agency Employees — not engaged in manual labor, or direct supervision of construction or erection work*, and 9420, *Municipal, State or Public Agency Employees — all other employees*, are listed under the *Municipal, State or Other Public Agencies* Industry Group.
- Amend Classification 8807, *Newspaper, Magazine or Book Publishing — no printing*, within the *Printing, Publishing and Duplicating* Industry Group, to clarify that it does not apply to publishing firms that perform distribution operations.
- Amend Classification 9079(1), *Restaurants or Taverns — all employees*, for clarity.
- Amend Classification 8078(1), *Sandwich Shops — not restaurants*, to (1) include stores that prepare and sell fresh, unbaked pizzas; (2) provide that this classification contemplates incidental warming of cold food items using microwave ovens; toaster ovens or heat lamps and the preparation of sandwiches with meats that are kept warm in a steam table; and (3) provide direction with respect to preparing and serving hot food.
- Amend Classification 7365, *Taxicab Operations — all employees*, to increase the minimum annual payroll per taxicab from \$29,200 per year to \$29,800 to reflect wage inflation since the last time the amount was adjusted on January 1, 2012.

- Amend the Table of *Abbreviated Classifications — Numeric Listing*, and Appendix II, *Construction and Erection Classifications*, for consistency.
- Amend a number of unit statistical reporting requirements for clarity, consistency and to conform to national data reporting specifications.

The WCIRB recommends that the following revisions to the California Workers' Compensation Uniform Statistical Reporting Plan — 1995 become effective January 1, 2014 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2014.

- Amend Part 3, *Standard Classification System*, Section VI, *Administration of Classification System*, Rule 4, *Audit of Payroll*, to require that a high wage dual wage classification be allowed for policies with a final premium of less than \$10,000 only if a physical audit, as defined, is conducted on new business or renewal business that has not been subject to a physical audit by the insurer during the prior two years.

AMENDMENTS TO MISCELLANEOUS REGULATIONS FOR THE RECORDING AND REPORTING OF DATA — 1995

The WCIRB recommends that the following revisions to the Miscellaneous Regulations for the Recording and Reporting of Data — 1995 become effective January 1, 2013 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2013:

- Amend Part 1, *General Provisions*, Section III, *Inquiries, Complaints and Requests for Action, Reconsideration and Appeals*, for clarity and consistency with the California Workers' Compensation Uniform Statistical Reporting Plan — 1995 and California Workers' Compensation Experience Rating Plan — 1995.

AMENDMENTS TO CALIFORNIA WORKERS' COMPENSATION EXPERIENCE RATING PLAN — 1995

The WCIRB recommends that the following revisions to the California Workers' Compensation Experience Rating Plan — 1995 become effective January 1, 2013 with respect to new and renewal policies as of the first anniversary rating date of a risk on or after January 1, 2013.

- Amend the experience rating eligibility, expected loss rates, and D-ratios to reflect the most current data available.
- Amend the table of credibility values to reflect the WCIRB's 2012 analysis of experience rating credibilities.

WCIRB ADVISORY PLANS

CALIFORNIA RETROSPECTIVE RATING PLAN

The WCIRB has adopted the following revisions to the California Retrospective Rating Plan. The amendments will become effective January 1, 2013:

Amended to reflect updated rating values, reduce the eligibility for the large-risk alternative rating option to reflect premium level changes since 2003 and for clarity and consistency.

CALIFORNIA LARGE RISK DEDUCTIBLE PLAN

The WCIRB has adopted the following revisions to the California Large Risk Deductible Plan. The amendments will become effective January 1, 2013:

Amended to reflect updated rating values and for clarity and consistency.

COSTS OR SAVINGS RESULTING FROM THE REGULATIONS

The Insurance Commissioner is authorized by law to issue or approve advisory pure premium rates. These pure premium rates may be adopted by workers' compensation insurers. To the extent they are adopted by insurers, it is unknown whether or not it may result in additional costs or savings to employers for workers' compensation insurance since insurers set their rates independently.

The amendments to the California Workers' Compensation Uniform Statistical Reporting Plan — 1995, the Miscellaneous Regulations for the Recording and Reporting of Data — 1995, and the California Workers' Compensation Experience Rating Plan — 1995 may result in additional costs or savings that depend upon many factors and are specific to each employer, such as, but not limited to, the rates filed by the insurer, whether an employer is above or below the experience rating eligibility threshold, the employer's claim experience, or the operations or classifications of employees of the employer.

COST OR SAVINGS AND MANDATE TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Insurance Commissioner cannot determine whether or not there may be a cost or savings to local

agencies and school districts. There will not be any new programs mandated on any local agencies or school districts as a result of the proposed regulations, if adopted as proposed herein. The Insurance Commissioner is authorized by law to issue or approve advisory pure premium rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, it is unknown whether or not it may result in additional costs or savings to employers for workers' compensation insurance since insurers set their rates independently.

The amendments to the California Workers' Compensation Uniform Statistical Reporting Plan — 1995, the Miscellaneous Regulations for the Recording and Reporting of Data — 1995, and the California Workers' Compensation Experience Rating Plan — 1995 may result in additional costs or savings that depend upon many factors and are specific to each employer, such as, but not limited to, the rates filed by the insurer, whether an employer is above or below the experience rating eligibility threshold, the employer's claim experience, or the operations or classifications of employees of the employer.

IMPACT ON HOUSING COSTS

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

IMPACT ON SMALL BUSINESSES

The Insurance Commissioner cannot determine whether or not the proposed regulations may have an effect on small businesses. The Insurance Commissioner is authorized by law to issue or approve advisory pure premium rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, it is unknown whether or not it may result in additional costs or savings to employers for workers' compensation insurance since insurers set their rates independently.

The amendments to the California Workers' Compensation Uniform Statistical Reporting Plan — 1995, the Miscellaneous Regulations for the Recording and Reporting of Data — 1995, and the California Workers' Compensation Experience Rating Plan — 1995 may result in additional costs or savings that depend upon many factors and are specific to each employer, such as, but not limited to, the rates filed by the insurer, whether an employer is above or below the experience rating eligibility threshold, the employer's claim experience, or the operations or classifications of employees of the employer.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by the proposal. At this time, the Insurance Commissioner expects that the proposed regulations may have an effect on private persons or entities, though its significance is unknown. The Insurance Commissioner is authorized by law to issue or approve advisory pure premium rates. These rates may or may not be adopted by workers' compensation insurers. To the extent they are adopted by insurers, it is unknown whether or not it may result in additional costs or savings to employers for workers' compensation insurance since insurers set their rates independently.

The amendments to the California Workers' Compensation Uniform Statistical Reporting Plan — 1995, the Miscellaneous Regulations for the Recording and Reporting of Data — 1995, and the California Workers' Compensation Experience Rating Plan — 1995 may result in additional costs or savings that depend upon many factors and are specific to each employer, such as, but not limited to, the rates filed by the insurer, whether an employer is above or below the experience rating eligibility threshold, the employer's claim experience, or the operations or classifications of employees of the employer.

FEDERAL FUNDING TO THE STATE

The matters proposed herein will not affect any federal funding.

NON-DISCRETIONARY COSTS OR SAVINGS

The proposed regulations will not impose any non-discretionary costs or savings to local agencies.

COST OR SAVINGS TO STATE AGENCIES

The matters proposed herein will not result in any cost or savings to State agencies.

