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

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## PROPOSED ACTION ON REGULATIONS

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

### TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Fair Political Practices Commission will consider the proposed regulation at a public hearing on or after June 7, 2002. Written comments must be received at the Commission offices no later than 5:00 p.m. on June 5, 2002.

#### BACKGROUND/OVERVIEW

Regulation 18707.4 is one of the final regulations being reviewed in the Commission's Conflict of Interest Regulations Improvement Project. Regulation 18707.4 sets forth a narrow exception from the conflict-of-interest rules for members of boards and commissions who are appointed to represent a particular economic interest, such as industry representatives on regulatory boards. The regulation has been applied to various agricultural commodity commissions and boards regulating a particular profession. The exception for industry boards and commissions was adopted by the Commission early on in its administration of the Political Reform Act, in 1976. The regulation was challenged and upheld in the case *Consumers Union of U.S., Inc. v. California Milk Producers Advisory Bd.* (1978) 82 Cal.App.3d 433.

At its November 5, 2001, meeting, the Commission discussed policy issues relating to regulation 18707.4. At its April 12, 2002, meeting, the Commission approved to be noticed for final adoption several amendments to the regulation as set forth below.

#### PROPOSED REGULATORY ACTION

*Amend 2 Cal. Code Regs. section 18707.4—Public Generally: Appointed Members of Boards and Commissions:* The amendments to regulation 18707.4 are designed to conform the regulation to current advice and to make the "significant segment" standard clearer.

A proposed amendment to 18707.4(b) would permit the requirement for the member to have the economic interest he or she represents to be implicit. For the

exception to apply, regulation 18707.4 subdivision (a)(2) currently states that the board member must be required by law to have the economic interest he or she represents. However, regulation 18707.4 has been appropriately applied where the statute authorizing creation of the board or commission does not explicitly require the member to have the economic interest the member represents. Rather, given the statutory scheme, it is clear that the statute anticipates that the board member will likely have the economic interest the member represents.

Another proposed amendment involves the "significant segment" language. Subdivision (a)(4) states that the exception only applies if the "decision of the board or commission will financially affect the member's economic interest in a manner that is substantially the same or proportionately the same as the decision will financially affect a significant segment of the persons the member was appointed to represent." Quantification of what "significant segment" means here has traditionally required cross referencing to the definitions of "significant segment" in regulations 18707.1 (public generally—general rule) or 18707.7 (public generally—predominant industry, trade or profession). The cross referencing is confusing and does not work well for the appointed boards regulation, which usually applies to a smaller universe of affected individuals or entities. The application of regulation 18707.4 will be clearer if the significant segment is defined in the regulation itself. The percentage is recommended to stay relatively high because often the "persons the member was appointed to represent" may be a fairly small group of individuals or entities.

In subdivision (a)(3) of regulation 18707.4, the concept of foreseeability would be added by substituting "reasonably foreseeable material financial effect" for "material financial effect." In addition, a typographical error is corrected in subdivision (b).

#### FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

#### AUTHORITY

Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

**REFERENCE**

The purpose of this regulation is to implement, interpret and make specific Government Code section 87103.

**CONTACT**

Any inquiries should be made to Hyla P. Wagner, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at [www.fppc.ca.gov](http://www.fppc.ca.gov).

**ADDITIONAL COMMENTS**

After the hearing, the Commission may adopt the proposed regulation if it remains substantially the same as described or as in the text originally made available to the public. The Commission may make changes to the proposed regulation before its adoption or repeal.

**TITLE 2. FAIR POLITICAL PRACTICES COMMISSION**

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

**CONFLICT OF INTEREST CODES**

**AMENDMENT**

**MULTI-COUNTY:**

Cutler-Orosi Unified School District  
College of the Sequoias

A written comment period has been established commencing on **May 3, 2002**, and closing on **June 17, 2002**. Written comments should be directed to the Fair Political Practices Commission, Attention Kevin S. Moen, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **June 17, 2002**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

**COST TO LOCAL AGENCIES**

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

**EFFECT ON HOUSING COSTS AND BUSINESSES**

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

**AUTHORITY**

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

**REFERENCE**

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

**CONTACT**

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

**AVAILABILITY OF PROPOSED CONFLICT OF INTEREST CODES**

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the

Commission should be made to Kevin S. Moen, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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### CONFLICT OF INTEREST CODES

#### AMENDMENT

MULTI-COUNTY:  
Paratransit, Inc.

A written comment period has been established commencing on **May 3, 2002**, and closing on **June 17, 2002**. Written comments should be directed to the Fair Political Practices Commission, Attention Kevin S. Moen, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **June 17, 2002**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

### COST TO LOCAL AGENCIES

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

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

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

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

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303 and

87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

**CONFLICT OF INTEREST CODES**

**ADOPTION**

**MULTI-COUNTY:**

Sacramento Valley Basinwide Air Pollution Control Council (SVBAPCC)

**AMENDMENT**

**MULTI-COUNTY:**

Alameda-Contra Costa Transit (AC Transit)  
Bay Area Rapid Transit (BART)  
Central Basin Municipal Water District  
Livermore-Amador Valley Water Management Agency

A written comment period has been established commencing on **May 03, 2002** and closing on **June 17, 2002**. Written comments should be directed to the Fair Political Practices Commission, Attention Teri Rindahl, 428 J Street, Suite 620, Sacramento, California 95814.

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

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

The Executive Director or the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict of interest code(s). Any written comments must be received no later than **June 17, 2002**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

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There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were

mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

**EFFECT ON HOUSING COSTS  
AND BUSINESSES**

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

**AUTHORITY**

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

**REFERENCE**

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

**CONTACT**

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

**AVAILABILITY OF PROPOSED CONFLICT  
OF INTEREST CODES**

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

**TITLE 8. OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

**NOTICE OF PUBLIC MEETING/PUBLIC  
HEARING/BUSINESS MEETING OF THE  
OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD AND NOTICE OF  
PROPOSED CHANGES TO TITLE 8 OF THE  
CALIFORNIA CODE OF REGULATIONS**

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and



Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

**PUBLIC MEETING:** On **June 20, 2002** at 11:00 a.m. in the Sierra Hearing Room of the Cal/EPA Building, 1001 I Street, Sacramento, California.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **June 20, 2002** following the Public Meeting in the Sierra Hearing Room of the Cal/EPA Building, 1001 I Street, Sacramento, California.

At the Public Hearing, the Board will consider the public testimony on the proposed changes noticed below to occupational safety and health regulations in Title 8 of the California Code of Regulations.

**BUSINESS MEETING:** On **June 20, 2002** following the Public Hearing in the Sierra Hearing Room of the Cal/EPA Building, 1001 I Street, Sacramento, California.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

**NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Permanent Amusement Rides Safety Orders and General Industry Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on June 20, 2002.

**1. TITLE 8: PERMANENT AMUSEMENT RIDES SAFETY ORDERS**

Chapter 4, Subchapter 6.2, Articles 1 through 4  
Sections 3195.1 through 3195.14  
**Inspection of Permanent Amusement Rides, Including Aquatic Devices**

**2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

Chapter 4, Subchapter 7  
Article 80, Section 4794  
Article 88, Section 4848  
Article 90, Section 4850  
**Gas and Electric Welding Systems and Operations**

A description of the proposed changes are as follows:

**1. TITLE 8: PERMANENT AMUSEMENT RIDES SAFETY ORDERS**

Chapter 4, Subchapter 6.2, Articles 1 through 4  
Sections 3195.1 through 3195.14  
**Inspection of Permanent Amusement Rides, Including Aquatic Devices**

**INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

The Legislature recently enacted Part 8.1, Sections 7920 through 7932, of the California Labor Code. This legislation established the Permanent Amusement Ride Safety Inspection Program, which has as a core function the oversight and performance of inspections conducted for the purpose of promoting the safety of patrons of permanent amusement rides.

Pursuant to Labor Code Section 7923, the Division of Occupational Safety and Health (Division) has the authority to “formulate and propose rules and regulations for adoption by the Occupational Safety and Health Standards Board (Board) for the safe installation, repair, maintenance, use, operation, and inspection of all permanent amusement rides as the Division finds necessary for the protection of the general public using permanent amusement rides”. These rules and regulations are to “be in addition to the existing applicable safety orders and will be concerned with engineering force stresses, safety devices, and preventative maintenance”.

Accordingly, the following is a description of the regulations proposed by the Division for adoption by the Board pursuant to Section 7923.

Article 1. Application and Definitions

Section 3195.1. Application.

Subsection (a)

Proposed subsection (a) describes the scope of application of Subchapter 6.2. The effect of this section is to provide that the requirements of Subchapter 6.2 apply to permanent amusement rides operated anywhere in California. Articles 1, 2, and 4 apply to all permanent amusement rides, including aquatic devices, while Article 3 applies only to aquatic devices.

Subsection (b)

Proposed subsection (b) lists the specific sections of seven industry standards that are referred to in Subchapter 6.2, with the effect that these standards are incorporated by reference therein. These standards are all published by the American Society for Testing and Materials (ASTM) in a document entitled "ASTM Standards on Amusement Rides and Devices, 6th Edition 2000." They consist of provisions applicable to ride manufacturers as well as ride owners and operators.

The referenced ASTM provisions form the basic compliance framework of the proposed regulations. This framework consists in part of requirements directly referencing ASTM provisions and in part of requirements based on ASTM concepts. The purpose of this approach is to tailor the ride-safety standards articulated by ASTM to ride owners and operators, who are the ultimate bearers of the duty to provide a safe permanent amusement ride environment to patrons in the State of California. The Board believes that adoption of this framework will constitute, for the most part, a regulatory standardization of practices that already exist throughout most of the permanent amusement ride industry in California.

The effect of this subsection is to ensure that owners and operators of permanent amusement rides understand precisely what documents are being referred to in subsequent sections. These documents are consensus standards developed by the amusement ride industry with regard to: design and manufacture of permanent amusement rides, methods of testing, and specifications for performance, operation, maintenance, inspection, and other related topics.

Section 3195.2. Definitions.

Proposed Section 3195.2 defines thirteen terms used in Subchapter 6.2, and indicates that other relevant definitions are found in Section 344.6 of Title 8. The thirteen terms defined by this section are: "amusement ride incident," "aquatic device," "authorized person," "DIN Standard," "existing permanent amuse-

ment ride," "facility," "flume," "patron," "public operation," "ride," "splash pool," "TUV Standard," and "water slide."

Article 2. Requirements, Other than Recordkeeping and Transfer of Information, Applicable to All Permanent Amusement Rides

Section 3195.3. Required Documentation.

Subsection (a)

The effect of proposed subsection (a), in subsections (1) through (6), is to require owners/operators to have and maintain specified types of documentation for each permanent amusement ride operated at a facility.

Subsection (a)(1)

The effect of proposed subsection (a)(1) is to require owners/operators to have and maintain documentation indicating that the design and manufacture of the ride is in compliance with ASTM F 1159-97a. The documentation is required to include certain manufacturer-originated design and calculation documents specified in Section 4.1 of ASTM F 1159-97a.

Two exceptions are provided. The first exception permits documentation of compliance with other accepted standards as an alternative to documentation of compliance with the referenced ASTM provisions, provided the alternative documentation provides a level of detail comparable to that specified by the referenced ASTM provisions. The second exception applies to existing amusement rides where the required documentation is reasonably believed not to exist or is not reasonably available, and permits the alternative of having and maintaining that documentation from the manufacturer which is reasonably available and, if information is missing on performance characteristics or forces on passengers, using alternative documentation as a supplement to the extent such information is necessary for a reasonably adequate evaluation of the safety of any ride.

Subsection (a)(2)

The effect of proposed subsection (a)(2) is to require owners/operators to have and maintain manufacturer-originated documentation conforming to Sections 5 through 8 of ASTM F 846-92 (Reapproved 1998) on developmental, installation, operational, and nondestructive testing procedures. Exceptions are provided for existing permanent amusement rides only. These exceptions apply if the complete documentation required by subsection 3195.3(a)(2) is reasonably believed not to exist or is not reasonably available.

Subsection (a)(3)

The effect of proposed subsection (a)(3) is to require owners/operators to have and maintain documentation consisting of (1) manufacturer-originated

maintenance instructions conforming to the specifications of Section 4 of ASTM F 853-98 and (2) mandatory maintenance procedures conforming to the specifications of Sections 5 and 6 of ASTM F 853-98. The maintenance procedures are to include an effective training program, which must conform to the specifications of Section 6.2 of ASTM F 853-98, include a manual containing the training subject matter, and specify the length of initial and refresher training as well as the frequency of refresher training.

An exception applies, for existing permanent amusement rides only, if the required documentation is reasonably believed not to exist or is not reasonably available. The exception allows alternative compliance in the form of having and maintaining that documentation which is reasonably available and by having and maintaining effective substitute maintenance instructions meeting a number of specifications reflecting the essential safety concerns of ASTM F 853-98.

Subsection (a)(4)

The effect of proposed subsection (a)(4) is to require owners/operators to have and maintain documentation on mandatory operation procedures conforming to the specifications of Sections 4.1 through 4.1.4.4 of ASTM F 770-93 (Reapproved 2000). The owner or operator is required to incorporate into this documentation the following items:

- (A) Manufacturer-originated information and recommendations conforming to the specifications of Section 3 of ASTM F 770-93 (Reapproved 2000);
- (B) A procedure for notifying the manufacturer of any event, failure, or malfunction reasonably and substantially appearing to have an impact on patron safety and to be of a type that could occur in connection with rides of the same design;
- (C) Descriptions of signal systems procedures and testing;
- (D) Procedures for implementing patron restrictions. A note follows this provision stating that it is not intended to require any action that would constitute discrimination under state or federal law; and
- (E) An effective training program, which must conform to the specifications of 4.1.3 of ASTM F 770-93 (Reapproved 2000), include a manual containing the training subject matter, and specify the length of initial and refresher training as well as the frequency of refresher training.

An exception for existing amusement rides only is provided to the subsection (a)(4)(A) requirement for owners/operators to incorporate into the required documentation certain manufacturer-originated information conforming to Section 3 of ASTM F- 770-93

(Reapproved 2000). The exception applies where the required documentation is reasonably believed not to exist or is not reasonably available, and permits the alternative of obtaining that documentation which is reasonably available coupled with having and maintaining whatever additional information is necessary to provide an effective informational basis for the procedures developed in conformance with Section 4.1 through 4.1.4.4 of ASTM F 770-93 (Reapproved 2000).

Subsection (a)(5)

The effect of proposed subsection (a)(5) is to require owners/operators to have and maintain documentation indicating that the manufacturer's quality assurance program followed for the ride is in conformance with ASTM F 1193-97 and Section 5 of ASTM F 893-87 (Reapproved 1995). An exception is provided, for existing permanent amusement rides only, which applies if the documentation is reasonably believed not to exist or is not reasonably available. The exception permits the alternative of obtaining that documentation which is reasonably available.

