



California Regulatory Notice Register

REGISTER 2008, NO. 47-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

NOVEMBER 21, 2008

PROPOSED ACTION ON REGULATIONS

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TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

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TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

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*Time-
Dated
Material*

SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State	2045
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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.

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002-931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$302.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. "Periodicals Postage Paid in Saint Paul, MN." **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Barclays, a subsidiary of West, a Thomson Reuters Business, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

**PROPOSED ACTION ON
REGULATIONS**

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

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended subsection 3434(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine as an emergency action that was effective on July 11, 2008. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than January 7, 2009.

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended subsection 3434(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine as an emergency action that was effective on July 28, 2008. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than January 7, 2009.

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended subsection 3434(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine as an emergency action that was effective on August 13, 2008. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than January 7, 2009.

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended subsection 3434(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine as an emergency action that was effective on August 18, 2008. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than January 7, 2009.

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended subsection 3434(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Light Brown Apple Moth Interior Quarantine as an emergency action that was ef-

fective on August 26, 2008. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than January 7, 2009.

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

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before January 5, 2009.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

The amendments of 3434(b) established additional portions of Contra Costa, Marin, Monterey, Napa, San Benito, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma counties as regulated areas. There is no existing, comparable federal regulation or statute regulating the intrastate movement.

**COST TO LOCAL AGENCIES
AND SCHOOL DISTRICTS**

The Department of Food and Agriculture has determined that Section 3434 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3434. No reimbursement is re-

quired for Section 3434 under Section 17561 of the Government Code because all of the affected county agricultural commissioners requested the change in the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

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

EFFECT ON BUSINESSES

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

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

The cost impact of the amended regulation on a representative private person or business located within the regulated area may be significant. An average infested ornamental nursery producing plants in one-gallon containers may incur initial costs of \$140 to \$218 per acre in eliminating the light brown apple moth to be in reasonable compliance with the proposed action. Approximately 65,000 one-gallon containers may be placed upon one acre. This translates into an initial increased production cost of \$0.002 to \$0.003 per one gallon container. The actual costs may vary with the type of material used, size and production practices of the affected businesses.

However, nursery stock that is infested with the light brown apple moth does not meet the current requirements of Section 3060.2, Standards of Cleanliness, California Code of Regulations (CCR), and cannot be sold. Therefore, there are no additional mandated costs of compliance due to this regulation.

ASSESSMENT

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

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend Section 3434 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5301, 5302 and 5322 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The proposed amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

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

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

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

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

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

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Sections 3024, 3024.1, 3024.2, 3024.3 and 3024.4; and, adopt Sections 3024.5, 3024.6, 3024.7, 3024.8 and 3024.9 of the regulations in Title 3 of the California Code of Regulations pertaining to Registration and Certification of Grapevines.

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

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before January 5, 2009.

INFORMATIVE DIGEST/PLAIN ENGLISH
OVERVIEW

Existing law provides that the Secretary may, for the purpose of promoting and protecting the agricultural industry of the State, upon request, inspect plants and the premises upon or near which they are growing and the records of their sources and qualities. The Secretary may upon the basis of the information thus determined, maintain registries of the plants which are found not to be infested or infected, or liable to become infested or infected, with pests (Section 5821, Food and Agricultural Code). The Secretary may also establish and enforce regulations which are necessary to carry out the purposes of this existing (Section 5823, Food and Agricultural Code).

The proposed amendment of Sections 3024, 3024.1, 3024.2, 3024.3 and 3024.4; and, adoption of Sections 3024.5, 3024.6, 3024.7, 3024.8 and 3024.9 pertaining to Registration and Certification of Grapevines will provide and update regulatory framework for an ongoing voluntary grapevine registration and certification program. The effect of this regulation will be to clarify the specific regulatory authority the Department has pertaining to the registration and certification of grapevines as to their variety, quality, and apparent freedom from pests and diseases.

**COST TO LOCAL AGENCIES AND
SCHOOL DISTRICTS**

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

EFFECT ON HOUSING COSTS

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

EFFECT ON BUSINESSES

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

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

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

ASSESSMENT

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

ALTERNATIVES CONSIDERED

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

AUTHORITY

The Department proposes to amend Sections 3024, 3024.1, 3024.2, 3024.3 and 3024.4; and, adopt Sections 3024.5, 3024.6, 3024.7, 3024.8 and 3024.9 pursuant to the authority vested by Sections 407 and 5823 of the Food and Agricultural Code of California.

REFERENCE

The Department proposes this action to implement, interpret and make specific Sections 5821 and 5822 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Stephen S. Brown, Department of Food and

Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulations should be directed to Stephen S. Brown.

INTERNET ACCESS

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

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Groundwater Protection List
DPR Regulation No. 08-005

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6800(b) of Title 3, California Code of Regulations. The proposed regulatory action pertains to ground water protection and would add pesticides to the Groundwater Protection List of pesticides that have the potential to pollute ground water.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on January 5, 2009. Comments regarding this proposed action may also be transmitted via e-mail <dpr08005@cdpr.ca.gov> or by facsimile at (916) 324-4088.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Pesticide Contamination Prevention Act (Act) (Chapter 1298, Statutes of 1985, section 1) added sections 13141 through 13152 to the Food and Agricultural Code (FAC). The purpose of the Act is to prevent pesticide pollution of California's ground water aquifers that may be used to supply drinking water.

FAC section 13145(d) requires DPR to establish, by regulation, a Groundwater Protection List of pesticides that have the potential to pollute ground water. The pesticides on the Groundwater Protection List are divided into two sublists. The first, section 6800(a), contains pesticides detected in ground water or soil pursuant to FAC section 13149. The second, section 6800(b), contains pesticides exceeding specific numeric values (SNVs) established by DPR. Data submitted by pesticide registrants in accordance with FAC section 13143(a) are compared to the established SNVs. The SNVs pertain to water solubility, soil adsorption coefficient, hydrolysis, aerobic and anaerobic soil metabolism, and field dissipation. These numerical thresholds enable DPR to predict which active ingredients have the potential to leach to ground water.

If SNVs (established in section 6804) are exceeded, DPR places pesticidal active ingredients on the Groundwater Protection List in section 6800(b), provided they are labeled for use under the following conditions:

- (1) The pesticide is intended to be applied to, or injected into, the soil by ground-based application equipment or by chemigation; or
- (2) The label of the pesticide requires or recommends that the application be followed within 72 hours by flood or furrow irrigation.

DPR has identified 40 additional pesticidal chemicals that meet the criteria for inclusion into section 6800(b) based on their environmental fate characteristics and label use directions. This proposal would amend section 6800(b) to include these chemicals. The chemicals are the following: azoxystrobin; bensulfuron methyl; bispyribac-sodium; clomazone; 2,4-D, 2-ethylhexyl ester; 2,4-D, diethanolamine salt; 2,4-D, isoctyl ester; 2,4-DP-P, dimethylamine salt (dichlorprop-P, dimethylamine salt); dicamba, diglycolamine salt; dicamba, dimethylamine salt; dicamba, sodium salt; diflufenzopyr, sodium salt; dimethenamid-P; dinotefuran; dithiopyr; endothall, dipotassium salt; endothall, mono (N,N-dimethyl alkylamine) salt; fenoxy carb; fludioxonil; flutolanil; halosulfuron-methyl; imazamox, ammonium salt; imazapic, ammonium salt; imazethapyr, ammonium salt; malathion; mefenaxam; methyl parathion; (S)-metolachlor, penoxsulam; piperonyl butoxide; propanil; siduron; terrazole; thiame-thoxam; thiazopyr; thiobencarb; thiophanate methyl; triclopyr, butoxyethyl ester; triclopyr, triethylamine salt; and uniconazole-P.

DPR has also identified one pesticide chemical, acrolein, that no longer meets the criteria for inclusion into section 6800(b) because it no longer exceeds the SNVs as required by law. This proposal would delete acrolein from section 6800(b).

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII B of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

DPR estimates that if local governments and schools applied the pesticides proposed to be listed in section 6800(b), this regulation could potentially result in additional reports submitted by local government and schools for a potential annual cost of \$16,000. However, this regulation does not require local governments or

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

schools to apply the pesticides proposed to be added to section 6800(b), and they could avoid the additional reporting costs by applying alternative pesticides that are not listed in section 6800(b), or by controlling the pest without the use of a pesticide.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that there may be minimal increased costs to any state agency resulting from the proposed regulatory action. Adding pesticides to section 6800(b) means that DPR would have to reimburse county agricultural commissioners for any additional pesticide use reports submitted for an annual cost of \$500.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with business in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. Although the proposed regulation is updating the list of pesticides that have the potential to pollute ground water in California, businesses and individuals would be required to report pesticide use of some of these pesticides. It is estimated that the lifetime cost for businesses and individuals would be \$80,000.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

DPR has determined that it is unlikely that the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

CONSIDERATION OF ALTERNATIVES

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

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456 and 13145.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 13144, 13145, and 13149.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comment on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Mark Pepple, Staff Environmental Scientist
Department of Pesticide Regulation
Environmental Monitoring Branch
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 324-4086

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Linda Irokawa-Otani, Regulations Coordinator
(916) 445-3991

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons, mandated by Government Code section 11346.9(a), may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Toxic Air Contaminants
DPR Regulation No. 08-004

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to amend section 6860 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action designates the pesticide chemical endosulfan as a toxic air contaminant (TAC) in subsection (a) pursuant to Food and Agricultural Code (FAC) section 14023.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on January 6, 2009. Comments regarding this proposed action may also be transmitted via e-mail <dpr08004@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

A public hearing has been scheduled for the time and place stated below to receive oral comments regarding the proposed regulatory changes.¹

DATE: January 5, 2009

TIME: 9:30 a.m.