REIMBURSABLE COSTS

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.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO HEARING ROOMS

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

PRESENTATION OF ORAL AND/OR WRITTEN COMMENTS

All persons are invited to submit written comments to the Insurance Commissioner prior to the public hearing on the proposed amendments contained in the WCIRB's filing. Such comments should be addressed to:

California Department of Insurance
Attn: Christopher A. Citko
Senior Staff Counsel
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3187
(916) 324-1883 (FAX)
citkoc@insurance.ca.gov

Any interested person may present oral and/or written testimony at the scheduled public hearing. Written comments and oral testimony will be given equal weight in the Insurance Commissioner's deliberations.

DEADLINE FOR WRITTEN COMMENTS

All written material, unless submitted at the hearing, must be received by the Insurance Commissioner at the address, FAX number, or email address listed above no later than 5:00 p.m. on September 24, 2012. Additional time to submit written material may be allowed at the time of hearing, or may be granted on or before September 24, 2012, upon a showing of good cause.

TEXT OF REGULATIONS AND STATEMENT OF REASONS AVAILABLE

The Insurance Commissioner has prepared an Initial Statement of Reasons for the proposed regulations, in addition to the informative digest included in this Notice of Proposed Action and Notice of Public Hearing. The express terms of the proposed regulations as contained in the WCIRB's filing, the Notice of Proposed Action and Notice of Public Hearing and the Initial Statement of Reasons will be made available for inspection or provided without charge upon written request to the contact person for these hearings (listed above). The filing may be viewed or downloaded from the Regula-

tory Filings section of the WCIRB website (www.wcirbonline.org).

ACCESS TO RULEMAKING FILE, CONTACT

Any interested person may inspect a copy of or direct questions about the proposed regulations or other matters relative to the WCIRB's filing, the statement of reasons thereof, and any supplemental information contained in the rulemaking file upon application to the contact person (listed above). The rulemaking file will be available for inspection at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the informative digest that contains the general substance of the proposed regulations, automatically will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings, and California Government Code mailing lists.

ADOPTION OF REGULATIONS

Following the hearing, the Insurance Commissioner may adopt or approve regulations substantially as described in this Notice and informative digest or he may adopt or approve modified regulations. He also may refuse to adopt or approve the regulations. Notice of the Insurance Commissioner's action will be sent to all persons on the Insurance Commissioner's Bulletins and Rulings mailing list and to those persons who have otherwise requested notice of the Commissioner's action.

TITLE 11. COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Amend and Update the Aviation Security Course Commission Regulation 1081

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Division 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 October 22, 2012, at 5:00 p.m.

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) 227-6932 or by letter to the:

Commission on POST
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.

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) — POST authority to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

At its June 28, 2012 meeting, the Commission approved proposed amendments to Commission Regulation 1081. The proposed changes included:

- Updating the minimum course content in 1081, Minimum Standards for Legislatively Mandated Courses, Aviation Security.

Penal Code §13510 requires that POST develop guidelines and a course of instruction and training for law enforcement officers to ensure officer competency. This proposed action will amend the required course content of the Aviation Security Course to make sure officers are aware of the current issues surrounding Aviation Security.

The specific benefits anticipated by the proposed amendments to the regulations will be to update the minimum content for the Aviation Security Course. There would be no effect to benefits in regard to public health and safety, worker safety, or the environment, the

prevention of discrimination, and the increase in openness and transparency in business and government.

An evaluation has found that the proposed changes to regulation are consistent or compatible with existing state regulations.

All changes to the curriculum begin with recommendations from law-enforcement practitioners or in some cases via legislative mandates. POST then facilitates meetings attended by curriculum advisors and subject matter experts who provide recommended changes to the existing curriculum. The completed work of all committees is presented to the POST Commission for final review and adoption. Upon adoption of the proposed amendments, course presenters will be required to teach and test to the updated curriculum. The proposed effective date is January 1, 2013.

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 creation of new businesses, the elimination of existing businesses, or the expansion of businesses in the state of California.

**RESULTS OF ECONOMIC IMPACT
ASSESSMENT PER GOV. CODE SEC. 11346.3**

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

There would be no benefit of proposed amendments of regulations to the health and welfare of California residents or any impact which would affect worker safety or the state's environment.

**COST IMPACT 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.

CONSIDERATION OF ALTERNATIVES

To take this action, the Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of the law.

CONTACT PERSON

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

Alexis Blaylock
Commission on POST
1601 Alhambra Boulevard
Sacramento, CA 95816-7083
(916) 227-3935 or Alexis.Blaylock@post.ca.gov
FAX (916) 227-6932

or

Patti Kaida
Commission on POST
1601 Alhambra Boulevard
Sacramento, CA 95816-7083
(916) 227-4847 or Patti.Kaida@post.ca.gov
FAX (916) 227-5271

TEXT OF PROPOSAL

Individuals may request copies of the exact language of the proposed regulations and of 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/regulatory-actions.aspx>.

**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 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 named above.

**TITLE 14. BOARD OF FORESTRY AND
FIRE PROTECTION**

**“Class II–L Identification Methods Amendments,
2012”**

**Title 14 of the California Code of Regulations
(14 CCR),**

**Division 1.5, Chapter 4, Subchapters 4, 5, 6,
Article 6 — Watercourse and Lake Protection**

Amend:

§§916.9[936.9, 956.9](c)(4)

**Protection and
Restoration in
Watersheds
with Threatened or
Impaired Values.**

§§916.9[936.9, 956.9](g)

**Class II
Watercourses**

The California State Board of Forestry and Fire Protection (Board) is promulgating a regulation to

amend existing Forest Practice Rules. The proposed amendments are intended to clarify the Board's intent with regard to identification and protection of watercourses designated as "Class II-Large" (Class II-L).

PUBLIC HEARING

The Board will hold a public hearing on Wednesday, November 7, 2012, starting at 8:00 a.m., at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code §11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 p.m., on Monday, October 22, 2012. The Board will consider only written comments received at the Board office by that time and those written comments received in connection with oral testimony at the public hearing. The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand-delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Public Resources Code Sections 4551 and 4562.7. Reference: Public Resources Code Sections 4512, 4513, and 4551.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board is authorized under Public Resources Code Sections 4551 and 4562.7 to adopt Forest Practice Rules for the protection of streams. Public Resources Code Section 4562.7 requires, among other things, that the Board of Forestry and Fire Protection (Board) adopt rules to prevent "unreasonable effects on the beneficial uses of the waters of the state." In September 2009, the Board adopted a comprehensive revision of watercourse protection rules for timber operations now commonly referred to as the "Anadromous Salmonid Protection Rules." These Rules included the new designation of a "Class II-Large" (Class II-L) watercourse to be differentiated from the previously existing "standard Class II" (Class II-S) watercourse.

During the initial implementation phase of the Board's newly adopted regulations, members of the regulated public expressed concerns about the Department of Forestry and Fire Protection's (CAL FIRE's) interpretation and enforcement of the Class II-L identification and minimum protection distance provisions. Specifically, it was contended that CAL FIRE's interpretation of the Class II-L regulations did not conform to the plain-English reading of the Rule text. As the Class II-L protection requirements are more restrictive than the Class II-S requirements, the implications of CAL FIRE's allegedly more inclusive interpretation of the Class II-L provisions appeared to be significant.

Based upon the testimony received by the Board from both the regulated public and regulatory agencies, it appears that the adopted Class II-L rule language has resulted in significant differences of opinion. The confusion and controversy exhibited in the testimony at numerous meetings leads the Board to conclude that a rule amendment to further clarify the intent and implementation of the Class II-L identification provisions should be considered.