Subsection (a)(6)

The effect of proposed subsection (a)(6) is to require owners/operators to have and maintain all of the manufacturer-originated information applicable to each ride as specified in ASTM 698-94. An exception for existing permanent amusement rides applies where the required documentation is reasonably believed not to exist or is not reasonably available. The exception allows the alternative of having and maintaining that documentation which is reasonably available and having and maintaining additional documentation as necessary to provide the information called for by the applicable provisions of Sections 2.2.5 through 2.5 and 2.7 through 2.15.3 of ASTM F 698-94.

Subsection (b)

The effect of proposed subsection (b) is to require owners/operators to make available to the Division upon request all of the documentation and records required to be maintained by Section 3195.3(a).

Section 3195.4. General Design and Manufacture.

The effect of proposed Section 3195.4 is to require that no new permanent amusement ride be opened to the public unless the new permanent amusement ride was designed and manufactured in conformance with the specifications of ASTM F 1159-97a and ASTM 1193-97. An exception is provided for new permanent amusement rides designed to other generally accepted standards where compliance with such other standards can be shown to ensure patron safety comparable to that provided by these ASTM standards.

Section 3195.5. Required Testing.

Subsection (a)

The effect of proposed subsection (a) is to require that no permanent amusement ride be operated with patrons on board unless the owner or operator has documentation demonstrating the proper performance of the ride through testing performed in conformance with the specifications of the documentation required by subsections (a)(2)(A) and (a)(2)(B) of Section 3195.3. An exception is provided for existing permanent amusement rides to mirror the exceptions to Section 3195.3(a)(2).

Subsection (b)

The effect of proposed subsection (b) is to require that all testing required by subsection (a) of this section is conducted by an authorized person as this term is defined at proposed Section 3195.2(d).

Section 3195.6. Maintenance, Inspection, and Related Training.

Subsection (a)

The effect of proposed subsection (a) is to require owners/operators to follow the procedures specified in the documentation required by Section 3195.3(a)(3)(B), and to require owners/operators to provide training as specified in that documentation to each operator and attendant.

The effect of proposed subsection (b) is to require that all maintenance and inspection functions be performed by an authorized person.

Section 3195.7 Operation Procedures and Related Training.

Subsection (a)

The effect of proposed subsection (a) is to require that owners/ operators of permanent amusement rides follow the operation procedures specified in the documentation required by Section 3195.3(a)(4) for each permanent amusement ride, and to provide training as specified in that documentation to each ride operator and attendant.

Subsection (b)

The effect of proposed subsection (b) is to require owners/operators to use effective signs, videos, or other similarly effective means of advising patrons of those instructions, limitations, and warnings deemed necessary for patron safety by the owner or operator, including those maintained as part of the procedures required by Section 3195.3(a)(4)(D). When signs are used for this purpose they would be required to be permanently and conspicuously posted at each existing permanent amusement ride.

Subsection (c)

The effect of proposed subsection (c) is to require owners/operators to ensure that, at all times while the facility is open to the public, at least one person employed by or under the control of the owner or operator has current certification in first aid and cardiopulmonary resuscitation (CPR) from the American Red Cross or another nationally recognized organization and is readily available to render such aid to patrons as needed.

Subsection (d)

The effect of proposed subsection (d) is to require owners/operators to ensure that complete operation instructions are readily accessible to the operators and attendants for each permanent amusement ride.

Subsection (e)

The effect of proposed subsection (e) is to require that all ride operation and attendant functions be performed by an authorized person.

Section 3195.8. Physical Information and Adherence to General Safety-Related Operating Parameters.

Subsection (a)

The effect of proposed subsection (a) is to require that permanent amusement rides not be operated with patrons on board in a manner inconsistent with the specifications of the documentation required by Section 3195.3(a)(6). An exception requiring the owner/operator to permanently affix certain information on the ride is provided for existing permanent amusement rides if manufacturer-originated information does not exist or is not reasonably available.

Subsection (b)

The effect of proposed subsection (b) is to require that all permanent amusement rides are identified by a registration number, which shall be provided by the Division. This registration number shall be kept with other pertinent records for the amusement ride and shall be permanently affixed by a Division representative to the ride.

Section 3195.9. Motion Restriction and Other Specific Hazard Control Measures.

Subsection (a) Emergency Brakes and Devices.

The effect of proposed subsection (a) is to require that ride conveyance vehicles on permanent amusement rides be provided with emergency brakes if upon failure of normal stopping controls collisions likely to cause injury or damage may reasonably be expected to occur. Low speed vehicles designed for controlled collisions, such as bumper cars, would not require emergency stopping controls.

Subsection (b) Anti Rollback Controls.

The effect of proposed subsection (b) is to require that each permanent amusement ride traversing an inclined track be provided with automatic anti-rollback devices unless such controls would conflict with manufacturer recommendations.

Subsection (c) Speed Limiting Devices and Systems.

The effect of proposed subsection (c)(1) is to require that each permanent amusement ride capable of exceeding its maximum design operating speed be provided with a speed-limiting device or system to ensure that the ride cannot exceed that speed at any time while patrons are on board. Proposed subsection (c)(2) addresses the sealing and resealing of adjustable mechanical governors. Proposed subsection (c)(3) addresses safeguards to prevent the ride operator from being able to alter the maximum speed settings of speed-limiting devices other than mechanical governors.

Subsection (d) Signal Systems.

Subsection (d)(1) requires signal systems to be used and to be adequate to control the dispatching of rides as necessary to prevent collision due to any forward unit's failure to clear a stopping point. Signal systems must also be adequate to control the operation of the ride so that neither starting nor stopping the ride results in an unsafe condition. In the case of starting the ride, the signal system must require that, before the start signal is given, there is confirmation that all patrons are safely secured within the ride conveyance vehicle and all other persons are a safe distance from the ride.

An exception provides that use of signal systems is not required if the ride is controlled by a single operator who can clearly observe all phases of operation of the ride.

Proposed subsection (d)(2) requires signal systems to be tested daily prior to initial operation with patrons on board.

Proposed subsection (d)(3) requires a written explanation for use and testing to be available at the operator's or signaler's stations.

The effect of this subsection is to prevent inadvertent collisions.

Subsection (e) Protection of Patrons from Hazardous Surfaces and Moving Parts.

The effect of proposed subsection (e) is to require that surfaces of permanent amusement rides with which patrons may come in contact be free from sharp, rough, or splintered surfaces, edges and corners, and protected from protruding studs, bolts, screws, or other projections. Surfaces and moving parts that a patron may forcibly contact while in motion shall be adequately padded or otherwise designed and main-

tained to protect against injury. Moving parts with which patrons may come into contact shall be guarded to protect against injury.

Subsection (f) Patron Retention, Restraint, and Support.

The effect of proposed subsection (f) is to require all tubs, cars, chairs, seats, gondolas, and other carriers to be equipped as necessary with devices that retain, restrain, or support patrons to provide protection against injury. All fastenings shall be of a type that cannot be released inadvertently by the patron or by other accidental means. All belts, bars, footrests, and other equipment intended for the protection of patrons while they are on the ride shall be designed and maintained to perform their intended function.

Subsection (g) Accessing and Exiting Permanent Amusement Rides.

The effect of proposed subsection (g) is to require that all steps, ramps and walkways inside the site of the permanent amusement ride used by patrons for accessing and exiting the ride be of adequate design and maintained to perform their intended function.

Subsection (h) Operation and Control of the Ride.

The effect of proposed subsection (h) is to require all rides to be operated and controlled only by authorized persons. Authorized persons designated to operate or control the ride shall be within immediate reach of the operating controls while the ride is in operation. Rides would be required to have a stop switch and a disconnect switch within immediate reach of the authorized person. No permanent amusement ride would be allowed to be capable of starting immediately upon reset of the stop switch or disconnect switch. Equipment rooms, machinery rooms, and all other areas unsafe for access by patrons or other unauthorized persons are required to be posted to forbid, and secured to prevent, unauthorized access. Fences installed or replaced after the effective date of this section are required to conform to the specifications of ASTM F 1159-97a. Electrically energized overhead screens used to power bumper car type rides are required to be free of holes that are not part of the design.

Subsection (i) Electrical Wiring Affecting Permanent Amusement Rides.

The effect of proposed subsection (i) is to require that the installation of all new electrical wiring for permanent amusement rides conform to the applicable requirements of the California Code of Regulations, Title 24, Part 3, California Electrical Code, 1998.

Article 3. Aquatic Devices

Section 3195.10. Application.

The effect of proposed Section 3195.10 is to provide that the requirements in Section 3195.11 through Section 3195.13 apply only to aquatic devices.

Section 3195.11. Operation and Maintenance.

Subsection (a)

The effect of proposed subsection (a) is to require aquatic device owners/operators to supplement the operation procedures required by Section 3193.3(a)(4) with written emergency procedures as well as instructions and procedures addressing staffing levels, control of patron movement, supervision of flumes and splash pools, and maintenance of water quality. Staffing levels are required to be determined by the owner/operator based on seven specified considerations.

Subsection (b)

The effect of proposed subsection (b) is to require that, at all times that the aquatic device is in operation, owners/operators of aquatic devices maintain staffing levels in compliance with the written operational instructions required by proposed subsection (a)(2)(A) of this section. Attendants are required to be located in certain vicinities of the water slide splash pool. Current certification to perform first aid and cardiopulmonary resuscitation is required for personnel who supervise patrons at aquatic devices or interact with patrons for the purpose of controlling patron usage of or movement through aquatic devices.

Subsection (c)

The effect of proposed subsection (c) is to require that surfaces and edges of aquatic devices that patrons may contact be free from cutting or pinching hazards or any other hazards that may cause injury.

Subsection (d)

The effect of proposed subsection (d) is to require that, if power is used to generate water movement for an aquatic device, at least one attendant have access to a stopping device that will remove all power.

Subsection (e)

The effect of proposed subsection (e) is to require that drains on aquatic devices be visible to at least one attendant.

Subsection (f)

The effect of proposed subsection (f) is to require that entrances to and exits from aquatic devices be clearly marked.

Subsection (g)

The effect of proposed subsection (g) is to require that areas of ingress to and egress from aquatic devices, as well as walking surfaces in or on aquatic devices, be designed and maintained to drain standing water and to be slip resistant.

Article 4. Recordkeeping and Information Transfer

Section 3195.12. Recordkeeping.

The effect of proposed Section 3195.13 is to require owners/operators to make and maintain for at least five years, and make available to the Division upon request during any Division inspection, records of all of the following: training, maintenance, repair, inspection, testing, accidents required to be reported pursuant to Section 344.15 of Title 8; amusement ride incidents, water quality testing of aquatic devices and determinations of staffing levels to be maintained at aquatic devices. This section requires records of incidents to consist of any reasonable format chosen by the owner/operator, and that records of accidents include certain information such as date of occurrence, name of ride manufacturer, a detailed description of the accident, information on all persons involved in the accident, and the nature of injuries and treatment that resulted.

Section 3195.13. Transfer of Information with Used Permanent Amusement Rides.

Subsection (a)

The effect of proposed subsection (a) is to require that the seller of a used permanent amusement ride provide the following information to the new owner upon transfer of the ride, to the extent the information is known or within the seller's possession: manufacturer documentation, operational and maintenance manuals, information on any modifications, and a summary of all incidents reported to the manufacturer pursuant to the procedure required by Section 3195.3(a)(4)(B) of this Title and all accidents reported pursuant to Title 8, Section 344.15.

Subsection (b)

The effect of proposed subsection (b) is to require the purchaser of a used permanent amusement ride to notify the manufacturer, if the manufacturer still exists, of the change of ownership.

Subsection (c)

The effect of proposed subsection (c) is to require that the purchaser of a used permanent amusement ride obtain from the manufacturer all updated owner, operational, and maintenance manuals and service bulletins to the extent they are available.

Section 3195.14 Confidentiality.

The effect of proposed Section 3195.14 is to require the Division to maintain the confidentiality of all documentation and records required by this Subchapter to the extent that the Division obtains such documentation and it is protected by Labor Code Section 6322 or any other applicable provision of law.

**DOCUMENTS INCORPORATED  
BY REFERENCE**

- (1) American Society for Testing and Materials (ASTM) F 698-94, "Standard Specification for Physical Information to be Provided for Amusement Rides and Devices," Sections 1 through 3.
- (2) ASTM F 770-93 (Reapproved 2000), "Standard Practice for Operation Procedures for Amusement Rides and Devices," Sections 1 through 4.
- (3) ASTM F 846-92 (Reapproved 1998), "Standard Guide for Testing Performance of Amusement Rides and Devices," Sections 1 through 8.
- (4) ASTM F 853-98, "Standard Practice for Maintenance Procedures for Amusement Rides and Devices," Sections 1 through 6.
- (5) ASTM F 893-87 (Reapproved 1995), "Standard Guide for Inspection of Amusement Rides and Devices," Sections 1 through 5.
- (6) ASTM F 1159-97a, "Standard Practice for the Design and Manufacture of Amusement Rides and Devices," Sections 1 through 14.
- (7) ASTM F 1193-97, "Standard Practice for an Amusement Ride and Devices Manufacturer Quality Assurance Program," Sections 1 through 7.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

**COST ESTIMATES OF PROPOSED ACTION**

**COSTS OR SAVINGS TO STATE AGENCIES**

No significant costs or savings to state agencies will result as a consequence of the proposed action.

**IMPACT ON HOUSING COSTS**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

**IMPACT ON BUSINESSES**

The Occupational Safety and Health Standards Board has made an initial determination that the adoption of these regulations may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The Standards Board has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations: The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses. Consolidation or simplification of compliance and reporting requirements for businesses. The use of performance standards rather than prescriptive standards. Exemption or partial exemption from the regulatory requirements for businesses.

These estimates are based on the memorandum from Bryan Eckman to the rulemaking file dated April 8, 2002.

A. Background Data:

1. Number of permanent amusement ride facilities impacted: 105
2. Number of permanent amusement rides: 1700
3. Average rides per business:  $1700/105 = 16$

B. Estimated initial cost for a typical permanent amusement ride park:

1. Cost of compliance for 16 permanent amusement rides after adoption of proposed regulations:  $16 \text{ rides} @ 52.6 \text{ hours/ride} @ \$50.625/\text{hour}^1 =$   
\$42,606.00
2. Cost of compliance for one new permanent amusement rides after adoption of proposed regulations:  $45 \text{ hours} @ \$50.625/\text{hour} =$   
\$2,278.13
3. Cost of compliance for one major modification of a permanent amusement ride after adoption of proposed regulations:  $30 \text{ hours} @ \$50.625/\text{hour} =$   
\$1,518.75

Total Initial Cost: \$46,402.88

<sup>1</sup> This figure is based on the following assumptions: hourly wage of personnel assigned to evaluating rides and bringing into compliance is \$33.75. Benefits associated with wage are 20% or \$6.75. Overhead associated with wage is 25% of (wage + benefits) or \$10.125. Total hourly person-hour cost is wage + benefits + overhead or \$50.625/hour. These assumptions regarding benefits and overhead are figures used by the Department of Industrial Relations in its budgetary proposals and are considered here to be valid for these estimates of private industry costs.