PLACE: California Environmental Protection Agency Headquarters Building
Sierra Hearing Room
1001 I Street
Sacramento, California 95814

A DPR representative will preside at the hearing. Persons who wish to speak will be asked to register before the hearing. The registration of speakers will be conducted at the location of the hearing from 9:00 a.m. to 9:30 a.m. Generally, registered persons will be heard in the order of their registration. Any other person who wishes to speak at the hearing will be afforded the opportunity to do so after the registered persons have been heard. If the number of registered persons in attendance warrants, the hearing officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard. Oral comments presented at a hearing carry no more weight than written comments.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does not affect small businesses. The regulatory action merely adds endosulfan to the TAC List in section 6860(a) and does not restrict or further regulate use of the chemical by businesses. Pursuant to FAC section 14023(e), the need for, and appropriate degree of, control measures for a pesticide listed as a TAC pursuant to FAC section 14023(d) shall be determined by DPR in consultation with the Office of Environmental Health Hazard Assessment (OEHHA), the Air Resources Board (ARB), and the air pollution control districts or air quality management districts in the affected counties. If a need for control measures is determined for endosulfan, the proposed control measures will be promulgated in a separate regulatory action.

¹ If you have special accommodation or language needs, please notify DPR. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

FAC section 14021 defines a TAC as “an air pollutant that may cause or contribute to an increase in mortality or an increase in serious illness, or which may pose a present or potential hazard to human health.” As mandated by FAC section 14022, DPR, in consultation with OEHHA and ARB, evaluates the health effects of pesticides which may be, or are, emitted into the ambient air of California. FAC sections 14021–14022 describe this evaluation process. Upon completion of this evaluation, DPR prepares a report on the health effects of the pesticide in question. Pursuant to FAC section 14023, an independent Scientific Review Panel (SRP) reviews this report and submits its written findings to DPR. Within ten days following receipt of the SRP’s findings, FAC section 14023(d) requires DPR to “prepare a hearing notice and a proposed regulation which shall include the proposed determination as to whether a pesticide is a toxic air contaminant.”

DPR evaluated endosulfan and the SRP has reviewed DPR’s report *“Endosulfan Risk Characterization Document, April 2008.”* The SRP recommended in its written findings that the Director initiate regulatory steps to list endosulfan as a TAC.

Based upon the results of the evaluation of endosulfan, the findings of the SRP, and the criteria in 3 CCR section 6890 for identifying pesticides as a TAC, the Director has declared endosulfan to be a TAC. The proposed regulatory action adds endosulfan to section 6860(a).

**IMPACT ON LOCAL AGENCIES
OR SCHOOL DISTRICTS**

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a “new program or higher level of service of an existing program” within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

**EFFECT ON FEDERAL
FUNDING TO THE STATE**

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

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

**SIGNIFICANT STATEWIDE
ADVERSE ECONOMIC IMPACT DIRECTLY
AFFECTING BUSINESSES**

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

**COST IMPACTS ON REPRESENTATIVE
PRIVATE PERSONS OR BUSINESSES**

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**IMPACT ON THE CREATION, ELIMINATION,
OR EXPANSION OF JOBS/BUSINESSES**

DPR has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective

and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456 and 14023.

REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 14021 and 14023.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Regulations
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-3991

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted above:

Randy Segawa, Environmental Program Manager
Environmental Monitoring Branch
(916) 324-4137

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

TITLE 9. DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Adoption of Section 9550, Title 9, California Code of Regulations

OFFENDER TREATMENT PROGRAM

Notice of Rulemaking and Public Comment Period

NOTICE IS HEREBY GIVEN that the California Department of Alcohol and Drug Programs (ADP) proposes to adopt a new regulation at Section 9550, Title 9, California Code of Regulations (CCR).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing regulations in Chapter 2.5 (commencing with Section 9500), Division 4, Title 9 of the CCR establish standards for the Substance Abuse and Crime Prevention Act (SACPA) of 2000 and the Substance Abuse Treatment and Testing Accountability (SATTA) Program. This regulatory action will adopt new Chapter 2.6 and Section 9550, which will implement, interpret, and make specific Health and Safety Code (HSC) Section 11999.30 by establishing standards for the Offend-

er Treatment Program (OTP), which is related to the SACPA and SATTA as explained below.

HSC 11999.30 established the OTP, charged the Department of Alcohol and Drug Programs (ADP) with administration of the OTP, and authorized ADP to distribute state funds to counties to augment their Substance Abuse and Crime Prevention Act of 2000 (SACPA) programs.

Section 9550 will codify existing ADP policy into regulation. Specifically, Section 9550 will establish a process for distributing funds to enhance services for individuals sentenced to alcohol and other drug treatment in lieu of incarceration services under SACPA. OTP funds will be used to enhance alcohol and drug treatment services, increase the proportion of sentenced offenders who enter, remain in, and complete treatment, and reduce delays in availability of appropriate treatment. Five percent of county OTP funds may also be used to provide mental health services for SACPA eligible offenders with co-occurring disorders.

AUTHORITY

These regulations are being adopted pursuant to Section 11755 of the Health and Safety Code.

REFERENCE

The statutory reference for this regulatory action is Section 11999.30 of the Health and Safety Code.

FISCAL IMPACT STATEMENTS

Anticipated costs or savings to federal funding to the state:

None because no federal funding is involved and this regulatory action merely codifies existing policy.

Anticipated costs or savings to state agencies:

None because this regulatory action merely codifies existing policy.

Anticipated costs or savings to county or local government:

None because this regulatory action merely codifies existing policy.

Anticipated fiscal or economic impact on business:

None because this regulatory action merely codifies existing policy. ADP has made an initial determination that the proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This regulatory action will not affect the ability of

California businesses to compete with businesses in other states, as other states already require certification of AOD counselors. This regulatory action will not affect the creation or elimination of jobs, the creation of new businesses, the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Anticipated fiscal or economic impact on small businesses:

This regulatory action will impact small businesses, since most AOD programs are small businesses. However this regulatory action will not result in any negative impact or cost to small businesses because it merely codifies existing policy.

Impact on Representative Private Persons or Businesses:

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

Mandate to Local Agencies or School Districts:

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

Other Non-discretionary Costs or Savings Imposed upon Local Agencies:

None.

Impact on Housing Costs:

ADP does not anticipate that this regulatory action will impact housing costs in any way.

WRITTEN COMMENT PERIOD

Any interested person or his authorized representative may submit written comments on the proposed regulatory action. **The written comment period closes at 5 p.m. on January 5, 2009.** Please submit any written comments before that time. ADP cannot accept written comments after the close of the public comment period. Please send written comments to Mary Conway, Regulations Coordinator, Department of Alcohol and Drug Programs, 1700 K Street, Sacramento, CA 95814. Comments may also be submitted by fax at (916) 323-5873 or e-mail at MCONWAY@ADP.STATE.CA.US.

SCOPE OF TESTIMONY

Section 11346.8(c) of the Government Code prohibits ADP from making any changes to the text of a not-

iced regulation after the public hearing, unless the change was so sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed action. Therefore please make your comments specific to the regulation discussed in this notice. Please indicate the number of the section you would like changed, the specific change requested, and the reason why you would like the section changed. Since ADP cannot make changes to sections of regulations which were not mentioned in this public notice, during the public comment period ADP will not consider testimony regarding changes which are outside the scope of this notice.

If you wish to request ADP to amend, adopt, or repeal additional sections of regulation, ADP is required to consider those changes in a separate regulatory action.

PUBLIC HEARING

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

CONSIDERATION OF ALTERNATIVES

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

ADDITIONAL CHANGES

ADP may modify the proposed regulation in response to testimony received during the 45-day public comment period, so long as any additional changes made are sufficiently related to the proposed regulatory action and within the scope of this notice. ADP will

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

AVAILABILITY OF TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

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

PERSON TO CONTACT FOR ADDITIONAL INFORMATION

ADP's contact for this regulation package is Millicent Gomes at (916) 445-7456. The back up contact is Harriet Schaeffer at (916) 322-7319.

FINAL STATEMENT OF REASONS

After the close of the 45-day public comment period, ADP will summarize and respond to all public comments in a written final statement of reasons. The final statement of reasons will be posted on ADP's web site at <http://www.adp.ca.gov>.

TITLE 17. CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

NOTICE OF PROPOSED REGULATION ADOPTION

**California Code of Regulations
Title 17. — Public Health
Division 4 — California Institute for
Regenerative Medicine
Chapter 2**

Date: November 21, 2008

**Deadline for Submission of Written Comment:
January 5, 2009 – 5:00 p.m.**

Hearing Date: None scheduled.

**Subject Matter of Proposed Regulations:
Exemption Petition for Lines Derived Prior to
November 22, 2006.**

Sections Affected:

The proposed action adopts section 100081 of Title 17 of the California Code of Regulations.