The most significant benefit anticipated from the adoption of the regulation is an immediate improvement in regulatory certainty for owners and managers of commercial timberland. The proposed regulation is the result of ongoing dispute over the interpretation of

an existing rule section. At a minimum, this dispute will be resolved as a result of the proposed action.

Whether or not adoption of the proposed regulation will have an effect on the level of environmental protection is unclear. It is unknown just how many Class II watercourse segments would be affected by the proposed regulations. The maximum protection distance has been clarified in the proposed regulation to be 1,000 feet or the total length of Class II watercourse. This is understood to be an increase in the protection distance, though this same distance appears to have been imposed under the existing regulations as well. Regardless, it may be presumed that the level of protective effect upon the environment will not be reduced as a result of this proposed regulation. This is largely due to the combined effect of the entire Forest Practice Rule Article from which the proposed regulation has been excerpted for clarifying improvement.

The proposed regulation is not expected to have an effect upon public health and safety, worker safety, the prevention of discrimination, or the promotion of fairness or social equity. Neither is the proposed regulation expected to result in an increase in the openness and transparency in business and government.

The proposed regulation is consistent and compatible with existing Forest Practice Rules for identification and protection of watercourses and lakes.

- Cost impacts on representative private persons or businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The cost of timber harvest planning and operational mitigations are not likely to be significantly affected by the proposed regulation.
- Effect on small business: No effect to small business is anticipated as the proposed rulemaking attempts to promote regulatory certainty through adoption of clarifying rule amendments to existing rule sections.
- Mandate on local agencies and school districts: None.
- Costs or savings to any State agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC §17500: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Cost or savings in federal funding to the State: None.
- Significant effect on housing costs: None.
- The proposed rules do not conflict with, or duplicate Federal regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

- The results of the economic impact assessment prepared pursuant to GC §11346.5(a)(10) for this proposed regulation indicate that it will not result in an adverse economic impact upon the regulated public or regulatory agencies.
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- While it may be speculated that the proposed regulation could benefit the environment, it is not expected to affect the health and welfare of California residents or improve worker safety.
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code §11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 616-8643

The designated backup person in the event Mr. Huff is not available is Mr. George Gentry, Executive Officer of the California Board of Forestry and Fire Protection, at the above address and phone.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request. When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above-referenced information is also available on the Board web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text — with the changes clearly indicated — available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

a) testified at the hearings,

- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

GENERAL PUBLIC INTEREST

DEPARTMENT OF HEALTH CARE SERVICES

Revised Quality Assurance Fee for Skilled Nursing Facilities Effective January 01, 2012

Health and Safety Code Section 1324.20(4)(A), mandated by Assembly Bill X1 19 (Chapter 4, Statutes of 2011) provides that beginning with the 2011-12 rate year, and every rate year thereafter, a unit that provides freestanding pediatric subacute care services in a skilled nursing facility, shall not be exempt from the quality assurance fee (QAF) requirements.

The Department of Health Care Services (DHCS) obtained approval from the Centers for Medicare and Medicaid Services on June 18, 2012 for the inclusion of pediatric subacute facilities, which requires the QAF per diem to be revised for all non-exempt Freestanding Skilled Nursing Facilities and Freestanding Skilled Adult Subacute Nursing Facility Level Bs (SNF-Bs).

QAF IMPOSED

Effective retroactively for date of service on or after January 01, 2012, DHCS will collect the following revised QAF per diem:

- FS/NF-Bs with total annual resident days equal to or greater than 100,000 — \$13.46 per resident day.
- FS/NF-Bs with total annual resident days less than 100,000 — \$14.42 per resident day.

Claims paid at the prior QAF per diem for services rendered on or after January 1, 2012, will be reprocessed for retroactive rate adjustments. Information pertaining to the implementation of the repayment process (timeframe of payments/claims) will be posted on the Long Term Care Reimbursement AB 1629 page of the DHCS website.

DHCS, Third Party Liability Division will send a notice to each non-exempt FS/NF-B.

Providers may submit questions by e-mail to AB1629@dhcs.ca.gov or by telephone at (916) 552-8613.

For payment invoice questions you may contact the FS/NF-B QAF coordinator by calling (916) 650-0583 and you will be directed to your facility's representative.

PUBLIC REVIEW AND COMMENTS

A copy of the California Health and Safety Code sections 1324.20 through 1324.30 may be requested from, and any comments may be sent to:

Mr. Grant Gassman, RM II
Long Term Care Section
Department of Health Care Services
1501 Capitol Avenue, Suite 71.4001
MS 4612
P.O. Box 997417
Sacramento, CA 95899-7417

PETITION DECISIONS

DEPARTMENT OF MANAGED HEALTH CARE

SENT BY U.S. MAIL AND EMAIL

August 27, 2012
Jerry Fleming
Senior Vice President
Kaiser Foundation Health Plan, Inc.
300 Lakeside Drive Oakland, CA 94612

RE: Petition by Kaiser Foundation Health Plan, Inc. Requesting Initiation of Formal Rule-making and Promulgation of Regulations Related to Senate Bill 946

Dear Mr. Fleming:

The Department of Managed Health Care (Department) appreciates your correspondence dated June 27, 2012 (Petition) which requests, on behalf of Kaiser Foundation Health Plan, Inc., (Kaiser) that the Department promulgate regulations to clarify Section 1374.73 of the Knox-Keene Health Care Service Plan Act (Knox-Keene Act). Kaiser states that there is health plan confusion as to the requirement of coverage for behavioral health treatment, including applied behavior analysis, for Healthy Families Program enrollees and CalPERS members with autism or pervasive development disorder under the Knox-Keene Act.

Consistent with the requirements of Government Code Section 11340.7, enclosed is the Department's response to the Petition. The response will be forwarded to the Office of Administrative Law for publication in the California Regulatory Notice Register.

For the reasons set forth in the enclosed response, the Department grants the Petition in part and denies the Petition in part.

Sincerely,

s/s

KEVIN DONOHUE
Deputy Director
Office of Legal Services

Enclosure: Decision on Petition for Rulemaking Action

NOTICE OF DECISION ON PETITION FOR RULEMAKING ACTION

DATE: August 27, 2012
ACTION: Notice of Decision on Petition for Rulemaking Action
SUBJECT: Petition by Kaiser Foundation Health Plan, Inc. Requesting Initiation of Formal Rulemaking and Promulgation of Regulations Related to Senate Bill 946

PETITIONER

The Kaiser Foundation Health Plan, Inc. (Kaiser) petition for rulemaking action (Petition) was received by the Department of Managed Health Care (Department) on June 27, 2012. The parties entered into an agreement on July 24, 2012, extending the date the Department has to respond to the Petition until August 27, 2012.

Pursuant to the requirements of Government Code Section 11340.7, the Department provides this response to the Petition.

CONTACT PERSON

Inquiries concerning this decision may be directed to Emilie Alvarez, Regulations Coordinator, Department of Managed Health Care, Office of Legal Services, by mail at: 980 9th Street, Suite 500, Sacramento, CA 95814, by telephone at: (916) 322-6727, or by e-mail at: evalvarez@dmhc.ca.gov or regulations@dmhc.ca.gov.

AVAILABILITY OF PETITION

The Petition for the adoption of regulations is available upon request directed to the Department's Contact Person.

AUTHORITY

Under authority established in the Knox–Keene Health Care Service Plan Act of 1975 (the Knox–Keene Act)¹, including but not limited to Health and Safety Code Sections 1343, 1344 and 1346, the Department may adopt, amend and rescind regulations as necessary to carry out the provisions of the Knox–Keene Act.