C. Estimated annual ongoing cost for a typical permanent amusement ride park:

1. Cost of compliance for 16 permanent amusement rides after first year: 16 rides @ 15 hours @ \$50.625/hour =  
\$12,150.00
2. Cost of compliance for one new permanent amusement ride per year after first year: 25 hours @ \$50.625/hour =  
\$1,265.625
3. Cost of compliance for one major modification of a permanent amusement ride after adoption of proposed regulations: 22.5 hours @ \$50.625/hour =  
\$1,139.0625

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Total Ongoing Cost: \$14,554.69

**COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any costs impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action, except as stated under “Cost Impact on Businesses.”

**COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE**

This proposal will not result in costs or savings in federal funding to the state.

**COSTS OR SAVINGS TO LOCAL AGENCIES OR SCHOOL DISTRICTS REQUIRED TO BE REIMBURSED**

No costs to local agencies or school districts are required to be reimbursed. See explanation under “Determination of Mandate.”

**OTHER NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES**

This proposal does not impose nondiscretionary costs or savings on local agencies.

**DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do 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.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed regulations do not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standards.

**EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendments may affect small businesses.

**ASSESSMENT**

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

**REASONABLE ALTERNATIVES CONSIDERED**

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

**2. TITLE 8: GENERAL INDUSTRY SAFETY ORDERS**

- Chapter 4, Subchapter 7
- Article 80, Section 4794
- Article 88, Section 4848
- Article 90, Section 4850

**Gas and Electric Welding Systems and Operations**



INFORMATIVE DIGEST OF PROPOSED  
ACTION/POLICY STATEMENT OVERVIEW

The proposed rulemaking action is initiated at the request of the Division of Occupational Safety and Health (Division). The Division submitted a memorandum with attachment dated March 31, 2000, to amend the GISO, Sections 4794 and 4850 to expand their scope of application by incorporating the welding operations recognized by the American Welding Society and contained in American National Standard/American Welding Society, Standard Welding Terms and Definitions (ANSI/AWS) A3.0-94.

This rulemaking was proposed after the Division investigated a serious injury accident involving a copper water line that was being installed near a plastic natural gas line in an excavation. An employee was soldering a water pipeline with a welding torch when the gas flame accidentally struck the plastic gas line damaging the gas line and causing the gas to escape and ignite. The employee was subsequently burned.

The current scope of Section 4794 covers the installation and operation of gas welding and cutting systems when used with gases used with oxygen for welding, flame cutting, heating, and heat treating operations. Section 4850 applies to the installation and maintenance of electric welding equipment. Currently, Sections 4794 and 4850 do not clearly include use of gas welding and cutting systems and electrical equipment for certain welding operations, such as soldering, brazing, thermal spraying, etc. The Division proposes to amend these sections to clarify that their scopes include all operations and processes (inclusive of soldering and brazing) described in the ANSI/AWS A3.0-94 when used with these systems and equipment. Board staff agrees with the Division's proposed amendments to Sections 4794 and 4850 only to the extent that in addition to the operations and processes for gas welding, flame cutting, heating, and heat treating operations, soldering and brazing should be specifically mentioned to clarify to the employer that they are subject the regulations contained in Group 10 which include fire prevention and suppression requirements. Likewise Staff agrees that Group 11 safety orders which apply to electric welding and related processes/operations should also be clarified to include resistance soldering and resistance brazing.

It should be noted that the reference to Title 24 was deleted from Section 4794 by an amendment filed on June 12, 1987. However, the deletion was inadvertently omitted in the subsequent publication of Section 4794. To correct this error, the reference to Title 24 is being deleted from Section 4794.

American National Standard, Safety in Welding and Cutting, ANSI Z49.1-1973 is referenced in Section 4850 and has been substantially revised three times,

with the latest ANSI/ASC Z49.1-94 edition taking into account the changes in welding technology that have occurred since 1973. Board staff proposes to amend Section 4850 to update ANSI Z49.1-1973 to the ANSI/ASC Z49.1-94 edition via incorporation by reference. Additionally, Board staff proposes to revise Section 4794 via incorporation by reference of specific ANSI/AWS A3.0-94 standard definitions for soldering and brazing. The ANSI/AWS standard contains state-of-the-art industry definitions describing the various types of gas welding and cutting systems. The proposed revision to Section 4794 will clarify that Group 10 orders apply to soldering and brazing. Similarly, Board staff proposes to amend Section 4850 to incorporate by reference the specific definitions for the electric forms soldering and brazing known as resistance soldering and resistance brazing.

Staff proposes to amend Section 4848 to incorporate by reference the fire suppression and prevention requirements of the ANSI/ASC Z49.1-94 and National Fire Protection Association (NFPA) 51B-1999 standards and at the same time delete unnecessary fire prevention and suppression requirements from the ANSI Z49.1-1973 standard. Staff further proposes to clarify to the employer that the requirements of Section 4848 cover gas and electric welding, soldering, brazing, etc., consistent with the proposed revisions to Sections 4794 and 4850.

Section 4794. Purpose.

Section 4794 applies to the installation and operation of all gas welding and cutting systems and covers all gases when used with oxygen for welding, flame cutting, heating, and heat treating operations. Section 4794 does not address use of these systems for gas welding operations such as soldering, brazing, thermal spraying, etc. A revision is proposed to amend Section 4794 to revise its scope by specifically incorporating by reference the definitions for soldering and brazing as defined in ANSI/AWS A3.0-94. To clarify the scope and make it more understandable to the employer, an amendment is proposed to subdivide Section 4794 into subsections (a) and (b). The proposed revision will amend the scope of Section 4794 to clearly indicate to the employer that in addition to the gas welding processes and operations now covered by Section 4794, soldering and brazing are also subject to the regulations contained in Article 10.

Section 4848. Fire Prevention and Suppression Procedure.

This section requires the employer to establish a fire prevention and suppression procedure and issue instructions based on the applicable parts of ANSI Z49.1-1973, portions of which are reproduced in subsection (a) and include but are not limited to: establishing areas for welding, cutting, employee

training, supervisor responsibilities, protection of combustibles, use of fire watchers, maintaining a safe distance from combustibles, etc.

Revisions are proposed to require the employer to establish a fire prevention and suppression program whenever any of the operations/processes covered under amended Sections 4794(a) and 4850(a) are conducted and further requires the employer's instructions to be implemented and be based upon the specific requirements of the ANSI/ASC Z49.1-94, Chapters 3 and 6 and NFPA 51B-1999, Chapter 3 requirements, which address supervisor responsibilities for fire prevention and suppression requirements for welding, cutting and allied processes (e.g., soldering and brazing).

The proposed revisions will clarify to the employer which specific welding, cutting and allied processes must be addressed by the specified fire prevention and suppression requirements of the ANSI/ASC Z49.1-94 and NFPA 51B-1999 standards; specific chapters of which are incorporated by reference as indicated in the proposed language.

Section 4850. General.

Section 4850 covers the installation and maintenance of all electric welding equipment and refers to the American National Standards Institute ANSI Z49.1-1973 for additional details. However, this section does not clarify whether it applies to all operations performed with electric welding equipment. Therefore, a revision to Section 4850 is proposed to add a new subsection (a) that clarifies that Group 11 orders apply to all electrical equipment used to perform electric welding, cutting, heating and specifically resistance soldering and resistance brazing as defined in the ANSI/AWS A3.0-94 standard. Only the definitions for resistance soldering and resistance brazing are proposed to be incorporated by reference.

Further, revisions are proposed to change the existing subsection (a) to subsection (b) to clearly indicate to the employer that all electrical welding equipment used to perform the processes defined in subsection (a) are to be installed and maintained in accordance with the California Electrical Safety Orders and Chapters 11, 12 and 13 (installation and maintenance requirements) of the ANSI/ASC Z49.1-94 standard, which are incorporated by reference. A separate revision is proposed to change subsection (b) to (c). The proposed revisions will clearly specify the scope to the employer and ensure that employers conduct electric welding, cutting, heating, etc., operations, including soldering and brazing, according to the latest state-of-the-art industry safety standards to prevent employee injury that might result from burns and electric shock.

**DOCUMENTS INCORPORATED  
BY REFERENCE**

1. American National Standards Institute/American Welding Society, Standard Welding Terms and Definitions, ANSI/AWS A3.0-94.
2. American National Standards Institute (ANSI)/American Welding Society (AWS), Safety in Welding, Cutting and Allied Processes, Chapters 3 and 6, ANSI/ASC Z49.1-94.
3. National Fire Protection Association (NFPA) 51B-1999, Standard for Fire Prevention During Welding, Cutting and Other Hot Work, Chapter 3.

These documents are too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the documents by reference. Copies of these documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

**COST ESTIMATES OF PROPOSED ACTION**

**COSTS OR SAVINGS TO STATE AGENCIES**

No costs or savings to state agencies will result as a consequence of the proposed action.

**IMPACT ON HOUSING COSTS**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

**IMPACT ON BUSINESSES**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

**COST IMPACT ON PRIVATE PERSONS  
OR BUSINESSES**

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

**COSTS OR SAVINGS IN FEDERAL FUNDING  
TO THE STATE**

The proposal will not result in costs or savings in federal funding to the state.

**COSTS OR SAVINGS TO LOCAL AGENCIES OR  
SCHOOL DISTRICTS REQUIRED  
TO BE REIMBURSED**

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

**OTHER NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES**

This proposal does not impose nondiscretionary costs or savings on local agencies.

**DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed regulations do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these regulations do 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.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

These proposed regulations do not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulations require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed regulations do not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

These proposed regulations do not impose unique requirements on local governments. All employers—state, local and private—will be required to comply with the prescribed standards.

**EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendments may affect small businesses.

**ASSESSMENT**

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

**REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention

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

The above proposals do not contain building standards as defined by Health and Safety Code Section 18909.

A copy of the proposed changes is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than June 14, 2002. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on June 20, 2002 will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at [oshsb@hq.dir.ca.gov](mailto:oshsb@hq.dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board’s rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to John D. MacLeod, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

**TITLE 11. DEPARTMENT  
OF JUSTICE  
OFFICE OF THE  
ATTORNEY GENERAL**

**NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the Department of Justice, Office of the Attorney General, proposes to adopt new Division 5, Chapter 1, sections 4000-4164 to Title 11, California Code of Regulations, which would implement Article 8 (commencing with Section 17590) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, which mandates the establishment of a statewide list of telephone numbers of those individuals who elect not to receive telephone solicitations.

**PUBLIC PROCEEDINGS**

A public hearing will be held, at which time any person may present statements or argument orally or in writing relevant to the action described in this notice, on June 17, 2002, starting at 9:30 a.m. at:

Employment Development Department  
First Floor Auditorium  
722 Capitol Mall  
Sacramento, CA 95814

Any written statements or arguments must be received by the Office of the Attorney General at the following address by 5:00 p.m. on June 17, 2002, which is hereby designated as the close of the written comment period. Comments sent by mail, courier or fax, should be addressed to:

Ian K. Sweedler  
Deputy Attorney General  
Office of the Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102  
Fax (415) 703-5480

It is requested, but not required, that submissions include three copies of each written statement or argument.

**CONTACT**

Inquiries concerning the public hearing may be directed to Arwen Flint at (916) 323-8513. Inquiries concerning the proposed administrative action described in this notice may be directed to Ian K. Sweedler, Deputy Attorney General, in writing at

455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, or by telephone at (415) 703-1055. If Mr. Sweedler is not available, inquiries may be directed to Esther Jackson, Deputy Attorney General, by telephone at (916) 445-9555. Inquiries concerning the substance of the proposed regulations may be directed to Mr. Sweedler, or if he is not available, Ms. Jackson.

**AUTHORITY AND REFERENCE**

The Department of Justice proposes to adopt Division 5, Chapter 1, consisting of sections 4000 through 4164 of Title 11 of the California Code of Regulations, pursuant to the authority granted in Section 17591(d) of the Business and Professions Code. The statute being implemented, interpreted and made specific is Chapter 695, Statutes of 2001, enacting Article 8 (commencing with Section 17590) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

**I. Existing Law**

Senate Bill 771 (Statutes of 2001, Ch. 695) requires the Attorney General to develop and operate a statewide "Do Not Call List" program. The purpose of the program is to protect the privacy of individuals who do not want their telephone numbers used for unwanted and unwelcome telephone solicitations.

SB 771 requires the Attorney General to maintain a list of telephone numbers and ZIP codes of those telephone subscribers who choose not to receive unwanted and unwelcome telephone solicitations. For a fee not to exceed \$1.00, individuals can add their residential or wireless telephone numbers to the list. A listing would expire after three years if not renewed. Telephone subscribers who put their telephone numbers on the list have the option of identifying particular telephone solicitors from whom they would permit telephone solicitation calls. SB 771 delegates to the Attorney General the authority to develop methods for maintaining the Do Not Call List, but does specify that subscribers must be given the option of registering their telephone numbers through an Internet website or by calling a toll-free telephone number.

SB 771 generally prohibits the practice of making telephone solicitation calls to telephone numbers on the Do Not Call List. There are several exemptions from that prohibition. Tax-exempt charitable organizations are permitted to make telephone solicitation calls. Certain small businesses are also permitted to make telephone solicitation calls under specified circumstances. Businesses and nonprofit organizations that have established business relationships with the telephone subscriber are not prohibited from contact-

ing the telephone subscriber in the course of those business relationships. Telephone solicitation calls authorized by the telephone subscriber are not prohibited, nor are calls made by a business to verify that a customer's request to terminate a business relationship was actually terminated by the customer and not someone else.

The Attorney General is required to issue updated versions of the Do Not Call Lists periodically. Individuals and businesses may purchase the list from the Attorney General for use in complying with the ban on telephone solicitation calls to telephone numbers on the list. The Attorney General is required to set and charge a fee for purchase of the Do Not Call List. The fee is to be set in an amount that does not exceed the amount needed to run the Do Not Call List program. The fee is to be on a sliding scale, with the highest charge for businesses with more than 1,000 employees or independent contractors, and no charge for businesses with fewer than five full-time employees. The list is to be made available using technology that will allow those purchasing the list to easily obtain and manipulate the list. Misuse or disclosure of the Do Not Call List is prohibited.

The Attorney General or any district attorney or city attorney is authorized to bring a civil action to enforce the provisions of SB 771. Individuals who receive unlawful telephone solicitation calls may also pursue civil actions. Anyone sued for unlawfully placing a telephone solicitation call to a telephone number on the Do Not Call List can defend the lawsuit by showing that the call was placed accidentally despite specified practices and procedures for complying with the law.