Authority: Article XXXV of the California Constitution and sections 125290.35, subdivisions (a), (b)(1), (2), (3), (4), (5) and (6); and 125290.40, subdivision (j), Health and Safety Code.

Reference: Sections 125290.35, 125290.40, 125290.55, Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The California Institute for Regenerative Medicine (“Institute” or “CIRM”) was established in early 2005 with the passage of Proposition 71, the California Stem Cell Research and Cures Initiative. The statewide ballot measure, which provides \$3 billion in funding for stem cell research and dedicated facilities at California universities and research institutions, was approved by California voters on November 2, 2004, called for the establishment of a new state agency to make grants and provide loans for stem cell research, research facilities and other vital research opportunities.

The Independent Citizens Oversight Committee (“ICOC”) is the 29-member governing board for the Institute. ICOC members are public officials, appointed on the basis of their experience earned in California’s leading public universities, non-profit academic and research institutions, patient advocacy groups and the biotechnology industry.

The Scientific and Medical Accountability Standards Working Group (“Standards Working Group” or “SWG”) makes recommendations to the ICOC on scientific, medical and ethical standards pertaining to stem cell research the Institute funds. Specifically, California Health and Safety Code section 125290.55 requires the Standards Working Group to: 1) recommend to the ICOC scientific, medical and ethical standards; 2) recommend to the ICOC standards for all medical, socioeconomic, and financial aspects of clinical trials and therapy delivery to patients, including, among others, standards for safe and ethical procedures for obtaining materials and cells for research and clinical efforts for the appropriate treatment of human subjects in medical research consistent with paragraph (2) of subdivision (b) of Section 125290.35, and to ensure compliance with patient privacy laws; 3) recommend to the ICOC modification of the standards described in numbers (1) and (2) as needed; 4) make recommendations to the ICOC on the oversight of funded research to ensure compliance with the standards described in numbers (1) and (2); and, 5) advise the ICOC, the Scientific and Medical Research Funding Working Group, and the Scientific and Medical Research Facilities Working Group on an on-going basis on relevant ethical and regulatory issues.

CIRM regulations require hESC lines derived prior to November 22, 2006 — the date the MES regulations took effect — to (1) be recognized by an authorized authority or (2) conform to specific regulatory criteria. hESC lines that do not meet either standard are not eligible for use in CIRM–funded research.

On July 25, 2008, CIRM presented an example to the SWG of a scientifically significant hESC line derived before November 22, 2006, in accordance with the prevailing ethical standard of care at the time. The line, however, does not conform to the exact regulatory criteria set forth in the CIRM regulations. The MES regulations have the effect of applying requirements retroactively to hESC lines.

It was the sense of the SWG that for lines derived before the effective date of the regulations, there is a need for a “grandfathering” process to evaluate materials for use in CIRM–funded research. The proposed regulation creates a process that would allow use of such lines under certain circumstances. This evaluation process should include the following:

1. Consideration of the informed consent from the woman or couple in IVF (and no indication that original donor would not consent for research);
2. Consideration of documentation related to the approval of the donation protocol by an Institutional Review Board;

3. Consideration of compliance with prevailing ethical and legal standards in place at the time of derivation in the jurisdiction where the derivation was carried out;
4. Documentation of the scientific or medical significance of the hESC line.

The evaluation process would be initiated with a request to CIRM. Staff would review the request and make a recommendation to the ICOC. The ICOC would consider the request in a public meeting.

Technical, Theoretical or Empirical Studies, Reports or Documents:

A. Documents or Laws:

None.

B. Public Input:

Discussion and public input received at two public meetings conducted by the Standards Working Group on July 25, 2008, and the ICOC on August 12, 2008.

Copies of the documents referenced above are available at the internet link indicated or at the offices of CIRM located at 210 King Street, San Francisco, California, 94107. Transcripts and meeting minutes of the meetings referenced in Section "B" are available on CIRM's website, www.cirm.ca.gov under the "Meetings Transcripts" and "Meetings Minutes" links.

Submittal of Comments:

Any interested party may present comments in writing about the proposed action to the agency contact person named in this notice. Written comments must be received no later than 5:00 p.m. on January 5, 2009. Comments regarding this proposed action may also be transmitted via e-mail to mescomments@cirm.ca.gov or by facsimile transmission to (415) 396-9141.

At this time, no public hearing has been scheduled concerning the proposed regulations. If any interested person or the person's representative requests a public hearing, he or she must do so in writing no later than December 22, 2008.

Effect on Small Business:

CIRM has determined that the proposed regulatory action has no impact on small businesses. The proposed amendments implement conditions on awarding grants for stem cell research. This research is conducted almost exclusively by large public and private non-profit institutions, as well as large for-profit institutions. As such, the regulation is not expected to adversely impact small business as defined in Government Code section 11342.610.

Impact on Local Agencies or School Districts:

CIRM has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. CIRM has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

Costs or Savings to State Agencies:

CIRM has determined that no savings or increased costs to any agency will result from the proposed regulatory action.

Effect on Federal Funding to the State:

CIRM has determined that no costs or savings in federal funding to the state will result from the proposed regulatory action.

Effect on Housing Costs:

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

Significant Statewide Adverse Economic Impact Directly Affecting Businesses:

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

Cost Impacts on Representative Private Persons or Businesses:

CIRM has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. The CIRM is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on the Creation, Elimination, or Expansion of Jobs:

CIRM has determined it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

Consideration of Alternatives:

CIRM must determine that no reasonable alternatives considered by the agency, or that have otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective

and less burdensome to affected private persons or businesses than the regulatory action.

Availability of Statement of Reasons and Text of Proposed Regulations:

CIRM has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which CIRM relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

Availability of Changed or Modified Text:

After the close of the comment period, CIRM may make the proposed regulation permanent if it remains substantially the same as described in the Policy Statement Overview. If CIRM does make changes to the proposed amendments to the regulations, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. CIRM will accept written comments on any changes for 15 days after the modified text is made available.

Agency Contact:

Written comments about the proposed regulatory action; requests for a copy of the Initial Statements of Reasons, the proposed text of the regulation, and a public hearing; and inquiries regarding the rulemaking file may be directed to:

Tamar Pachter, General Counsel
California Institute for Regenerative Medicine
210 King Street
San Francisco, CA 94107
(415) 396-9122

Questions on the substance of the proposed regulatory action may be directed to:

Geoff Lomax, Senior Officer for Medical and
Ethical Standards
California Institute for Regenerative Medicine
(415) 396-9134

The Notice of Proposed Regulatory Adoption, the Initial Statement of Reasons and any attachments, and the proposed text of the regulations are also available on CIRM's website, www.cirm.ca.gov.

Availability of Final Statement of Reasons:

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9, subdivision (a), may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on CIRM's web-page and accessed at www.cirm.ca.gov.

GENERAL PUBLIC INTEREST**DEPARTMENT OF
HEALTH CARE SERVICES****The California Department of Health Care
Services Skilled Nursing Facility Quality
Workgroup Meeting Information**

Information about the Skilled Nursing Facility (SNF) Quality Workgroup is available at the Department of Health Care Services (DHCS) web site page at www.dhcs.ca.gov/services/medi-cal/Pages/SNFQualityWorkgroup.aspx. Questions can be e-mailed to snfquali@dhcs.ca.gov.

Attached you will find the agendas for the November 19, 2008, and November 24, 2008 Skilled Nursing Facility Quality Workgroup meetings, developed during the November 6, 2008 meeting with the Workgroup and the public. Both meetings will be held at:

10:15 a.m.–3:15 p.m.
University of Southern California State Capitol
Center
1800 I Street, Sacramento, CA 95814

Call-in information is as follows:
Dial in Number 1-800-369-1772
Participant Pass code 1629

SKILLED NURSING FACILITY QUALITY WORKGROUP AGENDA

Wednesday, November 19, 2008

10:15 a.m.–3:15 p.m.

University of Southern California State Capitol Center
1800 I Street, Sacramento, CA 95814

1. Welcome Review Agenda	10:15– 10:20	Monique Parrish (MP) Facilitator
2. Status of outstanding issues/requests Develop workgroup purpose	10:20– 11:00	MP
3. PUBLIC COMMENT	11:00– 11:05	MP
4. Identify workgroup principles & values	11:05– 11:25	MP
5. PUBLIC COMMENT	11:25– 11:30	MP
6. Review notes from September 16 Meeting, “Improving Quality in Nursing Homes: Measuring, Reporting and Paying for Quality”	11:30– 12:00	MP
7. PUBLIC COMMENT	12:00– 12:05	MP
8. WORKING LUNCH—BREAK (Lunch provided for workgroup members)	12:05– 12:15	MP
9. Review workgroup goal — <i>to develop AB 1629/ratesetting methodology recommendations</i> <ul style="list-style-type: none">• Review and discuss recommended factors (13) for workgroup to consider to achieve this goal• Discuss additional factors to consider	12:15– 1:15	MP
10. PUBLIC COMMENT	1:15– 1:20	MP
11. Develop workgroup objectives (To achieve goal)	1:20– 2:00	MP
12. PUBLIC COMMENT	2:00– 2:05	MP

13. BREAK	2:05– 2:15	
14. Prioritize objectives Begin development of goal matrices with prioritized objectives—outline: • Tasks • Person(s) Responsible • Timeline	2:15– 2:55	MP
15. PUBLIC COMMENT	2:55– 3:00	MP
16. Closing remarks, develop next meeting agenda, meeting evaluation	3:00– 3:10	MP
17. PUBLIC COMMENT	3:10– 3:15	MP
18. Adjournment	3:15	MP

SKILLED NURSING FACILITY QUALITY WORKGROUP AGENDA

Monday, November 24, 2008

10:15 a.m.–3:15 p.m.