DETERMINATION ON THE PETITION

On October 9, 2011, Governor Brown signed into law Senate Bill 946 (SB 946), which added Section 1374.73 to the Knox–Keene Act in the Health and Safety Code. Beginning July 1, 2012, Section 1374.73 allows health plans to provide medically necessary behavioral health treatment (BHT), including applied behavior analysis (ABA), to individuals with autism or pervasive developmental disorder (PDD), by non–licensed professionals in compliance with detailed criteria set forth in the statute. While Section 1374.73 states that its provisions do not apply to Healthy Families Program (HFP) enrollees and CalPERS members, it also specifically states that it does not affect, reduce, or limit the health plans’ obligations to cover medically necessary treatment, including BHT, under the state’s pre–existing mental health parity law, Section 1374.72 of the Health and Safety Code.

Kaiser indicates in its Petition that there is confusion among health plans as to their obligations to cover BHT, including ABA, for HFP enrollees and CalPERS members with autism or PDD under existing mental health parity law, subsequent to the implementation date of Section 1374.73. The Petition requests that the Department promulgate regulations to clarify Section 1374.73, and, more specifically, the following:

- “(1) Whether contracts between health care service plans and the Board of Administration of the California Public Employees Retirement System (“CalPERS”) and the Healthy Families Program (“Healthy Families”) administered by the California Managed Risk Medical Insurance Board (collectively referred to herein as the “Public Purchasers”) must include coverage of Behavioral Health Treatment (BHT), including Applied Behavioral Analysis (“ABA”) defined in Health & Safety Code §1374.73 (“S.B. 946”);
- (2) If DMHC requires coverage of BHT in health care service plan contracts with Public Purchasers, the licensure and certification requirements for individuals who provide BHT;

(3) The ongoing statutory obligations of the Regional Centers to provide BHT to enrollees of the Public Purchasers pursuant to the Regional Centers’ contracts with the State of California for services governed by the Lanterman Act (Cal. Welfare & Institutions Code §4500 et seq.) and the Intervention Services Act (Cal. Government Code §95000 et seq.) in light of the statutory exemption contained in S.B. 946 for health care service contracts with the Public Purchasers.”

For the reasons discussed below, the Department grants the Petition in part and denies the Petition in part.

1. The Department Grant’s the Petitioner’s Request to Initiate Rulemaking Proceedings to Establish whether Health Plans Continue to be Required to Cover BHT, including ABA, for CalPERS Members and HFP Enrollees with Autism or PDD Subsequent to the Enactment of Section 1374.73.

Government Code Section 11342.2 establishes the necessity standard for rulemaking actions “. . . no regulation adopted is valid or effective unless . . . reasonably necessary to effectuate the purpose of the statute [it is implementing, interpreting, making specific or otherwise carrying out.]” SB 946, which was recently signed into law by Governor Brown, added Health and Safety Code Section 1374.73 to the Knox–Keene Act. Section 1374.73 allows health plans to provide medically necessary BHT, including ABA, for individuals with autism and PDD, beginning July 1, 2012, by non–licensed professionals in compliance with detailed criteria set forth in the statute.

Section 1374.73, states its requirements do not apply to Medi–Cal participants, HFP enrollees and CalPERS members. However, the legislation also specifically states that it does not affect, reduce, or limit the health plans’ obligations to cover medically necessary treatment, including BHT, under existing mental health parity law, which is contained in Section 1374.72 of the Knox–Keene Act. Specifically, Section 1374.73(a)(1) provides:

Every health care service plan contract that provides hospital, medical, or surgical coverage shall *also provide coverage for behavioral health treatment* for pervasive developmental disorder or autism no later than July 1, 2012. The coverage shall be provided in the same manner and *shall be subject to the same requirements as provided in Section 1374.72.*

(Section 1374.73(a)(1), emphasis added.)

The statutory language of SB 946 contains the same general mandate for mental health benefits that are contained in the original mental health parity law.²

¹ Health and Safety Code Section 1340 *et seq.*

² Health and Safety Code Section 1374.72.

California passed a mental health parity law in 1999. Section 1374.72 of the Knox–Keene Act requires health plans to provide coverage for the diagnosis and medically necessary treatment of specified severe mental illnesses, including PDD or autism, under the same terms and conditions applied to other medical conditions.³ Section 1374.72 requires all full–service health plan contracts to “provide coverage for the diagnosis and medically necessary treatment of severe mental illness [SMI] of a person of any age, and of serious emotional disturbances of a child” [SED]. SMI is specifically defined to include PDD and autism. SB 946 specifically references the mental health parity law in Section 1374.73(e) and states, “nothing in this section shall be construed to limit the obligation to provide services under Section 1374.72.”⁴

Kaiser has stated in its Petition that the health plans, as well as CalPERS and the Managed Risk Medical Insurance Board (MRMIB), which administers the HFP, are unclear whether the implementation of SB 946 relieved them of the coverage requirements for BHT, including ABA, under the mental health parity law effective July 1, 2012. Kaiser further states that it is essential for the health plans, MRMIB and CalPERS to know whether coverage for BHT, including ABA, is required when negotiating premium rates based on the scope of contractually covered services.

Based upon the confusion regarding the effect of SB 946 on existing mental health parity law for CalPERS members and HFP enrollees with PDD or autism, the Department grants the Kaiser Petition to begin rulemaking proceedings to implement, interpret and/or make specific Health and Safety Code Section 1374.73.

On August 20, 2012, the Department initiated an emergency rulemaking action by noticing the public five working days in advance of submitting an emergency rulemaking action to the Office of Administrative Law (OAL) for review and approval pursuant to Government Code Section 11346.1. The subject of the proposed emergency rulemaking action is “Pervasive Developmental Disorder and Autism Coverage,” contained in new Section 1300.74.73 of Title 28 of the California Code of Regulations. This emergency regulation is intended to implement, interpret, and/or make specific Health and Safety Code Section 1374.73 by ensuring health plans understand the requirements for uniform and timely application of the Knox–Keene Act related to coverage of medically necessary health care services, including BHT and ABA, for health plan enrollees with PDD or autism.

2. The Department Denies that Portion of the Petition to Initiate Rulemaking Proceedings to Establish the Licensure and Certification Requirements for Individuals Who Provide BHT to HFP and CalPERS Enrollees.

As previously discussed, the mental health parity law requires that health plans cover the diagnosis and medically necessary treatment of severe mental health conditions, including PDD and autism. The Department promulgated an administrative regulation regarding the mental health parity law.⁵ This regulation provides that, “[t]he mental health services required for the diagnosis, and treatment of conditions set forth in Health and Safety Code Section 1374.72 shall include, when medically necessary, all health care services required under the Act including, but not limited to, basic health care services within the meaning of Health and Safety Code Sections 1345(b) and 1367(i), and section 1300.67 of Title 28.”⁶ The regulation also states that a health plan “shall provide coverage for the diagnosis and medically necessary treatment of conditions set forth in Health and Safety Code section 1374.72 through health care providers within the meaning of Health and Safety Code section 1345(i), which requires licensure, who are 1) acting within the scope of their licensure; and 2) acting within their scope of competence, established by education, training and experience. . . .”⁷

The Knox–Keene Act provides that services under the Knox–Keene Act are to be furnished by “any professional person, organization, health facility, or other person or institution licensed by the State to deliver or furnish health care services.”⁸ The Knox–Keene Act also provides that “[pe]rsonnel employed by or under contract to the plan shall be licensed or certified by their respective board or agency, where licensure or certification is required by law.”⁹ Business and Professions Code Section 2052 provides that only licensed individuals can diagnose or treat a person for any physical or mental condition unless the Legislature provides an exception to the prohibition. The California Supreme Court has stated that the Knox–Keene Act does not exempt a provider from the licensing requirements of the Business and Professions Code. *People v. Cole* (2006) 38 Cal.4th 964, 985. Because Business and Professions Code Section 2052 requires a license or a legislative exemption from licensure requirements to provide diagnosis or treatment of any mental condition, such as that created by SB 946, the Legislature, not the Department, is the appropriate entity to establish licensure and certi-

⁵ Cal. Code Regs., tit. 28, § 1300.74.72.