SB 771 provides that the Attorney General may promulgate regulations to implement it. These proposed regulations are intended to implement SB 771.

There is no existing, comparable federal statute or regulation.

## II. Summary of Proposed Regulations

The regulations are divided into four parts. The first part defines various terms that are used throughout the regulations.

The second part of the regulations sets out the procedures and rules for maintaining the Do Not Call List. The regulations in this part describe who can add telephone numbers to the Do Not Call List and limits the Do Not Call List to telephone numbers for residential or wireless telephone service with California area codes. The regulations also explain how to add a telephone number to the Do Not Call List and when new additions take effect. The regulations provide that a listing expires after three years. The fee for a three-year listing currently proposed to be \$1.00. The Attorney General anticipates that the fees paid by

subscribers and telephone solicitors will not be enough to cover the costs of running the program, so the fees may have to be adjusted if the Legislature does not appropriate funds to supplement the fees.

The third part of the regulations describes how the Do Not Call List is organized, and provides that an updated Do Not Call List will be issued every three months. The regulations explain how telephone solicitors can obtain copies of the list and describe the legitimate ways that the Do Not Call List may be used. The fee to obtain the list is set at \$1,000 per year for the largest companies and less for smaller companies. The Attorney General anticipates that the fees paid by subscribers and telephone solicitors will not be enough to cover the costs of running the program, so the fees may have to be adjusted if the Legislature does not appropriate funds to supplement the fees. There is also a provision that explains how to get proof, for use in legal proceedings, of whether a telephone number was on the list.

The fourth part of the regulations describes conduct that is prohibited by SB 771 and the regulations. The main prohibition is against placing telephone solicitation calls to telephone numbers on the Do Not Call List. The various exceptions to that prohibition are also set out here. There is a regulation that explains the types of precautions that telephone solicitors must take to be able to claim that an accidental violation occurred despite sufficient efforts to comply. There are prohibitions against misusing or disclosing the information on the Do Not Call List, or including the listed telephone numbers on calling lists sold to telephone solicitors. The regulations state that it is illegal to add someone else's telephone number to the Do Not Call List without their authorization. It would also be illegal for a company to improperly convince its customers to sign up for the Do Not Call List as a way of making it harder for other companies to compete.

### DISCLOSURES AND DETERMINATIONS REGARDING THE REGULATIONS

1. Regulations Mandated by Federal Law (Government Code § 11346.2(c)): This regulation is not mandated by federal law or regulations.
2. Other Statutory Requirements (Government Code § 11346.5(a)(4)): There are no other statutory notice requirements specific to this agency or type of regulation.
3. Local Mandate Determination (Government Code § 11346.5(a)(5)): These regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

4. Fiscal Impact (Government Code § 11345.5(a)(6)):
  - a. There are no costs to any local agency or school district for which Government Code sections 17500–17360 require reimbursement.
  - b. There are no other non-discretionary costs or savings that would be imposed on local agencies.
  - c. The Department of Justice estimates that it will incur additional costs of \$348,000 for the 2002–2003 fiscal year. The Department of Justice will request an increase in the authorized budget level for the 2002–2003 fiscal year. There are no other costs to any other state agency.
  - d. There are no costs or savings in federal funding to the state.
5. Effect on Housing costs (Government Code § 11346.5(a)(12): There is no significant effect on housing costs.
6. Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete (Government Code §§ 11346.3(a), 11346.5(a)(7), 11346.5(a)(8): The Attorney General has initially determined that there will be no such impacts.
7. Assessment Regarding Effect on Jobs/Businesses (Government Code § 11346.5(a)(10)):
  - a. The creation or elimination of jobs within the State of California: None.
  - b. The creation of new businesses or the elimination of existing businesses within the State of California: None.
  - c. The expansion of businesses currently doing business within the State of California: None.
8. Cost Impacts on Representative Person or Business (Government Code § 11346.5(a)(9)):
  - a. The proposed regulations affect individuals who want to add their telephone numbers to the Do Not Call List. The cost of filing their requests with the Attorney General's Office should be minor.
  - b. The proposed regulations also affect businesses and individuals that engage in telephone solicitation of California telephone numbers. Fees for purchasing the Do Not Call List are determined by the size of the business, ranging from free for businesses with fewer than five full-time employees to \$1,000.00 per year for businesses with more than 1,000 full-time or part-time employees or independent contractors. Businesses may also incur unknown costs to implement procedures for ensuring that telephone solicitation calls are not placed to telephone numbers on the Do Not Call List, but those costs are mandated by the statute, not by these regulations.
9. Effect on Small Business: Pursuant to 1 CCR section 4, the Attorney General has determined that this proposed regulation affects small business.
10. Alternatives considered (Government Code § 11346.5(a)(13): The Attorney General must determine that no reasonable alternative considered by the Attorney General or that has otherwise been identified and brought to his attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.
11. Availability of Statement of Reasons, Express Terms, and Information: The Attorney General has prepared an initial statement of reasons for the proposed action, has available all the information upon which the proposal is based (the rulemaking file), and has available the express terms of the proposed action. The rulemaking file for this proposed regulatory action will be maintained at the Office of the Attorney General, at 1300 I Street, Sacramento, CA 95814, and is available for public review during the Office of the Attorney General's normal business hours (Monday through Friday, 8:30 a.m. to 5:00 p.m.). Requests to review the rulemaking file should be directed to:

Arwen Flint  
Office of the Attorney General  
1300 I Street, Room 820  
Sacramento, CA 95814  
Telephone (916) 323-8513  
Fax (916) 324-5033  
Arwen.Flint@doj.ca.gov
- When the rulemaking is completed, a Final Statement of Reasons for the proposed action will be completed, and it will be available, along with all of the other information described above, at the same address.
12. Availability of changes to text: The full text of a regulation changed pursuant to Government Code section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.
13. Internet Access (Government Code §§ 11346.4(a)(6), 11346.5(a)(20): The text of the Proposed Regulations and the Initial Statement of Reasons may be accessed at the Attorney General's website at <http://caag.state.ca.us/donotcall/index.htm>.

**TITLE 13. DEPARTMENT OF  
MOTOR VEHICLES**

**NOTICE OF WRITTEN COMMENT PERIOD  
ON PROPOSED ACTION TO MAKE  
EMERGENCY REGULATIONS PERMANENT**

**Article 5. Requesting Information  
from the Department**

**Section 350.44. Cost of Information**

The Department of Motor Vehicles amends, on an emergency basis, regulations in Section 350.44, Article 5, Chapter 1, Division 1, Title 13, of the California Code of Regulations. The amendment increases the per record fee for information requested electronically from the department and clarifies language in an associated subdivision.

Advance notice of the proposed amendment to these regulations has been and/or will be sent to persons affected by the changes. The amendments are summarized in the Informative Digest.

The emergency regulations may be rejected by the Office of Administrative Law before the effective date of regulations, and if not so rejected, will automatically expire 120 days after the effective date if they have not been adopted as permanent regulations in that time.

**SUBMISSION OF WRITTEN COMMENTS**

The department invites all interested persons or their representatives to submit written comments on the proposal to adopt the above described emergency regulations on a permanent basis. Comments should be addressed or delivered to the contact person identified below.

**DEADLINE FOR WRITTEN COMMENTS**

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on June 17, 2002, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

**PUBLIC HEARING**

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., June 2, 2002, fifteen (15) days prior to the close of the written comment period.

**CONTACT PERSON**

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Bonnie DeWatney, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-8954; or bdewatney@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, (916) 657-5690, or dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

**AUTHORITY AND REFERENCE**

The department proposes to adopt these regulations under the authority granted by Vehicle Code Sections 1651, 1810, 1810.7 and 1811 in order to implement, interpret amend or make specific Vehicle Code Sections 1810, 1810.7 and 1811.

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

Vehicle Code Section 1810 authorizes the Director of Motor Vehicles to “permit inspection of, or sell, or both, information from its records . . . at a charge sufficient to pay the actual cost to the department for providing the inspection or sale of the information, . . . with the charge for the information to be determined by the director.” Section 1811, authorizes the Director to sell information at “a charge sufficient to pay at least the entire cost to the department. . . the charge for the records and the conditions under which they may be sold to be determined by the director.” In addition, Vehicle Code Section 1810.7 subdivision (e) requires the department to charge fees for direct-access service pursuant to Vehicle Code Section 1811. Adoption of the amendments to Section 350.44 will satisfy the legislature’s requirement of recovering actual and anticipated costs in maintaining electronic access to the department’s database as well as clarifying existing language.

**FISCAL IMPACT STATEMENT**

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative business would necessarily incur in reasonable compliance with the proposed action, as the increased cost will be borne by the individual client.
- Effect on Housing Costs: None.

- Cost to any local agency or school district for which Government Code Sections 17500 through 17630 require reimbursement: None.

#### DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The regulatory action proposed by the department adopts fees commensurate with the costs associated with its electronic access program.
- The adoption of this regulation is not expected to create or eliminate jobs or businesses in the State of California or reduce or expand businesses currently doing business in the State of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action is not expected to have a significant effect on small businesses as the nominal fee increase can be borne by the individual client and would be viewed as a normal cost of doing business.

#### ALTERNATIVES CONSIDERED

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

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

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The express terms of the proposed action are written in plain English, and are available from the contact person named in this notice. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeouts to indicate deletions from, the California Code of Regulations. The contact person identified in this notice shall also make available to the public upon request the final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of

the public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons and Express Terms) may be accessed at [www.dmv.ca.gov](http://www.dmv.ca.gov), Other Services, Legal Affairs Division, Regulatory Notices web page.

#### AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing, if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Requests for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

### **TITLE 14. FISH AND GAME COMMISSION**

#### NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215 and 220 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 206, 215, and 220 of said Code, proposes to amend Section 28.59, Title 14, California Code of Regulations, regarding take or possession of shiner perch and transport of surfperch.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under regulations adopted on December 7, 2001, by the Fish and Game Commission (Commission) the take or possession of all surfperch of the family Embiotocidae, including shiner perch (*Cymatogaster aggregata*), is prohibited in San Francisco and San Pablo bays (bay) during the period April 1 through July 31 (Section 28.59, Title 14, CCR). Also under existing regulations, vessels entering the bay with surfperch aboard that were taken outside of the bay must remain underway without fishing gear in the water until arriving at their home port or launch site (Section 28.59, Title 14, CCR). However, emergency action taken by the Commission in March 2002 exempts shiner perch from the prohibition on the take and possession of surfperch in the bay during the



period April 1 through July 31. The emergency regulation approved by the Commission is scheduled to expire in mid to late July of this year.

Regulatory changes being proposed as a part of this rulemaking would exempt shiner perch from the current prohibition on the sport take or possession of surfperch in the bay during April 1 through July 31. Also, changes being proposed as a part of this rulemaking would eliminate the provision of Section 28.59, Title 14, CCR, that requires vessels entering the bay with sport-caught surfperch aboard (that were taken outside the bay) to remain underway without fishing gear in the water until arriving at their home port or launch site.

These changes are being proposed to ensure that the popular sport fisheries for California halibut and striped bass in San Francisco and San Pablo bays are not unduly constrained due to anglers being unable to take or possess shiner perch (for bait). Also, the regulation changes are expected to strengthen the Department's ability to enforce the seasonal surfperch closure in these bays by elimination of the provisions governing the movement of vessels entering the bays during the surfperch closure when surfperch taken outside the bay are aboard those vessels.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lakeland Village Beach & Mountain Resort, Lakeshore Room, 3535 Lake Tahoe Blvd., South Lake Tahoe, California, on Thursday, June 20, 2002, at 10:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 14, 2002, at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@dfg.ca.gov](mailto:FGC@dfg.ca.gov), but must be received no later than June 20, 2002, at the hearing in South Lake Tahoe, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John M. Duffy, Assistant Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John M. Duffy or Sherrie Koell at the preceding address or phone number. Don Schultze, Marine Region, Department of Fish and Game, phone (916) 227-5670, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action

shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

#### AVAILABILITY OF MODIFIED TEXT

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

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

#### IMPACT OF REGULATORY ACTION

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

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Adoption of the proposed changes will benefit commercial bait harvesters and bait and tackle shop owners who will be able to continue to supply shiner perch to recreational anglers in the bay during the seasonal prohibition on take and possession of surfperch there. Adopting the proposed changes will avoid expected losses of between \$35,000 and \$75,000 to bait suppliers unable to sell shiner perch to sport fishermen who could not possess them during the closure under current sport fishing regulations.

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

**EFFECT ON SMALL BUSINESS**

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

**CONSIDERATION OF ALTERNATIVES**

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

**TITLE 14. FISH AND GAME COMMISSION**

**NOTICE OF PROPOSED CHANGES IN REGULATIONS**

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 215, 220, 240 and 315 of the Fish and Game Code and to implement, interpret or make specific sections 200, 205, 206 and 215 of said Code, proposes to amend subsection (b)(212) of Section 7.50, Title 14, California Code of Regulations, regarding sport fishing regulations, Yuba River, from the mouth to Englebright Dam.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Current sport fishing regulations (subsection (b)(212) of Section 7.50, Title 14, CCR), as adopted by the Commission at its December 7, 2001 meeting, for the Yuba River from the mouth to Englebright Dam, establish open fishing seasons, restrict gear to only artificial lures with barbless hooks, and do not allow the harvest of any salmon (only catch-and-release fishing for salmon). The proposed change would allow anglers to harvest daily up to two salmon from the mouth to Daguerre Point Dam between January 1 and February 28 and between August 1 and October 15.

As part of its regular review of the State's sport fishing regulations, the Commission adopted changes to the sport fishing regulations for the Yuba River at its December 7, 2001 meeting. The changes were intended to reduce incidental mortalities to steelhead by prohibiting the use of bait and to protect spring-run chinook salmon through fishing season closures and bag limit reductions.

As part of this regulatory process in the Fall of 2001, the Department proposed two regulatory alternatives which would provide these protections. The first was simplified and allowed no harvest of salmon (zero bag limit). The second was more complex but would have allowed the harvest of salmon below Daguerre Point Dam during specific times.

The Commission adopted the simpler regulation alternative as recommended by the Department.

It has now come to the Department's attention that the angling public in the local area may have been misinformed and/or confused regarding which alternative the Department was recommending for adoption. Some anglers thought they would retain the opportunity to harvest salmon during at least a portion of the year.