University of Southern California State Capitol Center
1800 I Street, Sacramento, CA 95814

1. Welcome Review Agenda	10:15– 10:20	Monique Parrish (MP) Facilitator
2. Status of outstanding issues/requests Continue development of goal matrices with prioritized objectives—outline: • Tasks • Person(s) Responsible • Timeline	10:20– 12:00	MP
3. PUBLIC COMMENT	12:00– 12:05	MP
4. WORKING LUNCH – BREAK (Lunch provided for workgroup members)	12:05– 12:15	

5. Review and discuss progress on previously established objectives by responsible parties which may include: • Information/data presentations • Presentations related to other tasks	12:15– 1:55	MP & Dept. of Health Care Services (DHCS)
6. PUBLIC COMMENT	1:55– 2:00	MP
7, BREAK	2:00– 2:10	
8. Discuss process/structure for reaching consensus regarding workgroup AB <i>1629/ratesetting methodology recommendations</i>	2:10– 2:55	MP
9. PUBLIC COMMENT	2:55– 3:00	MP
10. Closing remarks, develop next meeting agenda, meeting evaluation	3:00– 3:10	MP
11. PUBLIC COMMENT	3:10– 3:15	MP
12. Adjournment	3:15	MP

All times are approximate. Opportunities for public comment will be provided throughout the agenda. If you wish to speak, place your name on the sign-in list. If you participate by phone, the facilitator and/or operator will provide instructions for making your comment. Prior to making your comments, please state your name for the record and identify any group or organization you represent. Depending on the number of individuals wishing to address the workgroup, the facilitator may establish specific time limits on presentations.

For individuals with disabilities, the Department of Health Care Services will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and

conversion of training or meeting materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write:

Jennifer Lovett
 Civil Rights Office
 Department of Health Care Services
 Phone: (916) 323-2412
 California Relay Service for the hearing impaired:
 771/1-800-735-2929
 Email: Jennifer.Lovett@dhcs.ca.gov

Please make your request for assistive services at least seven days in advance of the meeting.

FRANCHISE TAX BOARD
NOTICE OF CORRECTION

Correction to Notice of Proposed Action

On November 14, 2008, a notice was published in the Notice Register (California Regulatory Notice Register 2008, No. 46-Z, p. 2000) announcing a formal regulatory hearing on behalf of the Franchise Tax Board to consider amendments to section 25111 and adoption of section 25113 under Title 18 of the California Code of Regulations, pertaining to a water's-edge election.

There were two incorrect dates inadvertently included in the notice. The date for the hearing was identified as January 12, 2008 and should be January 12, 2009. Also, the date for the written comment period was identified as January 12, 2008 and should be January 12, 2009.

All inquiries concerning this notice or the hearing should be directed to Colleen Berwick at the Franchise Tax Board, Legal Branch, P.O. Box 1720, Rancho Cordova, CA 95741-1720; Telephone (916) 845-3306; Fax (916) 845-3648; E-Mail: colleen.berwick@ftb.ca.gov.

**OAL REGULATORY
DETERMINATION**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATIONS**

**(Pursuant to Government Code
Section 11340.5 and
Title 1, section 270, of the
California Code of Regulations)**

**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW
2008 OAL DETERMINATION NO. 18
(OAL FILE # CTU 2008-0131-01)**

REQUESTED BY: Edmund Carolan

CONCERNING: Department of Corrections and Rehabilitation Department Operations Manual sections 31130.6, 31130.6.1, 31130.6.2, and 31130.6.3, Hiring-Above-Minimum Salaries for Extraordinary Qualifications.

**DETERMINATION ISSUED
PURSUANT TO GOVERNMENT CODE SECTION
11340.5.**

SCOPE OF REVIEW

A determination by the Office of Administrative Law (OAL) evaluates whether or not an action or enactment by a state agency complies with California administrative law governing how state agencies adopt regulations. Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. Our review is limited to the sole issue of whether the challenged rule meets the definition of a "regulation" as defined in Government Code section 11342.600 and is subject to the Administrative Procedure Act (APA). If a rule meets the definition of a "regulation," but was not adopted pursuant to the APA and should have been, it is an "underground regulation" as defined in California Code of Regulations, title 1, section 250. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

ISSUE

On January 31, 2008, Edmund Carolan (Petitioner) submitted a petition to OAL challenging the Hiring-Above-Minimum (HAM) salary provisions found in the Department Operations Manual (DOM), a publication of the Department of Corrections and Rehabilitation (CDCR). The only challenged HAM provisions are DOM sections 31130.6, 31130.6.1, 31130.6.2, and 31130.6.3, located in chapter 3 (Personnel, Training, and Employee Relations), article 13 (Salary and Classifications) of the DOM. The entire text of the challenged DOM sections is attached as Exhibit A.

The four challenged sections pertain to applicants for CDCR employment who have extraordinary qualifications and qualify for a HAM starting salary. The following summarizes the four challenged DOM sections:

DOM section 31130.6. Hiring—Above—Minimum (HAM) Salary Rates for Extraordinary Qualifications.

The Department of Personnel Administration (DPA) may authorize HAM salaries to bring a person who has extraordinary qualifications into state service. Current state employees shall not be considered for HAM salaries.

HAM salaries may be offered to extraordinarily qualified applicants for CDCR employment only when the minimum starting salary for the classification is not attractive to the applicant. Firm salary commitments shall not be made prior to official approval.

DOM section 31130.6.1. Delegated Classifications.

CDCR has authority to approve HAM salaries for selected medical, nursing and related classifications. CDCR authority to approve HAM salaries for these classifications is delegated from DPA.

DOM section 31130.6.2. Approval.

CDCR Personnel Operations shall be the approval authority for HAM salary requests for delegated classifications. HAM salary requests for delegated classifications shall be submitted to CDCR Personnel Operations at least five working days before the proposed reporting date of the applicant, and shall be approved before salary commitments are made and before employees begin work.

HAM salary requests for non-delegated classifications require DPA approval, shall be submitted to CDCR Personnel Operations at least ten working days before the proposed reporting date of the applicant, and shall be approved before salary commitments are made and before employees begin work.

DOM section 31130.6.3. Standards.

HAM salaries shall only be considered for extraordinarily qualified applicants who will provide a significant contribution to CDCR beyond that which other applicants offer. An applicant shall be considered extraordinarily qualified and eligible for a HAM salary based upon standards and criteria that include the following:

- Unique talent, ability, or skill as demonstrated by previous employment experience
- Comparison of qualifications to other applicants and current state employees
- Current salary and other job offers
- Difficulty in recruitment for the position
- Prior state employment

Current state employees shall not be considered for a HAM salary. HAM salaries shall not be granted retroactively after an applicant enters state employment.

Petitioner challenges these four DOM provisions as alleged underground regulations¹ issued in violation of Government Code section 11340.5.² The scope of this determination is limited to the four challenged HAM sections in the DOM.³

DETERMINATION

OAL determines that the challenged HAM provisions in DOM sections 31130.6, 31130.6.1, 31130.6.2, and 31130.6.3 meet the definition of a “regulation” as defined in section 11342.600 and that they should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

Petitioner was hired by CDCR in May 2007 from a list of eligible applicants. The precise chronology of events is unclear, but we will assume the following facts based upon the allegations and exhibits in the record⁴ and information obtained during our review from CDCR and DPA. Petitioner was told during the hiring process that he could be qualified to receive a starting salary above the minimum range for his classification (a HAM salary), possibly at the maximum range for his classification. CDCR informed Petitioner in March 2007 that the HAM salary had been denied. Despite the denial, Petitioner accepted the position with CDCR and filed a grievance with CDCR in June 2007 alleging a violation of his bargaining unit’s Memorandum of Understanding (MOU) and seeking reversal of the HAM denial. In a letter dated November 2, 2007, Petitioner was informed by the CDCR Office of Labor Relations

¹ An underground regulation is defined in title 1, section 250: “Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

² Unless otherwise specified code references are to the California Government Code.

³ This determination is specifically limited in scope to these four HAM sections in the DOM. OAL is not reviewing or rendering an opinion on the validity of underlying DPA HAM policy issued in its personnel memoranda, PMLs, or other DPA guidelines. These were not challenged as underground regulations and DPA is not a party to this petition. For similar reasons, this determination does not address underlying issues that associate CDCR and DPA in establishing CDCR HAM policy, DPA’s authority to delegate HAM policy to CDCR or to state agencies in general, or DPA’s authority to establish HAM policy.

⁴ See Petitioner’s rebuttal, May 18, 2008.

that his grievance had been denied. Citing CDCR's initial denial of the HAM salary based in pertinent part on the HAM provisions in the DOM,⁵ CDCR found no violation of Petitioner's MOU.