⁶ Cal. Code Regs., tit. 28, § 1300.74.72(a).

⁷ Cal. Code Regs., tit. 28, § 1300.74.72(b).

⁸ Health and Safety Code Section 1345(i).

⁹ Health and Safety Code Section 1367(b).

³ Health and Safety Code Section 1374.72(a).

⁴ Health and Safety Code Section 1374.73(e).

fication requirements for individuals who provide BHT.

For these reasons, the Petitioner's request for rule-making to establish licensing and certification requirements for individuals providing BHT to HFP enrollees and CalPERS members with autism or PDD is denied.

3. The Department Denies that Portion of the Petition to Initiate Rulemaking Proceedings to Establish the Statutory Obligations of the Regional Centers to Provide BHT to CalPERS Members and HFP Enrollees pursuant to their Contracts with the State of California because of Inappropriate Jurisdiction.

The Department administers state law applicable to health care service plans as set forth under the Knox-Keene Act. The regulations that implement, interpret, make specific and otherwise carry out the provisions of the Knox-Keene Act are contained in Title 28 of the California Code of Regulations.

The Regional Centers are under the jurisdiction of the California Department of Developmental Services (DDS). The Department does not administer or enforce laws that govern the DDS and the Regional Centers with which DDS contracts, and, therefore, does not adopt regulations to implement, interpret and/or make specific those laws. The DDS has the authority to adopt regulations establishing the statutory obligations of the Regional Centers. DDS regulations are contained in Title 17 of the California Code of Regulations.

Since the Department does not promulgate regulations to clarify provisions of law that are outside of the Knox-Keene Act, the Department denies that portion of the Petition to initiate rulemaking proceedings to establish the statutory obligations of the Regional Centers to provide BHT to CalPERS members and HFP enrollees.

CONCLUSION

For the reasons set forth above, the Department has initiated a rulemaking action to adopt an emergency regulation clarifying whether CalPERS members or HFP enrollees are entitled to receive coverage for BHT, including ABA, by health plans under the provisions of the Knox-Keene Act. Petitioner's request to establish the licensure and certification requirements for individuals who provide BHT is denied as more appropriately the province of the Legislature. Petitioner's request to define the statutory and regulatory obligations of the Regional Centers is denied as the more appropriate jurisdiction of DDS.

The Petitioner's interest in the Department's rule-making process is appreciated.

DEPARTMENT OF INDUSTRIAL RELATIONS, DIVISION OF LABOR STANDARDS AND ENFORCEMENT

RULEMAKING PETITION DECISION
(Government Code Section 11340.7)

**California Code Of Regulations
Title 8, Industrial Relations
Division 1, Department Of Industrial Relations
Chapter 6, Division Of Labor Standards Enforcement
Subchapter 6.5, Hearings On Actions To Recover Wages, Penalties, And Other Demands For Compensation And On Claims From Holders Of Dishonored Payroll Checks or Drafts
Article 1, Rules Of Practice And Procedure**

PETITIONER

Michael Shepard

AUTHORITY

The Department of Industrial Relations (DIR) contains within it the Division of Labor Standards Enforcement (DLSE). The DIR carries on part of its work through the DLSE, which is headed by the Labor Commissioner who is the Chief of the DLSE. Pursuant to the provisions of Chapter 4 of Division 1 of the Labor Code, set out at sections 79 through 107 (Chapter 4), the DLSE is vested with the authority to enforce the provisions of the Labor Code and all other labor laws of the state the enforcement of which is not vested in any other officer, board, or commission. Labor Code section 203 is a statutory provision administered and enforced by the DLSE pursuant to the authority conferred by Chapter 4. Labor Code section 98.8 provides that the Labor Commissioner shall have the authority to adopt such regulations as are necessary to carry out the provisions of Chapter 4.

CONTACT PERSON

Please direct any inquiries regarding this action to: Ethera Clemons, Deputy Chief Labor Commissioner, Division of Labor Standards Enforcement, 455 Golden Gate Avenue, 9th Floor, San Francisco, CA, 94102.

AVAILABILITY OF PETITION

The petition to adopt a regulation is available upon request directed to DLSE's contact person.

SUMMARY OF PETITION

Labor Code section 203 provides that, “If an employer willfully fails to [timely] pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.” As explained by the court in *Mamika v. Barka* (1998) 68 Cal.App.4th 487, 793: “A proper reading of section 203 mandates a penalty equivalent to the employee’s daily wages for each day he or she remain[s] unpaid up to a total of 30 days. . . . Thus, the critical computation required by section 203 is the calculation of a daily wage rate, which can then be multiplied by the number of days of nonpayment, up to 30 days.”

Petitioner points out that there is no regulation in place that specifies how the daily wage rate is to be arrived at for purposes of calculating section 203 penalties. Petitioner states that in the absence of such specification it is unclear how the daily wage rate is to be determined where the wages vary over a period of time, such as where the employee is paid on commissions, or where the hours worked each week are variable, or where the rate of pay fluctuates from week to week, or month to month. Petitioner further states that a regulation is needed to establish what period of time should be used to calculate the daily wage rate in such circumstances. In support of his position, petitioner refers to a case in which he represented the claimant. In calculating the daily wage rate in that case, the hearing officer used the 12 days worked by the employee during the last month of employment. According to petitioner, had the hearing officer used the full employment period of 16 weeks, the hours worked per day and therefore the daily penalty would have been much higher. In petitioner’s view, the proffered evidence of the employer’s bad faith and repeated Labor Code violations warranted an exercise of discretion by the hearing officer and, pursuant thereto, a determination that the longer period should be used to calculate the daily wage.

As further support for his position that a new regulation is needed, petitioner suggests that DLSE hearing officers are determining the daily wage rate based on an unwritten, underground policy or guideline of general application. The petitioner references the following facts as supportive of his conclusion: (1) a statement by a Deputy Labor commissioner that the DLSE usually uses a period of a couple of weeks prior to termination to calculate the daily wage rate, (2) the decision by the hearing officer, in the case handled by petitioner, to use the month of termination to calculate the daily wage rate, and (3) the examples of penalty calculations found on the DLSE website which use the employment period

of the three months preceding termination to arrive at the average daily wage rate for employees on commission.

Petitioner seeks the adoption of a new regulation that will explain how to determine what period of pre-termination employment is to be used for purposes of calculating the daily wage rate in connection with assessing waiting time penalties under Labor code section 203. The petitioner also requests that the regulation explain how the discretion vested in the Labor Commissioner is to be exercised in taking into account the employer’s bad faith as it relates to calculating the daily wage rate.

DIVISION DECISION

The DLSE denies this petition in its entirety.