In order to provide the angling public with the opportunity to provide additional public comment and recommendations on this issue, this regulatory proposal is being renoticed. This way those who favor being able to keep salmon during the specified times of the year will be able to comment.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Lakeland Village Beach & Mountain Resort, Lakeshore Room, 3535 Lake Tahoe Blvd., South Lake Tahoe, California, on Thursday, June 20, 2002, at 10:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 14, 2002, at the address given below, or by fax at (916) 653-5040, or by e-mail to [FGC@dfg.ca.gov](mailto:FGC@dfg.ca.gov), but must be received

no later than June 20, 2002, at the hearing in South Lake Tahoe, CA. E-mail comments must include the true name and mailing address of the commentator.

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

**AVAILABILITY OF MODIFIED TEXT**

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

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

**IMPACT OF REGULATORY ACTION**

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

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability

of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The regulation change may have a positive financial benefit on a small number of local businesses.

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

**EFFECT ON SMALL BUSINESS**

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

**CONSIDERATION OF ALTERNATIVES**

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

**TITLE 17. AIR RESOURCES BOARD**

**NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO REGULATIONS FOR THE STATE AMBIENT AIR QUALITY STANDARDS FOR SUSPENDED PARTICULATE MATTER (PM) AND SULFATES**

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider amendments to regulations

contained in sections 70100 and 70200 of title 17, California Code of Regulations, and the adoption of a new section 70100.1 of title 17, California Code of Regulations regarding ambient air quality standards and measurement methods for suspended particulate matter (PM) and sulfates.

DATE: June 20, 2002

TIME: 9:00 a.m.

PLACE: California Air Resources Board  
Auditorium  
9530 Telstar Avenue  
El Monte, CA 91731

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., June 20, 2002, and may continue at 8:30 a.m., June 21, 2002. This item may not be considered until June 21, 2002. Please consult the agenda for the meeting, which will be available at least 10 days before June 20, 2002, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact the ARB's Clerk of the Board by June 6, 2002, at (916) 322-5594 or TDD (916) 324-9531 or (800) 700-8326 for TDD calls from outside the Sacramento area to ensure accommodation.

#### INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW

**Sections Affected:** Proposed amendments to title 17, California Code of Regulations (CCR), sections 70100 and 70200; and proposed adoption of new section 70100.1.

**Background:** Section 39606(a)(2) of the Health and Safety Code requires the ARB to adopt ambient air quality standards in consideration of the public health, safety, and welfare, including but not limited to health, illness, irritation to the senses, aesthetic value, visibility interference and the effects of air pollution on the economy. Ambient air quality standards, as defined in section 39014 of the Health and Safety Code, reflect the relationship between the composition and intensity of air pollution to undesirable effects. Ambient standards relating to health effects, including the PM and sulfates standards, are to be based upon the recommendations of the Office of Environmental Health Hazard Assessment (OEHHA). Existing section 70100 of 17 CCR consists of definitions of ambient air quality standards, and existing section 70200 consists of a table of standards. The proposed amendments would modify the parts of those sections pertaining to suspended particulate matter (PM) and sulfates. In addition, ARB staff is proposing to adopt new section 70100.1 to set forth approved samplers,

measurement methods, and instruments for monitoring for compliance with PM standards.

Section 39606(d) of the Health and Safety Code (Children's Environmental Health Protection Act (SB 25, Escutia; Stats. 1999 ch. 731, sec. 3)) required the ARB, in consultation with the OEHHA, to review all California health-based ambient air quality standards to determine if any were inadequate to protect public health, including the health of infants and children. At its December 7, 2000 meeting, the Board approved a report, "Adequacy of California Ambient Air Quality Standards: Children's Environmental Health Protection Act," prepared by ARB and OEHHA staffs. The report concluded that health effects may occur in infants and children and other potentially susceptible subgroups exposed to several criteria pollutants at or near levels corresponding to their current standards. A criteria pollutant is defined as an air pollutant for which acceptable levels of exposure can be determined and for which an ambient air quality standard has been set. The report identified the standards for particulate matter (PM), including sulfates, as having the highest priority for review and revision. Section 39606(d) of the Health and Safety Code also requires the Board to revise the highest priority California ambient air quality standard (PM) by December 31, 2002. Due to the importance of the health impacts from PM pollution, the Board directed staff to prepare a proposal for revising the standards for its consideration in spring of 2002.

For the PM and sulfates standards review, ARB and OEHHA staff considered and evaluated new scientific literature regarding the impacts of PM air pollution on public health. The body of evidence reviewed demonstrated associations between health effects and both PM10 and PM2.5. PM10 is defined as suspended PM with a mean aerodynamic radius of 10 microns or less, and PM2.5 is defined as fine suspended PM with a mean aerodynamic radius of 2.5 microns or less. The health effects from exposure are significant and include premature death, hospital admissions for cardiopulmonary causes, emergency room visits, acute and chronic bronchitis, asthma attacks, upper respiratory symptoms, work loss, and restricted activity.

The staff's review of the literature determined the following. First, there are compelling reasons to be concerned about significant adverse health effects associated with PM10 exposures occurring at or below the levels defined by the existing standard. Second, there are compelling reasons to be concerned about significant adverse health effects associated with PM2.5 exposures, for which no State standards exist. Third, PM and sulfates measurement methods should be updated to reflect more accurately the level of these pollutants in ambient air and the technical improvements in equipment.

A report containing staff's preliminary findings was released to the public on November 30, 2001, titled "Review of California Ambient Air Quality Standards for Particulate Matter and Sulfates, Report to the Air Quality Advisory Committee." This report, which recommended revising the annual average standard for PM10 and establishing a new annual average standard for PM2.5, was reviewed by the Air Quality Advisory Committee (AQAC), an external peer review committee established in accordance with section 57004 of the Health and Safety Code and appointed by the President of the University of California. At a public meeting on January 23 and 24, 2002, the AQAC approved those recommendations, and also recommended that the State establish a 24-hour standard for PM2.5. In response to the AQAC's request, ARB and OEHHA staffs presented a "Draft Proposal to Establish a 24-hour Standard for PM2.5" to the AQAC at a second public meeting on April 3, 2002, which the AQAC approved.

The Children's Environmental Health Protection Act in section 39606(d)(2) of the Health and Safety Code requires that ambient air quality standards be "established at levels that adequately protect the health of the public, including infants and children, with an adequate margin of safety." Accordingly, ARB and OEHHA staffs propose the following revisions to 17, CCR, sections 70100 and 70200, and the creation of a new section 70100.1.

**Staff Proposal:** Based on a review of the scientific evidence on PM health effects and the recommendations of the OEHHA, ARB staff proposes the following:

- (1) Lower the annual-average ambient air quality standard for PM10, from 30 to 20 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), not to be exceeded. Revise the averaging method to an annual arithmetic mean.
- (2) Establish an annual-average PM2.5 ambient air quality standard of  $12 \mu\text{g}/\text{m}^3$ , as an annual arithmetic mean, not to be exceeded.
- (3) Establish a 24-hour PM2.5 ambient air quality standard of  $25 \mu\text{g}/\text{m}^3$ , not to be exceeded.
- (4) Adopt "Measurement Method for Particulate Matter in Ambient Air," currently set forth in the "Air Monitoring Quality Assurance Manual," as printed on April 17, 2002, and available from the ARB's Monitoring and Laboratory Division (MLD), as the regulatory measurement method for PM. This method has two parts, "Measurement of PM10" and "Measurement of PM2.5".
- (5) Adopt ARB Method MLD 007, dated April 22, 2002, as the measurement method for sulfates.

In 17, CCR, section 70100 (Definitions), ARB staff propose the following:

- Replace subsection (k) "Total Suspended Particulate Matter" with "Fine Suspended Particulate Matter (PM2.5)." "Sulfates" has been measured based upon the definition for "Total Suspended Particulate Matter," but staff proposes a new sulfates measurement method.
- Revise subsection (j) "Suspended Particulate Matter (PM10)" to reflect updated measurement methods for PM10.
- Revise subsection (p) "Sulfates" to reflect an updated measurement method for sulfates.

In 17, CCR, section 70200 (Table of Standards), ARB staff propose the following:

- Revise the provision for "Suspended Particulate Matter (PM10)" to reflect the proposed  $20 \mu\text{g}/\text{m}^3$  standard, and new measurement methods.
- Add a provision for "Fine Suspended Particulate Matter (PM2.5)" to reflect the proposed PM2.5 standards, and new measurement methods.
- Revise the provision for "Sulfates" to reflect the new measurement method.

ARB staff propose a new section 70100.1, in 17, CCR, titled "Methods, Samplers, and Instruments for Measuring Pollutants." Section 70100.1 is a listing of specific analytical, and monitoring methods, samplers, and equipment to be used to measure pollutants in the ambient air to determine compliance with the State Ambient Air Quality Standards.

Once the ARB adopts ambient air quality standards that specify a level for clean air, a second phase of regulatory activity will occur as the ARB and the air pollution control and air quality management districts (Districts) develop, propose, and adopt emission standards and other control measures that will reduce emissions from specific source categories of PM and sulfates. The adoption of control measures designed to attain the ambient standards is a separate process conducted in accordance with the public notice and comment rulemaking procedures set forth in the Health and Safety Code and other laws. The ARB is not proposing any control requirements at this hearing.

#### COMPARABLE FEDERAL REGULATIONS

Two provisions of the federal Clean Air Act (42 USC section 7401 et seq.) govern the establishment, review, and revision of National Ambient Air Quality Standards (NAAQS), sections 108 and 109 (42 USC sections 7408 and 7409). Pursuant to these provisions, the federal Environmental Protection Agency promulgated an ambient standard for PM10 as an annual arithmetic mean of  $50 \mu\text{g}/\text{m}^3$ . The EPA also established NAAQS for PM2.5: a 24-hour standard of

65 µg/m<sup>3</sup>, and an annual arithmetic mean of 15 µg/m<sup>3</sup>. The federal 24-hour standard is attained when 98 percent of the daily concentrations, averaged over three years, are equal to or less than the standard.

The Federal Reference Method (FRM) for the determination of PM in the atmosphere is described in Title 40, Code of Federal Regulations, Part 50. Appendix L describes the method for PM 2.5, and Appendix M describes the method for PM10. In accordance with federal procedures, staff recommends adoption of the FRM for PM2.5 and PM10 as a sampling method for California.

Section 39606(d)(2) of the Health and Safety Code specifies that “standards shall be established at levels that adequately protect the health of the public, including infants and children, with an adequate margin of safety.” Because federal standards were not established in consideration of this specification, separate State standards may be needed. Also, results from a comprehensive review of the scientific literature conducted by ARB and OEHHA staff showed that significant adverse health effects can occur from exposure to PM at levels near and below the federal standards. Stricter State standards are needed to protect the health of Californians and meet the requirements of the Children’s Environmental Protection Act.

#### AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the Proposed Regulatory Action, which includes a summary of the environmental impacts of the proposal.

Copies of the Staff Report and the full text of the proposed regulatory language, in underline and strikeout format to allow for comparison with the existing regulations, may be accessed on the ARB’s web site listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Environmental Resources Center, 1st Floor, Sacramento, CA 95814, (916) 322-2990 at least 45 days prior to the scheduled hearing. Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the ARB’s web site listed below.

Further inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Mr. Richard Bode, Chief, Health and Exposure Assessment Branch, (916) 323-8413, or Dr. Linda Smith, Manager, Health and Ecosystems Assessment Section, (916) 327-8225.

Further, the agency representative and designated back-up contact persons to whom procedural inquiries concerning the proposed administrative action may

be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Marie Kavan, Regulations Coordinator, (916) 322-6533. The Board staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection at the ARB during regular business hours upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls outside the Sacramento area.

This notice, the ISOR and all subsequent regulatory documents, including the FSOR when completed, will be available on the ARB Internet site for this rulemaking at [www.arb.ca.gov/regact/aaqspm/aaqspm.htm](http://www.arb.ca.gov/regact/aaqspm/aaqspm.htm) and also at [www.arb.ca.gov/research/aaqs/std-rs/std-rs.htm](http://www.arb.ca.gov/research/aaqs/std-rs/std-rs.htm).

#### COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

The determinations of the Board’s Executive Officer concerning the costs or savings necessarily incurred in reasonable compliance with the proposed regulations are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, costs or mandate to any local agency or school district whether or not reimbursable by the State pursuant to part 7 (commencing with section 17500), division 4, title 2 of the Government Code, or other non-discretionary savings to State or local agencies. Because ambient air quality standards simply define clean air (see sections 39606 and 39014 of the Health and Safety Code), they will have no economic or fiscal impacts. Once ambient standards are adopted by the ARB, local air pollution control or air quality management districts and the Board develop rules and regulations to control air emissions from numerous source categories in order to attain the health-based ambient standards. A number of different emission standards and control measures are possible, and each will have its own economic or fiscal impact. These impacts must be evaluated when each control measure is proposed. Any economic or fiscal impacts associated with the imposition of future measures will be considered by the adopting regulatory agency in a public forum when specific measures are proposed.

In developing this regulatory proposal, the ARB staff evaluated the potential economic impacts on representative private persons or businesses. Because the adoption of a health-based ambient standard does not include the imposition of control measures to achieve that standard, the ARB has determined that there are no cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Executive Officer 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, or on representative private persons. Although the proposed regulatory action will not result in increased costs to the State, future regulations will be necessary to achieve or maintain the proposed standards. When the ARB proposes to adopt such regulations, any associated costs would need to be explained in accordance with statutory requirements and will be justified by the benefit to human health, public welfare, or the environment.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action will have no significant impacts on the creation or elimination of jobs within the State of California, no significant impacts on the creation of new businesses and the elimination of existing businesses within the State of California, and no significant impacts on the expansion of businesses currently doing business within the State of California.

The Executive Officer has also determined, pursuant to Government Code section 11346.5(a)(3)(B), that the proposed regulatory action will not affect small businesses, because ambient air quality standards simply define clean air, and therefore have no economic impact.

Before taking final action on the proposed regulatory action, the Board must determine that no 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 than the proposed action.

#### SUBMITTAL OF COMMENTS

The public may present comments relating to this matter orally or in writing at the hearing, and in writing or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received **no later than 12:00 noon, June 19, 2002**, and addressed to the following:

Postal mail is to be sent to:  
 Clerk of the Board  
 Air Resources Board  
 1001 "I" Street, 23rd Floor  
 Sacramento, California 95814

Electronic mail is to be sent to: [aaqspm@listserv.arb.ca.gov](mailto:aaqspm@listserv.arb.ca.gov) and received at the ARB **no later than 12:00 noon, June 19, 2002**.

Facsimile transmissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB **no later than 12:00 noon June 19, 2002**.

The Board requests but does not require that 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

#### STATUTORY AUTHORITY AND REFERENCES

This regulatory action is proposed under that authority granted in Health and Safety Code sections 39600, 39601 and 39606. This action is proposed to implement, interpret and make specific Health and Safety Code sections 39014, 39602, 39606(b), 39701, 39703(f), and 57004.

#### HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. Such substantive modifications may include: modifying the definition of a specific pollutant; setting the ambient air quality standards at different levels than proposed; or adopting different measurement methods or averaging times than proposed. If the Board approves any substantive changes to the originally-proposed regulations, the full regulatory text, with the modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from the ARB's Public Information Office, Air Resources Board, 1001 "I" Street,

Environmental Services Center, 1st Floor, Public Information Office, Sacramento, CA 95814, (916) 322-2990.

**TITLE 18. STATE BOARD OF EQUALIZATION**

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to promulgate Regulation 1807, Process for Reviewing Local Tax Re-Allocation Inquiries, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on June 19, 2002. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by June 19, 2002.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Under current law, Revenue and Taxation Code Section 7209, the Board may reallocate local sales or use tax revenues when it receives knowledge of an improper distribution. The statute does not, however, prescribe any administrative procedures by which a jurisdiction may file a petition to have local tax revenue reallocated. Section 7223 provides that the local tax jurisdictions have the right to receive, and the Board has the obligation to provide, open, uniform, and consistent administration of the local tax system so that the participating jurisdictions may perform competent audit oversight and accountability of their local tax revenues.

Proposed Regulation 1807, Process for Reviewing Local Tax Reallocation Inquiries, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code sections 7209 and 7223. The regulation is proposed to provide a method by which a city may submit a reallocation inquiry and appeal an adverse decision to the Board.

**COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The State Board of Equalization has determined that the proposed regulation does not impose a mandate on local agencies or school districts. Further, the Board has determined that the regulation will result in no direct or indirect cost or savings to any State agency, any local agency or school district that are required to be reimbursed under Part 7 (commencing with section 17500) of Division 4 of Title 2 of the Government

Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

**EFFECT ON BUSINESS**

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization makes an initial determination that the adoption of the adoption of Regulation 1807 will have no significant statewide adverse economic impact directly affecting business.

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

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

**COST IMPACT ON PRIVATE PERSONS OR BUSINESSES**

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

**SIGNIFICANT EFFECT ON HOUSING COST**  
No significant effect.

**FEDERAL REGULATIONS**

Proposed Regulation 1807 has no comparable federal regulations.

**AUTHORITY**

Section 7051 Revenue and Taxation Code.

**REFERENCE**

Sections 7209 & 7223, Revenue and Taxation Code.

**CONTACT**

Questions regarding the content of the proposed regulation should be directed to Mr. David Rosenthal (916) 324-2952, at 450 N Street, Sacramento, CA 95814, e-mail [David.Rosenthal@boe.ca.gov](mailto:David.Rosenthal@boe.ca.gov) or MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov) or Ms. Karen Anderson, Contribution Disclosures Analyst, telephone (916) 327-1798, e-mail [Karen.Anderson@boe.ca.gov](mailto:Karen.Anderson@boe.ca.gov) or by mail at State Board of Equalization, Attn: Diane Olson or Karen Anderson, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.



**ALTERNATIVES CONSIDERED**

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

**AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

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

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

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

**ADDITIONAL COMMENTS**

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

**TITLE 18. STATE BOARD OF EQUALIZATION**

**NOTICE IS HEREBY GIVEN**

The State Board of Equalization, pursuant to the authority vested in it by section 15606(a) of the Government Code, proposes to promulgate Regulation

1534, Timber Harvesting Equipment and Machinery, in Title 18, Division 2, Chapter 4, of the California Code of Regulations, relating to sales and use tax. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 1:30 p.m., or as soon thereafter as the matter may be heard, on June 19, 2002. At the hearing, any person interested may present statements or arguments orally or in writing relevant to the proposed regulatory action. The Board will consider written statements or arguments if received by June 19, 2002.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Regulation 1534, Timber Harvesting Equipment and Machinery, is proposed to be promulgated to interpret, implement and make specific Revenue and Taxation Code section 6356.6, granting a partial exemption from tax for sales of certain off-road equipment and machinery provided by the statute under defined conditions. (AB 426, Stats. 2001, Ch. 156, § 5.)

**COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

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

**EFFECT ON BUSINESS**

Pursuant to Government Code section 11346.5(a)(8), the Board of Equalization makes an initial determination that the adoption of the adoption of Regulation 1534 will have no significant statewide adverse economic impact directly affecting business.

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

The regulation as proposed will not be detrimental to California businesses in competing with businesses in other states.

The proposed regulation may affect small business.

**COST IMPACT ON PRIVATE PERSON OR BUSINESSES**

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

**SIGNIFICANT EFFECT ON HOUSING COSTS**  
No Significant effect.

**FEDERAL REGULATIONS**

Proposed Regulation 1534 has no comparable federal regulations.

**AUTHORITY**

Section 7051 Revenue and Taxation Code.

**REFERENCE**

Section 6356.6 Revenue and Taxation Code.

**CONTACT**

Questions regarding the content of the proposed regulation should be directed to Mr. David Rosenthal (916) 324-2952, at 450 N Street, Sacramento, CA 95814, e-mail [David.Rosenthal@boe.ca.gov](mailto:David.Rosenthal@boe.ca.gov) or MIC:50, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0050.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail [Diane.Olson@boe.ca.gov](mailto:Diane.Olson@boe.ca.gov) or Ms. Karen Anderson, Contribution Disclosures Analyst, telephone (916) 327-1798, e-mail [Karen.Anderson@boe.ca.gov](mailto:Karen.Anderson@boe.ca.gov) or by mail at State Board of Equalization, Attn: Diane Olson or Karen Anderson, MIC:80, P.O. Box 942879, 450 N Street, Sacramento, CA 94279-0080.

**ALTERNATIVES CONSIDERED**

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

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

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

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the proposed regula-

tion. It is also available for your inspection at 450 N Street, Sacramento, California.

**ADDITIONAL COMMENTS**

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

**TITLE 22. DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

**45-DAY PUBLIC NOTICE AND COMMENT PERIOD PROPOSED REGULATIONS RECYCLABLE HAZARDOUS WASTE REGULATIONS**

DEPARTMENT REFERENCE NUMBER: R-99-15

NOTICE IS HEREBY GIVEN that the Department of Toxic Substances Control (DTSC) proposes to amend California Code of Regulations, title 22, sections 66266.1 and 66266.2. Statutes 1999, chapter 745, section 25175 (SB 606), states that DTSC shall "prepare and adopt, by regulation, a list, on or before January 1, 2002, and when appropriate thereafter, shall revise, by regulation, that list of specified hazardous wastes that DTSC finds are economically and technologically feasible to recycle. . ." DTSC is also authorized to impose a disposal fee of five (5) times the applicable rate on generators who dispose of their recyclable hazardous waste, rather than recycling it, after they have received specified notification from DTSC. The proposed regulations will implement this statute. The current list and other requirements for generators of hazardous waste that appears on the list are in the California Code of Regulations, title 22, sections 66266.1 and 66266.2, which were enacted in 1979. Therefore, to comply with the statutory mandate, those sections must be amended.

PUBLIC HEARING AND WRITTEN COMMENT PERIOD

DTSC will hold a public hearing on the proposed regulations on **June 17, 2002** at 10:00 a.m. in the Sierra Hearing Room, 2nd floor, 1001 "I" Street, Sacramento, California, at which time any person may present statements or arguments orally or in writing, relevant to this proposal. Please submit written comments to the contact person listed at the end of this notice. Written comments submitted no later than 5:00 p.m. on **June 17, 2002**, will be considered.

Representatives of DTSC will preside at the hearing. Persons who wish to speak are requested to register prior to the hearing. Pre-hearing registration will be conducted at the location of the hearing from 9:30 a.m. to 10:00 a.m. Registered persons will be heard in the order of their registration. Any other person wishing to speak at the hearing will be afforded an opportunity after the registered persons have been heard.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Health and Safety Code section 25150. This section grants DTSC authority to adopt standards dealing with the management of hazardous waste.

Health and Safety Code section 58012. This section grants DTSC authority to adopt regulations.

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

Health and Safety Code section 25175. This section allows DTSC to impose a disposal fee five (5) times the otherwise applicable amount on certain generators who dispose of waste that appears on the list after DTSC has made certain findings and provided notice to those generators. This section also requires DTSC to revise the List of Recyclable Hazardous Waste Types.

There are no federal regulations analogous to the proposed regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 1979, Health and Safety Code section 25175 was enacted to foster the recycling of hazardous wastes. The Department of Health Services (DHS), DTSC's predecessor, developed in regulations a list of recyclable hazardous waste types. Each hazardous waste type was required, by statute, to be "categorized" according to degree of difficulty and the kind of difficulty encountered in recycling that waste. This list was enacted in the California Code of Regulations, title 22, sections 66266.1 and 66266.2 in 1979 and has not been revised since then.

In 1982, the statute was amended to require generators that dispose of a recyclable hazardous waste to recycle the waste if DTSC finds the recycling

of their waste to be economically and technologically feasible at the site of production, or if DTSC provides the generator with the name of a ready, willing, and able purchaser of the recyclable hazardous waste. Pursuant to this 1982 statute, generators who dispose of their recyclable hazardous waste rather than recycle it are subject to a two (2) fold increase in the disposal fee.

In 1997, the Bureau of State Audits published a report entitled "Department of Toxic Substances Control: The Generator Fee Structure Is Unfair, Recycling Efforts Need Improvement, and State and Local Agencies Need to Improve Their Administration of the Unified Program." The Bureau recommended that DTSC meet its statutory responsibilities to implement Health and Safety Code section 25175. The legislature subsequently enacted SB 606 in 1999 to enforce this recommendation. DTSC must prepare a list of recyclable wastes that is clear and enforceable in order to implement the statute. The proposed regulations will also assist the regulated community in its efforts to recycle the hazardous wastes it generates. In some cases, hazardous wastes that were on the original list will not be on the revised list. Some other hazardous wastes have been added to the list. The regulations also impose a fee that is five (5) times higher than the applicable disposal fee on generators that dispose of their recyclable hazardous waste after DTSC makes certain findings and provides notice to those generators.

Health and Safety Code section 25175, subdivision(a)(1) directs DTSC to "prepare and adopt a list on or before January 1, 2002, and when appropriate thereafter, to revise that list of specified hazardous wastes that DTSC finds are technologically and economically feasible to recycle. . ." Additionally, Health and Safety Code section 25175, subdivision(a)(2) allows DTSC to request a written statement from a generator justifying why it disposed rather than recycled waste that appears on the list. If after DTSC reviews this statement, and finds that waste is technologically and economically feasible to recycle, DTSC will notify the generator. If the generator disposes of the wastestream thirty (30) or more days after the generator receives DTSC's notice the generator will be subject to a fee that is five (5) times greater than the otherwise applicable fee.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

DTSC has found this rulemaking project to be exempt from CEQA. A draft of the Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

PEER REVIEW

Under the provisions of Health and Safety Code, section 57004, peer review is not required because the proposed regulations do not establish a regulatory level, standard, or other requirement for the protection of public health or the environment.

BUSINESS REPORT

The rulemaking will not require that businesses write a new report, as defined by Government Code, section 11346.3(c).

FISCAL IMPACT ESTIMATES

**Mandates on Local Agencies and School Districts:** DTSC has determined that adoption of these regulations imposes no new mandates to local agencies and/or school districts. The proposed regulations affect the generators of hazardous waste. Local governments contain agencies or divisions such as Public Works, Transportation, Building Maintenance, that are considered generators, and theoretically, may be impacted. However, based on DTSC manifest information, DTSC has determined a majority of the wastes on the proposed List of Recyclable Hazardous Wastes are already being recycled, therefore, the impact is expected to be minimal to nonexistent.

**Estimate of Potential Cost or Savings to Local Agencies Subject to Reimbursement:** DTSC has determined that the proposed regulations will provide no net costs or savings subject to reimbursement pursuant to part 7 (commencing with section 17500) of division 4 of the Government Code or other nondiscretionary costs or savings to local agencies.

**Cost or Savings to Any State Agency:** DTSC has determined that the proposed regulations will have an insignificant impact on State revenue or costs. The State is comprised of various boards, departments, offices, and agencies, each containing divisions or sections that are generators, such as fleet services, and many more. Although these proposed regulations concern all generators of waste on the list, DTSC expects that most of those generators will be minimally effected, if at all, because many of the hazardous wastes on the current list are also on the proposed list. A review of DTSC manifests shows that a majority of the wastes on the current List of Recyclable Hazardous Waste Types are already being recycled. Because the proposed list contains many of the same recyclable hazardous wastes that are on the current list, it is reasonable to assume that wastes on the proposed list will also be recycled.

Additionally, prior to a higher fee being imposed, DTSC will request from the generator a statement justifying why the recyclable hazardous waste was disposed of rather than recycled. If DTSC agrees with the generator, then no increase in the hazardous waste disposal fee will be imposed. If DTSC finds and

notifies the generator that the recyclable hazardous waste is economically and/or technologically feasible to recycle, then there shall be a five fold (5) increase in the disposal fee for future disposal of the same recyclable hazardous wastestream. It is expected that DTSC revenues will be minimally impacted because, as mentioned above, the majority of hazardous wastes are currently being recycled.

After the proposed regulations are adopted it is expected that DTSC revenues will be minimally impacted, if at all, because as mentioned above, the majority of hazardous wastes on the list are currently being recycled. It is also expected that after the proposed regulations are adopted, DTSC may incur an additional workload to address the generators that may not be recycling the hazardous waste they generate. This workload will consist of reviewing the manifests, sending letters to the generators and reviewing their statements. This additional workload is minor and absorbable by DTSC staff.

**Cost or Savings in Federal Funding to the State:** The proposed regulations will have no impact on federal funding of state agencies.

**Effect on Housing Costs:** DTSC has made an initial determination that there will be no impact on housing costs.

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

**Significant Statewide Adverse Economic Impact on Businesses:** DTSC has made an initial determination that these proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability to compete with businesses in other states. Although these proposed regulations concern all generators of waste on the list, DTSC expects that most of those generators will be minimally effected, if at all, because many of the hazardous wastes on the current list are also on the proposed list. A review of DTSC manifests shows that a majority of the wastes on the List of Recyclable Hazardous Waste Types are already being recycled. It is reasonable to assume that wastes on the proposed list will also be recycled, supporting the claim that this regulation package will have minimal or no statewide adverse economic impact.

Additionally, prior to a higher fee being imposed, DTSC will request from the generator a statement justifying why the recyclable hazardous waste was disposed of rather than recycled. If DTSC agrees with the generator, then no increase in the hazardous waste disposal fee will be imposed. If DTSC finds and notifies the generator that the recyclable hazardous waste is economically and/or technologically feasible

to recycle, then there shall be a five fold (5) increase in the disposal fee for future disposal of the same recyclable hazardous wastestream.