Subsequently, Petitioner submitted a petition to CDCR pursuant to section 11340.6⁶ asking CDCR to formally adopt the HAM provisions in the DOM in compliance with the APA. CDCR denied this petition and, pursuant to section 11340.7(d), CDCR's written decision for its denial was published in the California Regulatory Notice Register on January 28, 2008 (vol. 3-Z, pp. 73–74). Petitioner then filed this petition with OAL on January 31, 2008, pursuant to section 11340.5, challenging the HAM provisions in the DOM as underground regulations.

CDCR responded to the section 11340.5 petition on May 5, 2008, arguing that the HAM provisions in the DOM are not required to be adopted pursuant to the APA. The following summarizes the arguments in CDCR's response:

1. CDCR has the authority to regulate certain aspects of HAM salaries for new state employees. This authority is derived from DPA, whose authority is derived from section 19836 of the Government Code.
2. The challenged HAM provisions in the DOM are outdated and are therefore not underground regulations as defined in title 1, California Code of Regulations, section 250. CDCR administration of all medical classifications is currently under control of federal receivership under the *Plata* decision. The challenged HAM provisions in the DOM would have been accurate prior to PML No. 2007–026⁷ and the *Plata* receivership.

⁵ Petitioner was informed in this CDCR correspondence, and in DPA correspondence he apparently received after filing his petition with OAL, that CDCR's denial of his HAM was based on the HAM sections in the DOM and, by reference, to various HAM policies established by DPA. Only the HAM sections in the DOM cited in these letters are pertinent for purposes of this determination. These letters make clear the allegation in Petitioner's OAL petition that CDCR's denial of the HAM salary was based on the HAM provisions in the DOM.

⁶ A section 11340.5 petition is different from a section 11340.6 petition. A section 11340.6 petition is made to the state agency by any interested person requesting that the state agency formally adopt, amend, or repeal regulations in compliance with the APA. The state agency is required to respond to such a petition indicating whether the agency will formally adopt, amend, or repeal regulations as requested. A section 11340.5 petition is made to OAL, alleging that a state agency is using an underground regulation.

⁷ "PML" is apparently an acronym for Personnel Management Liaisons, the addressees of DPA memoranda distributed to state agencies. PML No. 2007–026 was issued on September 25, 2007 to update DPA's "Personnel Management Delegation Program," which, among other things, includes HAM salaries.

3. Amendment of regulatory portions of DOM are approved by CDCR's Secretary and forwarded to OAL in compliance with the APA. This process assures compliance with the APA and, accordingly, the HAM provisions in the DOM are not underground regulations because they have been vetted by this process.

On May 18, 2008, OAL received Petitioner's rebuttal to CDCR's response to the petition. The rebuttal reiterates the arguments made in the petition and disagrees with the arguments made in CDCR's response. OAL received no public comments for this petition.

UNDERGROUND REGULATIONS

Section 11340.5, subdivision (a), prohibits state agencies from issuing rules unless the rules comply with the APA. It states as follows:

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

When an agency issues, utilizes, enforces, or attempts to enforce a rule in violation of section 11340.5 it creates an underground regulation as defined in title 1, California Code of Regulations, section 250.

OAL may issue a determination as to whether or not an agency issues, utilizes, enforces, or attempts to enforce a rule that meets the definition of a "regulation" as defined in section 11342.600 and should have been adopted pursuant to the APA. An OAL determination that an agency has issued, utilized, enforced, or attempted to enforce an underground regulation is not enforceable against the agency through any formal administrative means, but it is entitled to "due deference" in any subsequent litigation of the issue pursuant to *Grier v. Kizer* (1990) 219 Cal.App.3d 422 [268 Cal.Rptr. 244].

ANALYSIS

A determination of whether the challenged rule is a "regulation" subject to the APA depends on (1) whether the challenged rule contains a "regulation" within the meaning of section 11342.600, and (2) whether the challenged rule falls within any recognized exemption from APA requirements.

A regulation is defined in section 11342.600 as:

. . . every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571 [59 Cal.Rptr.2d 186], the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, §11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency's procedure (Gov. Code, §11342, subd. (g)).⁸

The first element of a regulation is whether the rule applies generally. As *Tidewater* pointed out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. The HAM provisions in the DOM apply to such a clearly defined class of persons—all applicants seeking employment with CDCR and requesting HAM salaries for positions within designated medical classifications. The first element is, therefore, met.

The second element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency's procedure. CDCR states in its response that the HAM provisions in the DOM implement section 19836 HAM policy from authority it derives from the DPA delegation. Government Code section 19836 provides for the administration of HAM salaries by DPA. Section 19836(a) provides:

[DPA] may authorize payment at any step above the minimum salary limit to classes or positions in order to meet recruiting problems, to obtain a person who has extraordinary qualifications, to correct salary inequities resulting from actions by the department or State Personnel Board, or to give credit for prior state service in connection with appointments, promotions, reinstatements, transfers, reallocations, or demotions.

⁸ Section 11342(g) was re-numbered in 2000 to section 11342.600 without substantive change.

Additionally, Government Code section 11152 provides:

So far as consistent with law the head of each department may adopt such rules and regulations as are necessary to govern the activities of the department and may assign to its officers and employees such duties as he sees fit.

CDCR's authority to adopt regulations governing its activities necessarily includes its hiring practices. The challenged HAM sections expressly set forth standards for CDCR to determine eligibility for HAM salaries and establish procedures for CDCR to process HAM salary requests. DOM section 31130.6 sets forth the preliminary requirements (e.g., that current state employees cannot be considered). DOM section 31130.6.1 establishes that DPA has delegated its approval of HAM salaries for medical, nursing, and related classifications. DOM section 31130.6.2 sets forth the CDCR process for approval, including the timeframe in which requests must be made. And DOM section 31130.6.3 sets forth the standards and criteria for determining if an applicant is "extraordinarily qualified." See the summary of the provisions, *supra*, on page 2 of this Determination and the full text of the provisions attached as Exhibit A.

These challenged HAM provisions establish policies and procedures for HAM salaries authorized by CDCR. These HAM provisions implement, interpret, or make specific sections 11152 and 19836 of the Government Code, and therefore, the second element in *Tidewater* is met. Accordingly, we conclude that the challenged HAM provisions in the DOM meet the definition of "regulation" as defined in section 11342.600.

The final issue to examine is whether the challenged HAM provisions in the DOM fail within an exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies.⁹ Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to section 11346, the procedural requirements established in the APA "shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly." (Emphasis added.)

⁹ See Government Code section 11340.9. For example, section 11340.9(d) provides that the APA does not apply to "[a] regulation that relates only to the internal management of the state agency." In order for a rule to fall within this exemption, it must directly affect only the employees of the issuing agency. (See *Poschman v. Dumke* (1973) 31 Cal.App.3d 932 [107 Cal.Rptr. 596] and *Stoneham v. Rushen* (*Stoneham I*) (1982) 137 Cal.App.3d 729 [188 Cal.Rptr. 130].) Because the HAM sections affect applicants for employment with CDCR, i.e., people who are not employees of CDCR, the HAM sections do not fall within the internal management exception of the APA.

We were unable to find any statutory APA exemption that would apply to the DOM sections challenged by this petition.¹⁰

AGENCY RESPONSE

The following addresses the arguments made by CDCR in its response to the petition.

1. CDCR has the authority to regulate certain aspects of HAM salaries for new state employees. This authority is derived from DPA, whose authority is derived by section 19836 of the Government Code.

The question of authority is not determinative of whether an underground regulation exists. We only need to determine whether the HAM provisions issued by CDCR meet the definition of “regulation” as defined in section 11342.600 that should have been adopted pursuant to the APA. The question of authority becomes relevant only when an agency proposes to adopt regulations pursuant to the APA, the applicable requirements of which assure that a duly adopted regulation is within the agency’s quasi-legislative authority. CDCR’s authority to implement HAM policy is not an issue in this determination, and we make no finding on the authority of CDCR to adopt regulations directly related to HAM salaries.

2. The challenged HAM provisions in the DOM are outdated and are therefore not underground regulations as defined in title 1, California Code of Regulations, section 250. CDCR administration of all medical classifications is currently under control of federal receivership under the *Plata* decision. The challenged HAM provisions in the DOM would have been accurate prior to PML No. 2007–026 and the *Plata* receivership.

OAL informed CDCR of its option to issue a certification pursuant to title 1, California Code of Regulations, section 280, that CDCR is not using, enforcing, or will not attempt to enforce the HAM provisions currently in the DOM. CDCR chose not to issue the certification.

Additionally, CDCR’s claim that the California prisons are currently under control of federal receivership under the *Plata* decision does not mean the challenged HAM sections are not underground regulations. The *Plata* decision is a compilation of cases on the same subject. CDCR has not provided a citation to any specific language in any of these cases that would provide an exemption from the procedures of the APA. Without an express statutory exemption or language in the court’s

¹⁰Both CDCR and DPA were consulted on the issue of an applicable APA exemption. CDCR was unable to find an applicable exemption, and DPA declined to comment.

decision establishing an APA exemption, OAL rejects this argument.

3. Amendment of regulatory portions of DOM are approved by CDCR’s Secretary and forwarded to OAL in compliance with the APA. This process assures compliance with the APA and, accordingly, the HAM provisions in the DOM are not underground regulations because they have been vetted by this process.