In *Mamika v. Barca*, the court provided guidance for the determination of the daily wage rate for purposes of awarding section 203 penalties. There, the employee was compensated at an annual salary of \$60,000.00. The court held that, based on the circumstances presented, the proper method for arriving at the daily wage rate was to divide the \$60,000.00 salary by 52 weeks, then divide the resulting weekly sum by 40 hours to obtain an hourly rate, and then multiply the hourly rate by 8 hours to arrive at the average pay per day. The court explained that although the employee occasionally worked on Saturdays and Sundays and thus more than five days per week, the employee typically worked an average of eight hours per day, five days per week. In other words, the court made it clear that in order to calculate the daily wage rate for purposes of section 203, it is necessary to review the totality of the circumstances affecting the employee’s compensation and then, applying appropriate discretion, to determine the average workday that the employee typically works, which workday provides the basis for calculating the average daily pay.

In performing their adjudicatory functions under Labor Code sections 98–98.2, the Labor Commissioner’s hearing officers are required to apply the provisions of Labor Code section 203 on a case by case basis in accordance with the guidance provided by the case law. The fact that this factually driven analytical process will generate varying results depending on the circumstances of the particular case, plainly does not mean that the Labor Commissioner is adhering to or applying an underground regulation. Here, there is no basis for suggesting that the adjudicatory determinations of the Labor Commissioner’s hearing officers under section 203 are in any way driven by an underground regulation. In the case in which petitioner was involved, the hearing officer used a one month employment period to calculate the daily wage rate. There is no indication that peti-

tioner was prohibited from arguing for the use of a longer employment period, or that the hearing officer let it be known that such an argument would not be entertained or considered. Rather, it is evident that the hearing officer simply determined that the shorter period was the appropriate one to use. The statement to petitioner, from one of the DLSE deputies, that usually a two week period is used to calculate the daily wage rate was nothing more than that Deputy's assessment of what was likely to happen in the normal case. The very use of the word "usually" connoted that there is no fixed or rigid rule, and in petitioner's case itself, the hearing officer used a one month — not two week — period of employment. Moreover, in the DLSE's examples with respect to commission employees it was made clear that in some circumstances it might be determined that a three month employment period is appropriate. In sum, as these disparate facts manifestly show, it is clear that there is simply no underground regulation affecting the Labor Commissioner's application of section 203.

The DLSE finds that the suggestion for a new regulation, in the form proposed by petitioner, is misplaced. The suggestion presupposes that all of the circumstances and variables attendant to the application of Labor Code section 203 can be anticipated, encapsulated, and quantified, and that this will more appropriately accomplish the objectives of the statute. The DLSE disagrees. In the agency's view, the myriad circumstances, factors, and variables associated with the application of section 203 cannot be readily anticipated, encapsulated, and quantified, and any attempt to accomplish this will be counterproductive and thwart rather than promote the objectives of the statute. By way of illustration, we refer to the case in which petitioner was involved. In that case, the hearing officer applied a one month period of employment to calculate the daily wage rate instead of a period encompassing the full 16 weeks that the employee worked for the employer. According to petitioner, had the full 16 week period been used the daily wage rate would have been significantly higher. Presumably, petitioner would want a regulation that specifies that the daily wage rate is to be calculated using the last four months of the employment. But why would this be the appropriate standard? Suppose that the employee had been paid a much higher rate of pay during his final month of employment than he had been paid during the previous three months, and suppose further that it is this final month of pay that the employer withheld from the employee at the time of termination. Applying a fixed rule that requires using the last four months as the employment period would operate to significantly reduce the daily wage rate for purposes of calculating the penalty. Why would such a result, which is the direct opposite of what petitioner is seeking, be appropriate?

It is immediately evident from the foregoing that the adoption of a single rule for the calculation of the daily wage rate is unworkable. What is also readily apparent is that the adoption of a plethora of rules to govern every conceivable set of circumstances is equally unworkable — e.g., use the last four months, except if x then use the last month, except if y then use the last six weeks, except if z then use only the third month prior to termination and the last month, and so on. Petitioner has suggested that a proposed rule should detail when and how an employer's bad faith should be considered in determining the daily wage rate for purposes of section 203. But this is just one more imponderable variable that must be applied on a case by case basis, taking into account the totality of the particular circumstances. Thus, although bad faith may be relevant to assessing whether an employer has skewed final compensation in a manner calculated to drive down the daily wage rate, it can no more be anticipated, encapsulated, or quantified than any other factor or variable pertinent to the proper application of section 203.

To the extent the proffered basis for a regulation stems from a specific result in a wage case, a reaction in the form of a regulation which would provide the highest possible daily rate from many possibilities with numerous factors to consider and apply would also unreasonably complicate the determination of a daily rate by Labor Commissioner hearing officers and courts. Such an approach in a regulation could potentially override the main purpose of Section 203 which is aimed at compelling prompt payment of final wages in accordance with the standard set long ago by the Legislature.

In the view of the DLSE, the current case by case approach for determining the daily wage rate in accordance with the guidance provided by the case law constitutes the most appropriate method for applying Labor code section 203. Accordingly, the agency declines to adopt the new regulation proposed by petitioner.

Date: August 9, 2012

s/s

ETHERA CLEMONS
DEPUTY CHIEF

Division of Labor Standards Enforcement
Department of Industrial Relations

DISAPPROVAL DECISION

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Printed below are the summaries of Office of Administrative Law disapproval decisions. The full text of dis-

approval decisions are available at www.oal.ca.gov under the "Publications" tab. You may also request a copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916) 323-6225 — FAX (916) 323-6826. Please request by OAL file number.

**EMERGENCY MEDICAL SERVICES
AUTHORITY**

**State of California
Office of Administrative Law**

**In re:
Emergency Medical Services Authority**

**Regulatory Action: Title 22
California Code of Regulations
Amend sections: 100058, 100060, 100063, 100066,
100074, 100075, 100078, 100079, 100080, 100081**

**DECISION OF DISAPPROVAL
OF REGULATORY ACTION
Government Code section 11349.3
OAL File No. 2012-0711-02S**

SUMMARY OF REGULATORY ACTION

The Emergency Medical Services Authority (EMSA) proposed this action to amend ten title 22 regulations pertaining to emergency medical technicians (EMTs). The amendments would change the scope of practice and training requirements for EMTs, modify required course content for EMT training programs to align with national standards, and clarify the duration and expiration terms of valid EMT certificates.

DECISION

On August 22, 2012, the Office of Administrative Law (OAL) notified EMSA of the disapproval of this regulatory action. The reasons for the disapproval were the following: (1) failure to comply with the "Clarity" standard of Government Code section 11349.1, (2) failure to comply with the "Necessity" standard of Government Code section 11349.1, and (3) failure to comply with all required Administrative Procedure Act procedures (defective rulemaking file documents).

Date: August 29, 2012

Eric Partington
Staff Counsel

FOR: DEBRAM. CORNEZ
Director

Original: Daniel R. Smiley
Copy: Adam Morrill

**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# 2012-0718-01
BOARD OF OCCUPATIONAL THERAPY
Delegation of Functions, Disciplinary Processes

This regulatory action by the Board of Occupational Therapy adds two sections and amends four sections of title 16 of the California Code of Regulations. BOT adopted these changes in response to a Department of Consumer Affairs mandate that all boards enhance consumer protection. The changes include new delegations of authority to BOT's Executive Officer, additional actions constituting unprofessional licensee conduct, and requirements for mental and physical examinations of fitness for licensure under particular circumstances.