ASSESSMENT STATEMENT

- (A) **Creation or elimination of jobs within California**—DTSC has made a preliminary determination that no jobs will be created or eliminated in California as a result of the proposed regulations.
- (B) **Creation of new businesses or the elimination of existing businesses within California**—DTSC has made a preliminary determination that no businesses will be created or eliminated in California as a result of the proposed regulations.
- (C) **Expansion of businesses currently doing business in California**—DTSC has made a preliminary determination that no businesses in California will be expanded as a result of the proposed regulations.

**Effect on Small Businesses:** DTSC has determined that provisions of this rulemaking will have an effect on small businesses (generators) if they choose to dispose of their recyclable hazardous waste after they have received notice from DTSC informing them that DTSC finds their hazardous waste to be economically and/or technologically feasible to recycle. These businesses will be subject to increased disposal fees for future disposal of the same recyclable hazardous wastestream.

CONSIDERATION OF ALTERNATIVES

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

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

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

POST-HEARING CHANGES

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

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

CONTACT PERSONS

Inquiries regarding the technical aspects of the proposed regulations may be directed to Ms. Renee Spears of DTSC at (916) 323-8126 or, if unavailable, Mr. Charles Corcoran of DTSC at (916) 327-4499. However, such oral inquiries are not part of the rulemaking record.

Statements, arguments or contentions regarding rulemaking and/or supporting documents must be submitted in writing or may be presented orally or in writing at the public hearing in order for them to be considered by DTSC before it adopts, amends, or repeals these regulations. To be included on this regulation package’s mailing list, and to receive updates of this rulemaking, please leave a message on the DTSC mailing list phone line at (916) 324-9933 or e-mail: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov).

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

Ms. Joan Ferber, Regulations Coordinator  
 Environmental Analysis and Regulations Section  
 Department of Toxic Substances Control  
 Mailing Address: 1001 “I” Street, 22nd Floor  
 P.O. Box 806  
 Sacramento, CA 95812-0806  
 E-mail Address: [regs@dtsc.ca.gov](mailto:regs@dtsc.ca.gov)  
 Fax Number: (916) 323-3215

Ms. Ferber’s phone number is (916) 322-6409. If Ms. Ferber is unavailable, please call Ms. Nicole Sotak at (916) 327-4508 or Mr. James McRitchie at (916) 327-8642.

**TITLE MPP. DEPARTMENT OF  
SOCIAL SERVICES**

**ITEM #1 ORD #0202-04**

**Electronic Benefit Transfer (EBT) Regulations**

The California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at public hearings to be held June 19 and 21, 2002, as follows:

June 19, 2002

Office Building #9  
744 P St. Auditorium  
Sacramento, CA 95814

June 21, 2002

Community Care Licensing  
1000 Corporate Center Dr., Suite 670  
Monterey Park, CA 91754

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

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by telefax to the address/number listed below. All comments must be received by 5:00 p.m. on June 21, 2002.

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

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

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

**CONTACT**

Anthony J. Velasquez, Chief  
Office of Regulations Development  
California Department of Social Services  
744 P Street, MS 7-192  
Sacramento, California 95814  
TELEPHONE: (916) 657-2586  
TELEFAX: (916) 654-3286  
E-MAIL: [ord@dss.ca.gov](mailto:ord@dss.ca.gov)

**CHAPTERS**

Manual of Policies and Procedures, Division 16 (Electronic Benefit Transfer System), Chapter 16 (General), Sections 16-001 (General System Information), 16-003 (General Information), 16-005 (Definitions), 16-010 (County Interface and Administrative Transactions), and 16-015 (EBT Security); Chapter 16-100 (EBT Account), Section 16-105 (EBT Account Setup), 16-120 (Account Aging and Expungement), and 16-130 (Account Balance and Transaction History); Chapter 16-200 (EBT Benefits), Sections 16-201 (Benefit Authorization) and 16-215 (Benefit Availability); Chapter 16-300 (Benefit Transaction), Sections 16-301 (General Benefit Transaction), 16-310 (Food Stamp Transaction), 16-315 (Food Stamp Benefit Conversion), 16-320 (Cash Transaction), and 16-325 (Alternative Methods to EBT Cash Benefit Delivery); Chapter 16-400 (Settlement, Reconciliation, and Reporting), Sections 16-401 (Cash Settlement Process) and 16-410 (Food Stamp and Cash Reconciliation Process); Chapter 16-500 (EBT Card and PIN), Sections 16-501 (EBT Cardholders), 16-505 (Additional EBT Cardholders), 16-510 (EBT Card and PIN Issuance), 16-515 (Lost, Stolen, Inoperative EBT Card), 16-517 (EBT Card Replacement) and 16-520 (PIN Selection, Change, and Unlock); Chapter 16-600 (Training), Sections 16-601 (Cardholder Training) and 16-610 (County Training); Chapter 16-700 (Adjustments), Section 16-701 (Reserve—Error Resolution) and 16-750 (Food Stamp Overissuance Collections from EBT Accounts); and Chapter 16-800 (EBT Fraud and Suspected Violations), Section 16-801 (Fraud and Suspected Violations for Benefits Received Via the EBT System); and Division 20 (Fraud and Suspected Law Violations), Chapter 20-300 (Intentional Program Violations in the Food Stamp Program), Section 20-300 (Intentional Program Violations in the Food Stamp Program); and Division 44 (Standards of Assistance), Chapter 44-300 (Aid Payments), Sections 44-302 (Payment by Electronic Fund Transfer) and 44-304 (Aid Payment Schedules)

**INFORMATIVE DIGEST/POLICY  
STATEMENT OVERVIEW**

Welfare and Institutions Code Sections 18900 through 18919 authorize California to participate in the federal Food Stamp Program that is administered at the national level by the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS). The California Department of Social Services (CDSS) oversees the program that is administered at the local level by the county welfare departments. Public Law (P.L.) 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, as codified at 7 USC 2016, mandates states to implement an electronic benefit transfer (EBT) system for food stamp benefit issuance no later than October 1, 2002 (for which California received waiver approval). Federal regulation 7 CFR 274.12 provides implementation requirements for an EBT issuance system for food stamp benefits as an alternative to issuing food stamp coupons. State legislation, AB 1542, establishes the authority for a statewide EBT system to issue food stamp benefits and, at county option, the issuance of cash benefits. An on-line EBT system is an issuance system in which benefits are stored in a central computer database and electronically accessed by cardholders at a point-of-sale (POS) terminal, automated teller machine (ATM), and other electronic fund transfer device utilizing a reusable plastic card. EBT is an extension of debit card access to benefit funds from POS terminals (or ATMs) via electronic fund transfer networks. EBT is a proven technology and is operating in a majority of states.

Current state regulations do not provide the authority for an EBT issuance system. These regulations implement pertinent federal provisions regarding the operation of an EBT issuance system for the Food Stamp Program. Additionally, these regulations implement requirements in the Welfare and Institutions Code applicable to EBT benefit issuance for food stamps and, at county option, cash benefits. These regulations specify requirements regarding the EBT system, benefit accounts, EBT benefits, benefit transactions, adjustments, settlement, reconciliation and reporting, EBT card and PIN, training, and fraud.

**COST ESTIMATE**

1. Costs or Savings to State Agencies: Additional expenditures of approximately \$677,000 in the State Fiscal Year 2002–03.
2. Costs to Local Agencies or School Districts: None.
3. Nondiscretionary Costs or Savings to Local Agencies: Additional expenditures of approximately \$167,000 for Food Stamps and savings of approximately \$167,000 for CalWORKs.

4. Federal Funding to State Agencies: Additional expenditures of approximately \$1,626,000 in the State Fiscal Year 2002–03.

**LOCAL MANDATE STATEMENT**

These regulations implement issuance of Food Stamp and cash benefits via the EBT system. The regulations implementing issuance of cash benefits via the EBT system do not impose a mandate on local agencies or school districts because this is a county option as set forth in Welfare and Institutions Code Section 10069. There are no state-mandated local costs in this order that require reimbursement under the laws of California.

The regulations implementing issuance of Food Stamp benefits via the EBT system do impose a mandate upon local agencies, but not on school districts. There are no “state-mandated local costs” in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code because any costs associated with the implementation of these regulations are costs mandated by Federal Food Stamp regulations at 7 CFR 274.12.

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

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

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

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

**SMALL BUSINESS IMPACT STATEMENT**

Food Stamp Program: The federal regulations and state legislation mandate the use of an EBT system for the issuance of food stamp benefits. FNS authorized food retailers are not required to participate in the EBT system. POS terminals will be provided to authorized retailers with food stamp redemption of at least \$100 per month that do not have, or do not intend to use, their own POS terminal. Those retailers with less than \$100 per month in food stamp redemption may obtain the equipment to participate in EBT at their own expense. Those choosing not to acquire their own equipment will be able to participate in EBT using manual vouchers or other alternatives approved by the state.

Because food stamp coupons will no longer be used, businesses, such as coupon issuers, that issued the coupons for the county welfare offices, will have a decrease in business.

EBT Cash Issuance: The state legislation includes a county option to issue cash benefits through the EBT system. Retailers are not required to participate in the EBT system.

In counties that choose the cash option, check cashers with CalWORKs clientele may have a decrease in business. Also, ATMs may have an increase in business dispensing cash to cash benefit recipients.

**ASSESSMENT OF JOB CREATION  
OR ELIMINATION**

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

**STATEMENT OF EFFECT ON HOUSING COSTS**

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

**STATEMENT OF ALTERNATIVES CONSIDERED**

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

**AUTHORITY AND REFERENCE CITATIONS**

CDSS adopts these regulations under the authority granted in Welfare and Institutions Code Sections 10077, 10553, 10554, 18904, and 18904.1 and 7 CFR 271.2. Subject regulations implement and make specific Welfare and Institutions Code Sections 10065, 10069, 10071, 10072, 10075.5, 10075.6, 10077, 10600, 10980, 11006.2, 15153.2; 7 CFR 271.1(a); 7 CFR 271.2; 7 CFR 271.3; 7 CFR 273.18(g) and (h); 7 CFR 274.2(d); 7 CFR 274.10(j); 7 CFR 274.12(a) [finalized April 1, 1992], (a), (f), (g), (h), (j), (i), (k); 7 CFR 278.1; FNS Letter to EBT Coordinators FS 9-5-1/EBT GEN, dated September 28, 1998; California Approved Waiver Request #980069 for 7 CFR 274.12(h)(7) [subsequently renumbered to 7 CFR 274.12(i)(7)]; California Approved Waiver Request #980070 and #980071 for 7 CFR 274.12(f)(7) and (f)(7)(i) [subsequently renumbered to 7 CFR 274.12(g)(7) and (g)(7)(i)]; California Approved Waiver Request #980090 for 7 CFR 274.12(f)(10)(ii) [subsequently renumbered to 7 CFR 274.12(g)(10)(ii)]; California Approved Waiver Request #980091 for 7 CFR 274.12(f)(5)(ii) [subsequently renumbered to 7 CFR 274.12(g)(5)(ii)]; California Approved Waiver Request #2000040 for 7 CFR 274.12(h)(7)(iii) [subsequently renumbered to 7

CFR 274.12(i)(7)(iii)]; Preamble, Federal Register, Vol. 57, No. 63, April 1, 1992; and Administrative Notice 00-57, dated August 11, 2000.

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

Contact Person: Anthony J. Velasquez  
(916) 657-2586

Backup: Maureen Miyamura  
(916) 657-2586

**CDSS REPRESENTATIVE REGARDING  
SUBSTANCE OF THE PROPOSED REGULATION**

Program Contact: Stan Cagle  
654-1529

Backup: Nancy Yee  
654-1065

**EMERGENCY STATEMENT**

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

**AGENDA ITEM FOR THESE  
PUBLIC HEARINGS  
June 19, 2002 and June 21, 2002**

ITEM #1 ORD # 0202-04  
Electronic Benefit Transfer (EBT)  
Regulations

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF FAIR  
EMPLOYMENT AND HOUSING**

NOTICE IS HEREBY GIVEN that the prospective contractors listed below have been required to submit a Nondiscrimination Program (NDP) or a California Employer Identification Report (CEIR) to the Department of Fair Employment and Housing, in accordance with the provisions of Government Code Section 12990. No such program or (CEIR) has been submitted and the prospective contractors are ineligible to enter into the State contracts. The prospective



contractors signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contracts in order to submit a responsive bid must present evidence that its Nondiscrimination Program has been certified by the Department.

ASIX Communications, Inc.  
DBA ASI Telesystems, Inc.  
21150 Califa Street  
Woodland Hills, CA 91367

Bay Recycling  
800 77th Avenue  
Oakland, CA 94621

C & C Disposal Service  
P. O. Box 234  
Rocklin, CA 95677

Choi Engineering Corp.  
286 Greenhouse  
Marketplace, Suite 329  
San Leandro, CA 94579

Fries Landscaping  
25421 Clough  
Escalon, CA 95320

Marinda Moving, Inc.  
8010 Betty Lou Drive  
Sacramento, CA 95828

MI-LOR Corporation  
P. O. Box 60  
Leominster, MA 01453

Peoples Ridesharing  
323 Fremont Street  
San Francisco, CA 94105

San Diego Physicians &  
Surgeons Hospital  
446 26th Street  
San Diego, CA

Southern CA Chemicals  
8851 Dice Road  
Santa Fe Springs, CA 90670

Tanemura and Antle Co.  
1400 Schilling Place  
Salinas, CA 93912

Turtle Building Maintenance Co.  
8132 Darien Circle  
Sacramento, CA 95828

Univ Research Foundation  
8422 La Jolla Shore Dr.  
La Jolla, CA 92037

Vandergoot Equipment Co.  
P. O. Box 925  
Middletown, CA 95461

## DISAPPROVAL DECISIONS

### DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are published in full in the California Code of Regulatory Decisions. You may request a copy of a decision by contacting Mike Ibold, Law Librarian at the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, California 95814-4339, (916) 323-8906—FAX (916) 323-6826. Please request by OAL file number.

#### STATE OF CALIFORNIA OFFICE OF ADMINISTRATIVE LAW OAL File No. 02-0228-09S

VICTORIA S. CLINE  
Staff Counsel

for: DAVID B. JUDSON  
Deputy Director/Chief Counsel

**In re:**  
**AGENCY: BOARD OF LICENSED  
VOCATIONAL NURSES AND  
PSYCHIATRIC TECHNICIANS**

**ACTION: Amend sections 2542, 2542.1, 2547, and  
2547.1 of Title 16 of the California Code of  
Regulations**

#### SUMMARY OF RULEMAKING ACTION

The Board of Licensed Vocational Nurses and Psychiatric Technicians (“Board”) proposed regulatory amendments that would have permitted a licensed vocational nurse (“LVN”) with a Board-certification in intravenous therapy to administer intravenous medications in hemodialysis, pheresis and blood bank settings under certain conditions. The regulations were submitted to the Office of Administrative Law (“OAL”) for review on February 28, 2002, and disapproved on April 12, 2002.