After careful regulatory research, OAL found no evidence of the HAM provisions having been adopted by CDCR in compliance with the procedural requirements of the APA. The DOM is a collection of provisions, labeled as operational policies, that is published by and solely the product of CDCR. OAL has no oversight or affiliation with what CDCR publishes in the DOM. The fact that regulatory provisions in the DOM may include duly-adopted regulations does not necessarily mean that all DOM regulatory provisions have first been properly adopted pursuant to the procedural requirements of the APA.

CONCLUSION

The challenged HAM provisions in DOM sections 31130.6, 31130.6.1, 31130.6.2, and 31130.6.3 meet the definition of a “regulation” as defined in section 11342.600. They do not fall within any express APA exemption, and should, therefore, have been adopted pursuant to the APA.

August 4, 2008

/s/
SUSAN LAPSLEY
Director

/s/
Richard L. Smith
Staff Counsel

Exhibit A

Operations Manual
DEPARTMENT OF CORRECTIONS
AND REHABILITATION

31130.6 Hiring—Above-Minimum (HAM) Salary Rates for Extraordinary Qualifications

The DPA may authorize payment above the minimum step in the salary range in order to bring a person who has extraordinary qualifications into state service. Current state employees shall not be considered for these rates.

Special hiring rates under this authorization may be offered to an unusually well qualified person when the minimum step of the range is not attractive. Firm salary commitments shall not be made prior to official approval.

31130.6.1 Delegated Classifications

The Department has the delegated authority to approve HAMs (second to fifth step, inclusive) for selected medical, nursing and related classifications. This authority and the classifications affected are specified in a DPA memorandum published at the beginning of each fiscal year. A copy of the memorandum is available for review in the institutional personnel offices and Personnel Operations Section, Central Office.

31130.6.2 Approval

HAM requests shall be approved before salary commitments are made and before employees begin work.

The Personnel Operations Section analysts and institutional personnel officers are the approval authority for delegated classifications. Their authority is limited in accordance with the DPA memorandum and any subsequent guidelines published by DPA.

HAMs for other classifications require DPA approval.

HAM requests shall be received:

- By the Personnel Operations Section or institution personnel officer at least five working days before the proposed reporting date for delegated classification.
- By the Personnel Operations Section at least ten working days before the preneed reporting date for classifications requiring DPA approval.

31130.6.3 Standards

Contribution to the Agency

Extraordinary qualifications should provide to the work of the Department a significant contribution beyond that which other applicants offer, for example:

- Expertise in a particular area of the Department's program. This expertise must be well beyond the normal requirements of the class.
- Unique talent, ability, or skill as demonstrated by previous job experience. The scope and depth of such experience is more significant than its length.

The degree to which a candidate exceeds minimum qualifications shall be a guiding factor, rather than a determining one. When a number of candidates offer considerably more than minimum qualifications, it may not be necessary to pay above the minimum to acquire an unusually well qualified person.

The qualifications of state employees already in the same or closely related classes shall be carefully con-

sidered since questions of salary equity may arise. Inequity adjustments shall not result from use of this delegation.

Current Salary and Other Job Offers

If the criteria for extraordinary qualifications are otherwise met, the individual's present salary or other bona fide salary offers normally shall be above the first step of the class before the candidate can be considered for a special hiring rate.

Current competitive salary offers shall be verified. The name of persons contacted, telephone numbers and dates of contact, and data obtained shall be included on the request form.

Recruitment Difficulty

Recruitment difficulty is a factor to the extent that a specific extraordinary skill is difficult to recruit, even though some applicants are qualified in the general skills of the class.

Prior State Employment

The Department approves (or requests approval of) HAMS for extraordinary qualifications only for persons who are not now in state civil service. Above-minimum rates cannot be granted retroactively once the individual becomes a state civil service employee.

Prospective employees with prior state service (civil or exempt service, including that with the University of California, state colleges, the Legislature and other groups) shall be evaluated in the same manner as other applicants. However, to qualify for a higher rate of pay than they received as state employees, they shall clearly have qualifications above those they possessed as state employees.

Employees re-entering state service under DPA Rule 599.677, Rate on Reappointment or Reinstatement After Permanent Separation, are not eligible for a special hiring rate under this section.

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.

CALIFORNIA REGULATORY NOTICE REGISTER 2008, VOLUME NO. 47-Z

File# 2008-0926-03

BOARD OF FORESTRY AND FIRE PROTECTION
Northern Spotted Owl Definitions and Federal and State "Take" Definitions, 2008

This regulatory action deals with Northern Spotted Owl definitions and Federal and State "Take" definitions.

Title 14

California Code of Regulations

AMEND: 895.1, 919.9, 939.9

Filed 11/07/2008

Effective 01/01/2009

Agency Contact:

Christopher Zimny

(916) 653-9418

File# 2008-0926-02

BOARD OF FORESTRY AND FIRE PROTECTION
Forest Fire Prevention Exempt, 2008

This action amends existing provisions governing the Public Resources Code section 4584(k) Forest Fire Prevention Exemption.

Title 14

California Code of Regulations

AMEND: 1038(i)

Filed 11/07/2008

Effective 01/01/2009

Agency Contact:

Christopher Zimny

(916) 653-9418

File# 2008-0926-05

BOARD OF FORESTRY AND FIRE PROTECTION
Watershed with T or I Values Extension, 2008

This action will extend the effective period of forest practice rules for the protection of threatened and impaired watersheds that were first effective on July 1, 2000, continuing them in force without change until December 31, 2009.

Title 14

California Code of Regulations

AMEND: 895.1, 898, 914.8, 916, 916.2, 916.9, 916.11, 916.12, 923.3, 923.9, 934.8, 936, 936.2, 936.9, 936.11, 936.12, 943.3, 943.9, 954.8, 956, 956.2, 956.9, 956.11, 956.12, 963.3, 963

Filed 11/07/2008

Effective 01/01/2009

Agency Contact:

Christopher Zimny

(916) 653-9418

File# 2008-0930-02

CALIFORNIA STATE UNIVERSITY

Employment Status

This regulation concerns the terms and conditions of athletic personnel appointed to positions in the Man-

agement Personnel Plan. These regulations are exempt from the Administrative Procedure Act and follow procedures outlined in Education Code section 89030.1.

Title 5

California Code of Regulations

AMEND: 42723

Filed 11/06/2008

Effective 11/06/2008

Agency Contact:

Cassandra M. Andrews

(562) 951-4500

File# 2008-1014-01

COMMISSION ON PEACE OFFICER STANDARDS
AND TRAINING
Airport Peace Officer Basic Training

Penal Code section 832.1 requires any airport security officer, airport policeman, or airport special officer, regularly employed and paid by a city, county, city and county, or district who is a peace officer to complete a course of training relative to airport security approved by the Commission on Peace Officers Standards and Training within 90 days after such employment. The curriculum for the Aviation Security Course currently appears to section 1081 of title 11 of the California Code of Regulations. Section 1005 of title 11 of the California Code of Regulations specifies that every peace officer, with certain exceptions, must attend a Regular Basic Course before the officer is assigned duties that include the exercise of peace officer powers. This regulatory action amends section 1005 to provide that an airport peace officer must complete the Aviation Security Course within the prescribed time in addition to the Regular Basic Course.

Title 11

California Code of Regulations

AMEND: 1005, 1081

Filed 11/07/2008

Effective 12/07/2008

Agency Contact: Leah Cherry

(916) 227-3891

File# 2008-0930-08

DEPARTMENT OF FOOD AND AGRICULTURE
Mediterranean Fruit Fly Eradication Area

This certificate of compliance makes permanent the prior emergency regulatory action (OAL file no. 2008-0620-01E) that established the entire county of Tulare as an eradication area for the Mediterranean fruit fly ("Ceratitis capitata").

Title 3

California Code of Regulations

AMEND: 3591.5(a)

Filed 11/12/2008

Agency Contact:

Stephen S. Brown

(916) 654-1017

File# 2008-1105-02

DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This emergency regulatory action expands the quarantine areas for the light brown apple moth (*Epiphyas postvittana*) in Contra Costa County, Sonoma County, Santa Cruz County, Alameda County and Monterey County and adds the Greenfield area of Monterey County to the quarantine area following the taking of multiple male moths from traps in each of these areas.

Title 3

California Code of Regulations

AMEND: 3434(b)

Filed 11/12/2008

Effective 11/12/2008

Agency Contact:

Stephen S. Brown

(916) 654-1017

File# 2008-0925-04

DEPARTMENT OF FOOD AND AGRICULTURE
Diaprepes Root Weevil Interior Quarantine

This certificate of compliance makes permanent two prior emergency regulatory actions (OAL file nos. 2008-0324-01E and 2008-0410-02E) that expanded the existing quarantine area in the Rancho Santa Fe area by approximately two square miles and the San Diego area by approximately one square mile of San Diego County for the Diaprepes root weevil (*Diaprepes abbreviatus*).

Title 3

California Code of Regulations

AMEND: 3433(b)

Filed 11/07/2008

Agency Contact:

Stephen S. Brown

(916) 654-1017

File# 2008-1031-01

DEPARTMENT OF INDUSTRIAL RELATIONS
Occupational Safety and Health Fund and Assessments

These amendments to Subchapter 2.06 of Title 8 add provisions covering a new Occupational Safety and Health Fund to levy on employers, pursuant to Labor Code section 62.5. Labor Code section 62.5(e) specifically exempts review of these regulations from the Administrative Procedure Act.