Title 16
California Code of Regulations
ADOPT: 4146, 4148, 4149, 4149.1 AMEND: 4100,
4101
Filed 08/29/2012
Effective 09/28/2012
Agency Contact: Heather Martin (916) 263-2294

File# 2012-0724-04
BOARD OF PAROLE HEARINGS
Parole Revocation Procedures

This resubmittal rulemaking amends several sections in Title 15 of the California Code of regulations. The purpose of this rulemaking is to make regulations consistent with changes made to statute in the "Criminal Justice Realignment." Some of the changes are that a parolee after 10/1/2011 may not be returned to custody for a parole revocation term longer than 180 days unless statute provides otherwise. Additionally there are changes being made to when a parolee is eligible to earn worktime credits. There also changes to the suggested length of confinement based on a single parole violation charge.

Title 15
California Code of Regulations
AMEND: 2606, 2635.1, 2646.1, 2733, 2740, 2743,
2744
Filed 08/29/2012
Effective 09/28/2012
Agency Contact:
Anne M. Cervantes (916) 445-5277

File# 2012-0821-04
CALIFORNIA DEBT LIMIT ALLOCATION
COMMITTEE
Administration of California's Limited Tax-Exempt
Debt Authority

The California Debt Limit Allocation Committee (CDLAC) submitted this emergency readoption action to continue the emergency action taken in OAL File Nos. 2011-1011-02E, 2011-1129-02ER, and 2012-0522-01EE, which amended various title 4 regulations and seven related incorporated by reference forms and added a new incorporated by reference form. The emergency regulations pertain to housing projects for lower income families and individuals and for preserving and rehabilitating existing governmental assisted housing for lower income families and individuals. Additionally, the CDLAC application form for small-issue industrial development bond projects was updated to conform to regulations governing this bond issuance category that are adopted by both CDLAC and the California Industrial Development Financing Advisory Commission. This action makes nonsubstantive technical revisions to five of the incorporated by reference forms.

Title 4
California Code of Regulations
ADOPT: 5205 AMEND: 5000, 5054, 5144, 5190,
5200, 5230, 5370, 5170, 5350 REPEAL: 5133
Filed 08/29/2012
Effective 08/29/2012
Agency Contact: Annie Ong (916) 653-8018

File# 2012-0720-03
CALIFORNIA INSTITUTE FOR REGENERATIVE
MEDICINE
Loan Administration Policy

The California Institute for Regenerative Medicine (CIRM) amended section 100800 in tile 17 of the California Code of Regulations to amend their loan administration policy.

Title 17
California Code of Regulations
AMEND: 100800
Filed 08/29/2012
Effective 08/29/2012
Agency Contact: C. Scott Tocher (415) 396-9136

File# 2012-0716-01
DEPARTMENT OF CORPORATIONS
Private Fund Adviser Exemption

This rulemaking action adopts, as a permanent rule for certification exemption for investment advisors to private funds, a variation of the North American Securities Administrators Association Model Rule for Exempt Reporting Advisers.

Title 10
California Code of Regulations
AMEND: 260.204.9
Filed 08/27/2012
Agency Contact: Karen Fong (916) 322-3553

File# 2012-0823-04
DEPARTMENT OF FOOD AND AGRICULTURE
Mediterranean Fruit Fly Interior Quarantine

This emergency action adopts a quarantine area for the Mediterranean fruit fly in the counties of Los Angeles and San Bernardino.

Title 3
California Code of Regulations
AMEND: 3406(b)
Filed 08/24/2012
Effective 08/24/2012
Agency Contact: Stephen S. Brown (916) 654-1017

File# 2012-0720-01
DEPARTMENT OF INSURANCE
Premium Taxes

This regulatory action is pursuant to the State Board of Equalization's opinion issued on December 12, 2006: In the Matter of the Petitions for Redetermination Under the Tax on Insurers Law of California Automobile Insurance Company. It creates a framework for an insurer who opts to transition from reporting and paying premium taxes based on premiums written to reporting and paying them based on premiums received. It also requires newly admitted insurers to report and pay premium taxes on premiums received.

Title 10
 California Code of Regulations
 ADOPT: 2327, 2327.1, 2327.2
 Filed 08/22/2012
 Effective 09/21/2012
 Agency Contact:
 Laszlo Komjathy, Jr. (415) 538-4413

File# 2012-0711-04
 DEPARTMENT OF PESTICIDE REGULATION
 Groundwater Protection List

This action by the Department of Pesticide Regulation makes changes without regulatory effect relating to the groundwater protection list located in Title 3, CCR section 6800(b). Pursuant to section 13145(d) of the Food and Agricultural Code, section 6800(b) establishes a list of pesticides that have the potential to pollute groundwater. This action reorganizes the pesticides already identified in section 6800(b) to reflect whether each pesticide is actively registered for use in California pursuant to Food and Agricultural Code section 12811 et seq.

Title 3
 California Code of Regulations
 AMEND: 6800(b)
 Filed 08/22/2012
 Agency Contact:
 Linda Irokawa-Otani (916) 445-3991

File# 2012-0717-02
 DEPARTMENT OF TRANSPORTATION
 Mass Transportation

The California Department of Transportation seeks to make changes that have no regulatory effect to California Code of Regulations (CCR) Title 21, Sections 6640 and 6680. These amendments are necessary to bring the CCR into conformance with SB 607.

SB 607 of the Statutes of 2009 created the Imperial County Transportation Commission (ICTC) as the regional transportation planning agency for Imperial County. This newly created regional transportation planning agency succeeds the previous regional transportation planning agency, the Imperial Valley Association of Governments (IVAG). Sections 6640 and 6680 still refer to the IVAG as the regional transportation planning agency for Imperial County. The reference to IVAG as the regional transportation planning agency in Sections 6640 and 6680 needs to be deleted.

Title 21
 California Code of Regulations
 AMEND: 6640, 6680
 Filed 08/28/2012
 Agency Contact: Gordon Arruda (916) 654-9396

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN April 4, 2012 TO
 August 29, 2012**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

- 08/16/12 AMEND: 1859.2, 1859.61, 1859.74, 1859.77.1, 1859.79, 1859.79.2, 1859.79.3, 1859.83, 1859.104 REPEAL: 1859.70.3, 1859.71.5, 1859.78.9, 1859.93.2, 1859.93.3
- 08/13/12 ADOPT: 59720
- 08/07/12 AMEND: 18640
- 07/16/12 AMEND: 18215.3
- 07/09/12 ADOPT: 22620.1, 22620.2, 22620.3, 22620.4, 22620.5, 22620.6, 22620.7, 22620.8
- 06/28/12 AMEND: 649.32
- 06/19/12 AMEND: 56800
- 06/04/12 ADOPT: 18313.6
- 05/29/12 AMEND: 20811(c)
- 05/15/12 AMEND: 1859.2
- 05/10/12 AMEND: 1859.2, 1859.82
- 05/08/12 ADOPT: 559.1
- 04/30/12 ADOPT: 565.5 AMEND: 565.1, 565.2, 565.3
- 04/26/12 AMEND: 554.4
- 04/23/12 AMEND: 18705.5
- 04/23/12 AMEND: 554.3
- 04/19/12 ADOPT: 18412 AMEND: 18215, 18413
- 04/10/12 ADOPT: 18215.3
- 04/09/12 ADOPT: 59710