Title 8

California Code of Regulations

AMEND: 15600, 15601, 15602, 15603, 15604, 15605, 15606, 15607, 15611

Filed 11/12/2008

Effective 11/12/2008

Agency Contact:

Richard Starkeson

(650) 737-2022

File# 2008-0930-03

DEPARTMENT OF INSURANCE

Changes to Sections 37, 44 and 54 of the CAARP Plan of Operations

This rulemaking amends the California Automobile Assigned Risk Plan Plan of Operations to raise the minimum premium deposits for all commercial vehicles and to establish a new minimum premium deposit for extra heavy duty trucks and truck tractors. The rulemaking also clarifies the time period during which servicing carriers must issue financial responsibility filings for agencies such as FHA, ICC, DOT, PUC, and DMV.

Title 10

California Code of Regulations

AMEND: 2498.4.9

Filed 11/12/2008

Effective 12/12/2008

Agency Contact: Mike Riordan

(415) 538-4226

File# 2008-0930-05

DEPARTMENT OF INSURANCE

Changes to Rules 57, 121 and 141 of the CAARP Rules and Rate Manual

This “file and print only” rulemaking filing amends rules 57, 121, and 141 of the “California Automobile Assigned Risk Plan Simplified Manual of Rules and Rates.” This rulemaking is exempt from OAL review pursuant to Government Code section 11340.9(g).

Title 10

California Code of Regulations

AMEND: 2498.5

Filed 11/07/2008

Effective 12/07/2008

Agency Contact: Mike Riordan

(415) 538-4226

File# 2008-0930-04

DEPARTMENT OF INSURANCE

Changes to Section 19 of the CAARP Plan of Operations

This regulatory action amends section 19 of the California Automobile Assigned Risk Plan (CAARP) Plan of Operations to require that “certified producers” must attend a producer seminar at least once every four years after certification. Certified producers are broker-agents who are able to submit applications for insurance on behalf of their clients.

Title 10

California Code of Regulations

AMEND: 2498.4.9

Filed 11/12/2008

Effective 12/12/2008

Agency Contact: Mike Riordan

(415) 538-4226

File# 2008-0925-01

**EMPLOYMENT DEVELOPMENT DEPARTMENT
Family Temporary Disability Insurance Benefits**

This regulatory action amends one section to clarify that filing a first time claim for Family Temporary Disability Insurance Benefits establishes a 12-month benefit period. Another section is amended to clarify the meaning of “stepparent” with respect to all children, not just “minor” children. Another section is amended to add four example scenarios to clarify the application of the regulations to specific commonly occurring fact situations.

Title 22

California Code of Regulations

AMEND: 2706-2, 3302-1, 3303.1(c)-1

Filed 11/06/2008

Effective 12/06/2008

Agency Contact: Laura Colozzi (916) 654-7712

File# 2008-1022-04

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

Replace Graphics

This change without regulatory effect replaces graphics relating to Electrical Safety Orders to improve the quality of the illustrations, and deletes references to Title 24 pursuant to AB 3000 (Ch. 1124 of 2002), which repealed the requirement for OSHSB regulations to be submitted to the Building Standards Commission.

Title 8

California Code of Regulations

AMEND: 2540.8, 2540.9, 2548.23, 2719, 2740, 2741, 2880, 2980

Filed 11/06/2008

Agency Contact: Marley Hart (916) 274-5721

File# 2008-1030-02

**STATE WATER RESOURCES CONTROL BOARD
Emergency Fee Regulations to Conform With Budget
Act 2008-09**

On October 7, 2008, the State Water Resources Control Board adopted Resolution 2008-0074, which revised the emergency water right and water quality certification fee regulations and schedules to be consistent with the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2008–2009. Under the Water Code and existing regulations, a person filing a water right application, petition, registration, or other filing, must pay a filing fee to the State Water Board. Existing regulations also establish annual fees for water right permits, licenses, water leases, and applications for water quality certification under Clean Water Act (CWA) section 401 for an activity that involves a hydroelectric fa-

cility licensed by the Federal Energy Regulatory Commission (FERC). In general, these emergency regulations would adjust the fee schedule to (1) reduce fees for most applications for temporary permits filed under Water Code section 1426; (2) increase the limit on filing fees for the largest (in terms of quantity of water to be appropriated or transferred) applications, petitions, and water transfers; and (3) increase annual fees for projects under review for CWA section 401 certification in connection with FERC licensing and for projects issued FERC licenses. The proposed fee schedule will result in no change in the annual fees from FY 2007–2008 for water right permits and licenses; accordingly, fees for most of the current water right fee payers would remain unchanged. The proposed revision will also amend the requirements for petitions for reconsideration.

Title 23

California Code of Regulations

AMEND: 1062, 1064, 1077, 3833.1

Filed 11/05/2008

Effective 11/05/2008

Agency Contact: Erin Mahaney (916) 341-5187

File# 2008-1030-03

**STATE WATER RESOURCES CONTROL BOARD
Emergency Regs. to conform with Budget Act 2008/09
(ch 268 st 2008)**

On October 7, 2008, the State Water Resources Control Board adopted Resolution 2008-0073 to adjust the annual waste discharge permit fees to conform to the revenue levels set forth in the Budget Act for Fiscal Year (FY) 2008–2009. Under the Water Code and existing regulations, any person filing a report of waste discharge that could affect the quality of the waters of the state must pay an annual fee to the State Water Board. Pursuant to Water Code section 13260, subdivision (f), these regulations are deemed emergency regulations, exempt from OAL review, and shall remain in effect until revised by the State Water Board.

Title 23

California Code of Regulations

AMEND: 2200, 2200.4, 2200.5, 2200.6

Filed 11/06/2008

Effective 11/06/2008

Agency Contact: David Ceccarelli (916) 341-5999

File# 2008-0925-02

**STATE WATER RESOURCES CONTROL BOARD
Basin Plan Amendment: TMDL for Salts in the Calleguas Creek Watershed**

In this regulatory action subject to Government Code section 11353, the Los Angeles Regional Water Quality Control Board adopted, and the State Water Resources Control Board approved, an amendment of the Water

Quality Control Plan for the Los Angeles Region. This Basin Plan amendment establishes a Total Maximum Daily Load (TMDL) in the Calleguas Creek Watershed for boron, chloride, sulfate, and total dissolved solids.

Title 23

California Code of Regulations

ADOPT: 3939.32

Filed 11/06/2008

Agency Contact: Nick Martorano (916) 341-5980

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN June 11, 2008 TO
November 12, 2008**

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

Title 2

11/03/08 AMEND: 647.1, 647.2, 647.3, 647.20, 647.20.1, 647.21, 647.22, 647.23, 647.24, 647.25, 647.26, 647.30, 647.31, 647.32, 647.33, 647.35, 647.36, 648.1, 648.3, 648.5, 649.20, 649.21

10/31/08 AMEND: 18545, 18703.4, 18730, 18940.2, 18942.1, 18943

10/31/08 ADOPT: 18402.1 AMEND: 18427

10/22/08 ADOPT: 59600

10/21/08 ADOPT: 1859.41.1, 1859.42.1 AMEND: 1859.2, 1859.41, 1859.42, 1859.43, 1859.51, 1859.147, Form SAB 50-01, Form SAB 50-03

10/20/08 ADOPT: 20120, 20121, 20122, 20123, 20124, 20125, 20126, 20127

09/04/08 ADOPT: 18530.45

09/04/08 AMEND: 18946.4

08/14/08 AMEND: 1859.2, 1859.121, 1859.122, 1859.127, 1859.129

08/08/08 ADOPT: 21905.5 AMEND: 21903, 21905

07/16/08 ADOPT: 18946.6

07/10/08 AMEND: 1859.76, 1859.83, 1859.104.3

07/10/08 AMEND: 1859.71

07/08/08 AMEND: 2271

06/26/08 AMEND: 554.2, 554.3

06/17/08 ADOPT: div. 8, ch. 112, sec. 59570

06/11/08 AMEND: 18360, 18361

06/11/08 ADOPT: 18421.7 AMEND: 18401

06/11/08 ADOPT: 18944.2 REPEAL: 18944.2

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11/12/08 AMEND: 3591.5(a)

11/12/08 AMEND: 3434(b)

11/07/08 AMEND: 3433(b)

10/30/08 ADOPT: 1430.142 AMEND: 1430.43 REPEAL: 1430.44.5

10/29/08 AMEND: 3435(b)

10/28/08 ADOPT: 3408

10/22/08 AMEND: 3700(c)

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10/14/08 AMEND: 3423(b)

10/01/08 AMEND: 3434(b)

09/24/08 AMEND: 810.1 REPEAL: 810

09/23/08 AMEND: 3591.20(a)

09/23/08 AMEND: 3434(b)

09/18/08 AMEND: 3591.20(a)

09/17/08 AMEND: 3435(b)

09/11/08 AMEND: 3591.20(a)

09/10/08 AMEND: 3434

09/05/08 ADOPT: 3435

09/03/08 AMEND: 6452.2

09/02/08 AMEND: 3433(b)

09/02/08 AMEND: 3591.6(a)

08/26/08 AMEND: 3434(b)

08/25/08 AMEND: 3423(b)

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08/11/08 AMEND: 3406(b)

08/01/08 AMEND: 3589(a)

08/01/08 ADOPT: 3591.22

07/28/08 AMEND: 3434(b)

07/25/08 AMEND: 902.9

07/24/08 ADOPT: 3591.21

07/22/08 AMEND: 3417(b)

07/16/08 AMEND: 3700

07/16/08 AMEND: 3406

07/14/08 AMEND: 3963

07/11/08 AMEND: 3434(b)

07/09/08 AMEND: 3434(b)

06/30/08 AMEND: 3589(a)

06/24/08 AMEND: 3963

06/24/08 AMEND: 3060.3

06/23/08 AMEND: 3591.5(a)

06/17/08 AMEND: 2751

06/16/08 AMEND: 3434(b)

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10/03/08	ADOPT: 12008 AMEND: 12122, 12200.14, 12200.20, 12202, 12203A, 12203.2, 12205.1, 12218.13, 12220.14, 12220.20, 12220.20A, 12222, 12237, 12301, 12342, 12343, 12344, 12345
09/29/08	AMEND: 1843.2
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08/25/08	ADOPT: 8102, 8102.1, 8102.2, 8102.3, 8102.4, 8102.5, 8102.6, 8102.7, 8102.8, 8102.9, 8102.10, 8102.11, 8102.12, 8102.13, 8102.14, 8102.15 AMEND: 8090, 8091, 8092, 8093, 8094, 8095, 8096, 8097, 8098, 8099, 8100, 8101
08/21/08	ADOPT: 1634 AMEND: 1420
08/12/08	ADOPT: 4180, 4181
08/08/08	AMEND: 12002, 12100, 12101, 12120, 12122, 12128, 12130, 12140, 12200, 12200.3, 12200.7, 12200.9, 12200.10A, 12200.10B, 12200.10C, 12200.11, 12200.13, 12200.14, 12200.16, 12200.17, 12200.18, 12200.20, 12200.21, 12201, 12202, 12203, 12203A, 12203.1, 12203.2, 12203.3, 12203.5, 12204, 12205, 12205.1, 12218, 12218.1, 12218.5, 12218.7, 12218.11, 12220, 12220.3, 12220.13, 12220.14, 12220.16, 12220.18, 12220.20, 12220.20A, 12220.21, 12220.23, 12221, 12222, 12223, 12224, 12225, 12225.1, 12233, 12234, 12235, 12236, 12300, 12301, 12301.1, 12302, 12303, 12304, 12305, 12306, 12308, 12309, 12310, 12335, 12341, 12342, 12343, 12344, 12345, 12347, 12358, 12359, 12360, 12370, 12400, 12401, 12402, 12403, 12404, 12405, 12460, 12463, 12464, 12466, 12550, 12552, 12554, 12556, 12558, 12560, 12562, 12564, 12566, 12568, 12590
08/04/08	AMEND: 1843.2
07/14/08	AMEND: 8070, 8072, 8073
07/10/08	AMEND: 1481, 1783, 1784
06/24/08	ADOPT: 12335, 12340, 12357 AMEND: 12342, 12343, 12344, 12345, 12358, 12359

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11/06/08	AMEND: 42723
10/17/08	ADOPT: 100000, 100001, 100002, 100003, 100004, 100005, 100006, 100007, 100008, 100009, 100010,

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10/14/08 ADOPT: 42729
09/10/08 AMEND: 41000
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08/26/08 AMEND: 5168, 6775
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08/08/08 AMEND: 1532.1
08/04/08 AMEND: 3649
08/04/08 AMEND: Appendix C following section 560, Appendices A, B, and C following section 1938, and section 5001
07/30/08 AMEND: 1524
07/18/08 AMEND: 290.0, 290.1, 291.0, 291.1, 291.2, 291.5, 292.0, 294.0, 295.0, 296.0, 296.1, 296.2, 296.3, 296.4
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07/14/08 AMEND: Appendix B following 1541.1
06/30/08 ADOPT: 4300.1 AMEND: 4297, 4300

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07/11/08 ADOPT: 1810.207.5, 1810.220.5
AMEND: 1830.220
07/02/08 AMEND: 9515(d), 10522(b)

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11/12/08 AMEND: 2498.4.9
11/12/08 AMEND: 2498.4.9
11/07/08 AMEND: 2498.5
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09/11/08	AMEND: 2330.1	08/13/08 ADOPT: 619.2 AMEND: 615, 615.1, 616, 617, 618, 619, 619.1
08/15/08	ADOPT: 2844 AMEND: 2840, 2842	07/15/08 AMEND: 440.04
08/14/08	AMEND: 2699.100, 2699.201, 2699.205, 2699.207, 2699.209, 2699.400	06/16/08 ADOPT: 156.01
08/04/08	AMEND: 5000, 5110, 5111, 5112, 5113, 5114, 5116, 5117 REPEAL: 5119	06/16/08 AMEND: 1961, 1965
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07/23/08	AMEND: 2498.4.9	Title 14
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07/17/08	AMEND: 2498.6	11/07/08 AMEND: 1038(i)
07/10/08	REPEAL: 2191	11/07/08 AMEND: 895.1, 898, 914.8, 916, 916.2, 916.9, 916.11, 916.12, 923.3, 923.9, 934.8, 936, 936.2, 936.9, 936.11, 936.12, 943.3, 943.9, 954.8, 956, 956.2, 956.9, 956.11, 956.12, 963.3, 963
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11/07/08	AMEND: 1005, 1081	09/22/08 AMEND: 4900 REPEAL: 4901, 4902, 4903, 4904
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10/16/08	AMEND: 1081	09/11/08 AMEND: 10310, 10360, 10810, 10820, Appendix D, Appendix F
10/14/08	AMEND: 1005	09/09/08 ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5, 17987.6
10/02/08	AMEND: 1003, 9040, 9041, 9073(b)	09/04/08 AMEND: 670.2
10/02/08	AMEND: 1081	08/27/08 AMEND: 300
09/23/08	ADOPT: 44.3	08/25/08 ADOPT: 27.32 AMEND: 27.20(f), 27.25, 27.30, 28.26, 28.27, 28.28, 28.29, 28.48, 28.49, 28.51, 28.52, 28.53, 28.54, 28.55, 28.56, 28.57, 28.58
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06/17/08	AMEND: 1005, 1007, 1008, 1080	08/14/08 ADOPT: 3950, 3951, 3952, 3953, 3954, 3955, 3956, 3957, 3958, 3959, 3960, 3961, 3962, 3963, 3964, 3965
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10/20/08	ADOPT: 346.00, 346.02, 346.04, 346.06, 346.08, 346.10, 346.12, 346.14, 346.16	08/06/08 AMEND: 815.05, 818.02, 825.05, 827.02
10/07/08	AMEND: 935	07/28/08 AMEND: 702
10/02/08	AMEND: 423.00	07/23/08 AMEND: 7.50
10/02/08	AMEND: 15.00, 15.03	07/15/08 ADOPT: 4860
09/08/08	AMEND: 2449	07/08/08 ADOPT: 124.1 AMEND: 122, 125, 149.1, 150, 150.02, 150.03, 150.05, 163, 163.5, 164, 174, 180.3
08/29/08	ADOPT: 2660(a)(0.5), 2260(a)(0.7), 2260(a)(6.9), 2260(a)(7.5), 2260(a)(8.5), 2260(a)(10.5), 2260(a)(10.7), 2260(a)(19.7), 2260(a)(19.8), 2260(a)(23.5), 2260(a)(23.7), 2260(a)(37), 2260(a)(38), 2260(a)(39), 2262.3(d), 2264.2(a)(3), 2264.2(b)(5),	07/02/08 AMEND: 7.50

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10/28/08	ADOPT: 3999.7	10/17/08 ADOPT: 1399.610, 1399.612 AMEND: 1399.502
10/23/08	ADOPT: 1417 AMEND: 1029, 1206, 1248, 1357, 1358, 1461	10/07/08 AMEND: 832.47
10/15/08	ADOPT: 3999.6	10/02/08 AMEND: 3351.2
09/15/08	ADOPT: 3269	09/29/08 AMEND: 2522, 2524, 2579, 2579.10 REPEAL: 2522.5, 2579.1
09/03/08	AMEND: 2253	09/22/08 AMEND: 4154, 4155
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08/04/08	AMEND: 3000, 3005, 3006, 3008, 3009, 3011, 3012, 3013, 3015, 3016, 3290, 3310, 3313, 3314, 3315, 3317, 3318, 3320, 3323, 3327, 3328	08/27/08 AMEND: 2250 REPEAL: 2274, 2277
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07/17/08	ADOPT: 3134.1 AMEND: 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137,	08/15/08 AMEND: 1361
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08/07/08	AMEND: 51098.5, 51202.5, 51309.5, 51503.3	
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06/17/08	ADOPT: 25000, 25102, 25103, 25104, 25201, 25203, 25204, 25301, 25302, 25303, 25304, 25305, 25306, 25401, 25403, 25405, 25501, 25502, 25503, 25504, 25505, 25601, 25701, 25703, 25705, 25707, 25709, 25711, 25713, 25721, 25801, 25803, 25805, 25821, 25900, 25901, 25902, 25903, 27000, 28001, 28002, 28003, 28004, 28006, 28007, 28008, 28009, 28010, 28011, 28012, 28013, 28014, 28015, 28016, 28017, 28018, 28019, 28020, 28021, 28022, 28023, 28024, 28025, 28026,	
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