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- 08/24/12 AMEND: 3406(b)
- 08/22/12 AMEND: 6800(b)
- 08/20/12 AMEND: 3435(b)
- 08/06/12 AMEND: 3435(b)
- 06/19/12 ADOPT: 6970, 6972 AMEND: 6000
- 05/17/12 AMEND: 4603(i)
- 05/01/12 AMEND: 3423(b)
- 04/16/12 AMEND: 3591.19
- 04/16/12 AMEND: 3439
- 04/12/12 AMEND: 3591.21(b)
- 04/12/12 ADOPT: 3435(c)
- 04/12/12 AMEND: 3434(b)&(c)

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08/29/12 ADOPT: 5205 AMEND: 5000, 5054, 5144, 5190, 5200, 5230, 5370, 5170, 5350 REPEAL: 5133

08/01/12 ADOPT: 5255, 5256 AMEND: 5170, 5230, 5250, 5560, 5580

08/01/12 AMEND: 5000, 5052

07/26/12 AMEND: 8070

07/26/12 AMEND: 12101, 12202, 12205.1, 12218, 12218.7, 12218.8, 12222, 12225.1, 12233, 12235, 12238, 12309, 12335, 12342, 12350, 12352, 12354

07/23/12 AMEND: 8035

07/16/12 AMEND: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057

06/25/12 AMEND: 8070, 8071, 8072, 8078, 8078.2

06/25/12 AMEND: 1663

06/06/12 AMEND: 1843.3

06/01/12 ADOPT: 5205 AMEND: 5000, 5054, 5144, 5170, 5190, 5200, 5230, 5350, 5370 REPEAL: 5133

05/15/12 REPEAL: 61.3

05/04/12 ADOPT: 10050, 10051, 10052, 10053, 10054, 10055, 10056, 10057, 10058, 10059, 10060

04/30/12 ADOPT: 511 AMEND: 399

04/26/12 AMEND: 2066

04/19/12 ADOPT: 10192, 10193, 10194, 10195, 10196, 10197, 10198, 10199

04/17/12 AMEND: 53

04/12/12 AMEND: 10317, 10325

04/11/12 AMEND: 10302, 10310, 10315, 10317, 10322, 10325, 10327, 10328

04/04/12 AMEND: 5000, 5170, 5200, 5230, 5370, 5500, 5540

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08/09/12 AMEND: 40403

08/09/12 AMEND: 59400, 59402, 59404, 59406, 59408

08/09/12 AMEND: 40500

08/09/12 ADOPT: 40541

08/09/12 AMEND: 40407.1

08/08/12 ADOPT: 40540

08/08/12 ADOPT: 19824.1, 19841, 19851.1, 19854.1 AMEND: 19816, 19816.1, 19824, 19850, 19851, 19854

07/31/12 AMEND: 19816, 19816.1, 19845.2

06/12/12 ADOPT: 18004 AMEND: 18000, 18001, 18002, 18003

05/29/12 AMEND: 42600

04/25/12 AMEND: 80028, 80301, 80442

04/20/12 AMEND: 18013, 18054, 18111 REPEAL: 18006, 18200, 18201, 18202, 18203, 18205, 18206, 18207

04/11/12 AMEND: 19816, 19816.1, 19845.2

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07/03/12 AMEND: 219

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08/07/12 ADOPT: 3558 AMEND: 3207, 4184

07/30/12 ADOPT: 32802, 32804 AMEND: 32380, 32603, 32604

05/21/12 ADOPT: 10582.5, 10770.1 AMEND: 10770

05/07/12 AMEND: 477

05/07/12 AMEND: 2340.22

05/02/12 AMEND: 20363, 20365, 20393, 20400, 20402

05/01/12 AMEND: 1533, 1541, 8403

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07/27/12 AMEND: 7141.5, 7143, 7227, 7350, 7351, 7353.6, 7354, 7355, 7356, 7357, 7358, 7400

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08/27/12 AMEND: 260.204.9

08/22/12 ADOPT: 2327, 2327.1, 2327.2

08/03/12 ADOPT: 2561.1, 2561.2

07/19/12 AMEND: 2698.302

07/19/12 AMEND: 2699.301

07/19/12 AMEND: 5501, 5506

05/31/12 AMEND: 2318.6, 2353.1, 2354

05/09/12 AMEND: 2698.208

04/23/12 AMEND: 2355.1, 2355.2

04/10/12 AMEND: 260.204.9

04/09/12 ADOPT: 6400

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07/31/12 AMEND: 999.16, 999.17, 999.19, 999.22

06/26/12 AMEND: 1005, 1007, 1008

06/21/12 AMEND: 1005, 1007

05/09/12 ADOPT: 1019 REPEAL: 9020

05/07/12 ADOPT: 999.24, 999.25, 999.26, 999.27, 999.28, 999.29 AMEND: 999.10, 999.11, 999.14, 999.16, 999.17, 999.19, 999.20, 999.21, 999.22

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06/04/12 AMEND: 506

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08/07/12 ADOPT: 1962.2 AMEND: 1962.1, 1962.2 (renumbered to 1962.3)

08/07/12 ADOPT: 1961.2, 1961.3 AMEND: 1900, 1956.8, 1960.1, 1961, 1961.1, 1965, 1968.2, 1968.5, 1976, 1978, 2037, 2038,

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08/02/12	ADOPT: 426.00	05/21/12 AMEND: 705
07/30/12	AMEND: 1268, 1270.3	05/17/12 AMEND: 7.50
07/12/12	ADOPT: 345.58, 345.73 AMEND: 345.50, 345.52, 345.56, 345.74, 345.78, 345.86, 345.88, 345.90 REPEAL: 345.54, 345.58, 345.60	05/07/12 ADOPT: 18835, 18836, 18837, 18838, 18839
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04/19/12	ADOPT: 345.31, 345.32, 345.42 AMEND: 345.02, 345.04, 345.05, 345.06, 345.07, 345.11, 345.13, 345.15, 345.16, 345.18, 345.20, 345.22, 345.23, 345.24, 345.27, 345.28, 345.29, 345.30, 345.34, 345.36(renumbered to 345.33), 345.38 (renumbered to 345.35), 345.39 (renumbered to 345.36), 345.40, 345.41 REPEAL: 345.17, 345.21, 345.25, 345.26	05/01/12 ADOPT: 4870, 4871, 4872, 4873, 4874, 4875, 4876, 4877
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		04/30/12 AMEND: 632
		04/27/12 AMEND: 228, 228.5
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		08/29/12 AMEND: 2606, 2635.1, 2646.1, 2733, 2740, 2743, 2744
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		07/02/12 ADOPT: 3999.12
		06/26/12 ADOPT: 1712.1, 1714.1, 1730.1, 1740.1, 1748.5 AMEND: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.1, 1747.5, 1748, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788 REPEAL: 1757
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		04/11/12 AMEND: 3187, 3188
		04/09/12 AMEND: 3172.2
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		08/29/12 ADOPT: 4146, 4148, 4149, 4149.1 AMEND: 4100, 4101
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		07/23/12 ADOPT: 1397.2 AMEND: 1380.4
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		07/10/12 ADOPT: 3394.25, 3394.26, 3394.27
		06/18/12 ADOPT: 1727.2 AMEND: 1728
		06/18/12 AMEND: 443
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08/02/12	ADOPT: 2231, 2301 AMEND: 2000, 2200, 2230, 2235, 2240, 2245, 2300, 2305, 2310, 2320	
07/26/12	AMEND: 18836	
07/12/12	AMEND: 790, 851.20, 851.21, 851.22, 851.25, 851.26, 851.27, 851.27.1, 851.28, 851.29, 851.30, 851.31, 851.32	
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07/02/12	ADOPT: 602	
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