Date: April 19, 2002

Original: Teresa Bello-Jones, Executive Officer  
cc: Kim Frankland  
Marina Okimoto

**RULEMAKING PETITION  
DECISIONS**

**DEPARTMENT OF CORRECTIONS**

**NOTICE OF DECISION ON PETITION TO  
AMEND REGULATIONS**

**Title 15, Crime Prevention and Corrections**

**PETITIONER**

Alvin R. Ross.

**AUTHORITY**

Under authority established in Penal Code (PC) Section 5058 the Director may prescribe and amend regulations for the administration of prisons. PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein.

**CONTACT PERSON**

Please direct any inquiries regarding this action to Rick Grenz, Chief, Regulation and Policy Management Branch, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001, or telephone (916) 322-9702.

**AVAILABILITY OF PETITION**

The petition to amend regulations is available upon request directed to the Department's contact person.

**SUMMARY OF PETITION**

Petitioner requests the Department of Corrections to amend regulations in the California Code of Regulations (CCR), Title 15, Division 3, Section 3377.1. The Petitioner requests that the Department amend regulations that would affect single-cell custody status.

**DEPARTMENT DECISION**

The Director of Corrections denies the petition to amend regulations in Title 15, Division 3, Section 3377.1 of the CCR.

The CCR, Section 3377.1 clearly states that all departmental Classification Committees are granted the discretionary authority to determine whether an inmate can be safely housed in a double cell or dormitory. The Department, when determining inmate housing, recognizes the risk associated with a variety of inmate case factors or behavior that has occurred in the past or are anticipated to reoccur in the future.

The Petitioner requests that the Department affix an "S" suffix to the inmate's custody designation at the receiving institution when there has been documented

evidence of a previous assaultive act on a cellmate of a serious nature. The Petitioner requests that an inmate desiring to double-cell after being placed on single-cell status, shall submit a written request to their counselor. Lastly, the Petitioner requests that inmates who desire single-cell status not be considered a program failure, be placed in Privilege Group C, or have their personal property confiscated.

The Department contends that restricting placement of the "S" suffix by only the "receiving institutions," limits the authority of the Classification Committees at all institutions. It is necessary for all institution to have the ability to consider whether an inmate's custody placement be granted because case factors and behaviors change regularly, no matter where the inmate is housed. Additionally, the Department contends that by limiting placement of the "S" suffix to only those inmates who have documented evidence of a previous assaultive act would restrict staff from considering other previous acts, such as sexual abuse or predatory behaviors. It would also preclude a Classification Committee from considering actions that could be anticipated based on inmate statements or confidential information that is deemed reliable. It could also hamper a Committee's evaluation of previous housing, criminality, health, or social issues, or other institutional security needs.

The Department contends that a Committee's ability to revisit the single-cell housing issue, until the inmate requests in writing to double-cell, restricts a Committee from reviewing custody on a regular basis and not just at the request of the inmate. The Department contends that inmates cannot be placed in Privilege Group C based solely on their single-cell status. Criteria is set forth in Section 3044(f) regarding the placement of an inmate into Privilege Group C. For example, placement may occur after an inmate refuses to accept or perform work or training assignments; or for unsatisfactory performance; or has committed a serious rule violation. Additionally, the Department contends that an inmate's inability to double-cell does not constitute a program failure. If an inmate feels that any of the above has occurred, a remedy through the Inmate Appeal process may be pursued.

**DEPARTMENT OF CORRECTIONS**

**NOTICE OF DECISION ON PETITION TO  
AMEND REGULATIONS**

**Title 15, Crime Prevention and Corrections**

**PETITIONER**

Bruce Senator

**AUTHORITY**

Under authority established in Penal Code (PC) Section 5058 the Director may prescribe and amend regulations for the administration of prisons. PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein.

**CONTACT PERSON**

Please direct any inquiries regarding this action to Rick Grenz, Chief, Regulation and Policy Management Branch, Department of Corrections, PO Box 942883, Sacramento, CA 94283-0001, or telephone (916) 322-9702.

**AVAILABILITY OF PETITION**

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

**SUMMARY OF PETITION**

Petitioner requests that the Department of Corrections incorporate amendments into the California Code of Regulations (CCR), Title 15, Division 3, to include changes to existing provisions concerning inmate access to courts and administrative agencies (§ 3160), legal duplicating services for inmates (§ 3162) and the mailing of legal documents (§ 3165).

The petitioner would amend §§ 3160 and 3160(b) (3) so as to expand the existing prohibition against obstruction of inmate access to courts to include a prohibition against obstruction of access to "administrative agencies." Access to and service upon all parties to "filed" actions in courts and administrative agencies would be within the expanded scope of the existing section with adoption of a new subsection (c).

Likewise, § 3162 would be amended with the addition of new text to subsection (a), the replacement and partial repositioning of the existing text of subsection (b) to a new subsection (d) with new text added, and an entirely new subsection (b). The net effect of these changes would be to further extend existing provisions regarding legal forms and duplicating services to include forms required by administrative agencies and 28-line pleading paper as well as the duplication of attachments, appendices or exhibits to legal documents to be mailed (or served). Proposed subsections (b) and (c) would add two new regulatory provisions: Staff assistance to inmates to facilitate access to courts and agencies and for the purpose of mailing legal documents and providing legal duplicating services for "all legal communications made in connection with any court, administrative agency, Board of Control action or potential action" up to the exhaustion of available relief. Newly added text to

redesigned subsection (d) would specify that an abundance of legal work would by itself would not be evidence of abuse of the services afforded by the section as amended.

Further changes sought by the petitioner would amend § 3165 with additions to the existing text of subsection (a), interposition of new subsections (b), (c) and (d) and the redesignation and amendment of existing subsections (b), (c) and (d). The net effect of these changes would be to further extend existing provisions regarding legal document mailing to include service of legal documents to administrative agencies and parties to actions. Staff assistance would be broadened to include the processing, marking and tracking, as appropriate, of completed documents and envelopes for mailing. Illiterate or physically challenged inmates may request additional assistance. Such mail shall be given priority status and regular and legal mail shall be mailed each working day. Moreover, the mailroom will be required to maintain a current list of "federal, state, county, appellate and district courts, and administrative agencies."

Finally, as the petitioner is undergoing "irreparable harm" due to the existing rules and regulations, the adoption of the requested amendments as an "emergency measure" is requested.

**DEPARTMENT DECISION**

The Director of Corrections denies this petition.

While the Department accepts the petitioner's contention that inmates have both constitutional and statutory rights with respect to access to courts, it rejects the assertion that its existing regulations are inadequate with respect to this matter. The need for the changes requested has not been clearly established. Difficulty pursuing an individual complaint with a state administrative body is neither sufficient evidence of the inadequacy of the existing regulations, nor is it reason enough for the regulations to be rewritten as to refashion Departmental functions into a support body for the pursuit of such matters, as the petitioner requests. Federal and state law after *Lewis v. Casey* support inmate access only to courts, not to administrative agencies. The Department, in any event, does not inhibit inmate access to non-judicial bodies nor impede inmate retention of counsel in order to pursue such remedies as are permitted by law.

The petitioner proposes the imposition of a variety of new, relatively nonessential inmate assistive obligations upon the department; making special stationery available, helping prepare legal submissions, duplicating services through remedy exhaustion and so forth. These would plainly burden staff with greater responsibilities in a period of severe fiscal constraint with competing, and frequently, more compelling demands already being unmet. It is also the Depart-

ment's overall position that, rather than facilitating inmate court access, the petitioner's requested changes would more likely add unnecessary complications and workload, overburdening the existing process for those inmates in need of such services for more urgent court filings. Likewise, disagreement over the sufficiency of Department compliance with such overly broad provisions as the one that requires "well-documented" and incident-specific proof of the deprivation of services to other inmates invites massive clogging of the inmate appeals system.

Therefore, all of the petitioner's suggested changes are denied at this time.

However, inasmuch as the Department is currently considering changes in the existing inmate mail processing regulations, the petitioner's more general requests respecting § 3162 shall be reconsidered as the new provisions are being drafted.

## **DEPARTMENT OF CORRECTIONS**

### **NOTICE OF DECISION ON PETITION TO REPEAL AND ADOPT REGULATIONS**

#### **Title 15, Crime Prevention and Corrections**

##### **PETITIONER**

Joel Brown.

##### **AUTHORITY**

Under authority established in Penal Code (PC) Section 5058 the Director may prescribe and amend regulations for the administration of prisons. PC Section 5054 vests with the Director the supervision, management and control of the prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein.

##### **CONTACT PERSON**

Please direct any inquiries regarding this action to Rick Grenz, Chief, Regulation and Policy Management Branch, Department of Corrections, P.O. Box 942883, Sacramento, CA 94283-0001, or telephone (916) 322-9702, or e-mail [pmchenry@executive.corr.ca.gov](mailto:pmchenry@executive.corr.ca.gov).

##### **AVAILABILITY OF PETITION**

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

##### **SUMMARY OF PETITION**

Petitioner requests the Department of Corrections adopt Section 3220.2 regarding weightlifting programs and to repeal Sections 3174, 3268, 3006, 3138, 3147, 3141, 3220.4, and 3062 of the California Code of Regulations (CCR), Title 15, Division 3, regarding

family visiting, the use of force, publications, confidential correspondence, the viewing of "R" rated movies by inmates, and inmate grooming standards. Petitioner contends that the Department has created an unstable environment by promulgating the above regulations and requests that all of these rule changes be reversed back to the way they were prior to 1986.

##### **DEPARTMENT DECISION**

The Director of Corrections denies the petition.

The Legislature in enacting Penal Code (PC) Section 5054, has vested with the Director of Corrections the authority to supervise, manage and control the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein. PC Section 5058 gives the Director the authority to promulgate regulations for the administration of the prisons.

The above referenced sections of the California Code of Regulations were promulgated in accordance with the requirements set forth in the Administrative Procedure Act, Government Code Section 11340 et seq. The Office of Administrative Law reviewed the promulgation of these regulations and approved them which enabled the regulations to go into permanent effect and the Department to implement them.

The Department contends that the changes suggested by the petitioner are not meritorious and is therefore denying the repeal of Sections 3174, 3268, 3006, 3138, 3147, 3141, 3220.4, and 3062 of the California Code of Regulations (CCR), Title 15, Division 3, regarding family visiting, the use of force, publications, confidential correspondence, the viewing of "R" rated movies by inmates, and inmate grooming standards, and the adoption of Section 3220.2 regarding weightlifting programs.

## **DEPARTMENT OF HEALTH SERVICES**

April 15, 2002

Kathy Kneer  
Executive Director  
California Planned Parenthood  
Education Fund, Inc.  
555 Capitol Mall, Suite 510  
Sacramento, CA 95814-4581

### **RE: Petition to Amend California Code of Regulations, Title 22, Section 75051**

Dear Ms. Kneer:

This is to advise you that your petition filed pursuant to Government Code section 11340.6, has been carefully reviewed by the Licensing and Certification Program of the Department of Health Services (Department). The Department considered your peti-

tion in accordance with Government Code section 11340.7. The petition filed by the California Planned Parenthood Education Fund Inc., for regulatory change to California Code of Regulations, title 22, section 75051 is granted.

Specifically, the petition proposed deleting the requirement originally included in Section 75051 for an annual health examination for all persons working in a clinic. The requirement for a health examination within 6 months prior to or within 15 days after employment was retained. Since the annual tuberculosis testing was linked to the annual health examination, you included regulatory changes that now require an annual tuberculosis test for those individuals with a previously documented negative tuberculin test. For each individual who previously tested negative, but now tests positive, a chest x-ray would be required. The petition also proposed deleting the requirement that persons who are known to have an infectious disease be removed from contact with patients, but added the provisions that are reflected in the acute care facility regulations at CCR, title 22, section 70723. Those provisions require that persons evidencing signs or symptoms indicating an infectious disease shall be medically screened prior to patient contact. Those provisions also require clinics to write and implement policies and procedures for addressing tuberculosis related issues.

While your petition for regulatory changes has been granted, the Department retains the right to alter proposed language or add further wording to clarify or to address other issues. You should be aware that, pursuant to Government Code section 11340.7(c), you, or any other interested person may request reconsideration of any part or all of the Department's decision regarding this petition no later than 60 days after the date of this letter.

A copy of this letter will be sent to the Office of Administrative Law for publication in the California Regulatory Notice Register, pursuant to Government Code section 11340.7(d). If you or any other interested person would like copies of the petition or wish to discuss further this matter, please contact Joseph Conkle, Staff Counsel at (916) 651-9789.

Thank you for bringing this matter to our attention.

Yours truly,

Barbara H. Yonemura  
Deputy Director and  
Chief Counsel

cc: Brenda Klutz  
Deputy Director  
Licensing and Certification  
1800 3rd Street, Room 210  
Sacramento, CA 95814

Joseph Conkle  
Staff Counsel  
Department of Health Services  
714 P Street, Room 1216  
Sacramento CA 95814

Allison Branscombe, Chief  
Office of Regulations  
714 P Street, Room 1000  
Sacramento, CA 95814

Lily Spitz  
Chief Legal Counsel  
California Planned Parenthood Education Fund  
555 Capitol Mall, Suite 510  
Sacramento, CA 95814

Anthony Way, MD, MBA  
Chief Medical Consultant  
Licensing and Certification Program  
Department of Health Services  
1800 Third Street, Suite 210  
Sacramento, CA 95814

**SUMMARY OF REGULATORY  
ACTIONS**

**REGULATIONS FILED WITH  
SECRETARY OF STATE**

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

**AIR RESOURCES BOARD**

Transported Pollutants On Ozone Concentrations

This action officially identifies the San Francisco Bay Area as an area of origin of air pollution that is, on occasions, transported to the South Central Coast and the North Coast and requires the San Francisco Air Basin or District to include measures in its plan sufficient to allow the portion of Sonoma County within the North Coast Air Basin to meet the ambient air quality standard for ozone.

Title 17  
California Code of Regulations  
AMEND: 70500, 70600  
Filed 04/22/02  
Effective 05/22/02  
Agency Contact:  
Leslie M. Krinsk

(805) 473-7325

**BOARD OF EQUALIZATION**

Application for Equalization

This action adopts a rule intended to clarify a taxpayer's right to apply to a county board of equalization for equalization of the value of property when an assessor's audit of business property under Revenue and Taxation Code section 469 concludes that there is property of the business subject to an escape assessment charged retroactively to remedy an omission or error in the original assessment.

Title 18  
California Code of Regulations  
ADOPT: 305.3  
Filed 04/17/02  
Effective 05/17/02  
Agency Contact: Diane G. Olson (916) 322-9569

**DEPARTMENT OF CORRECTIONS**

Firearms

This action would amend the provision prohibiting private firearms or ammunition. It would allow employees the use of privately owned firearms or ammunition if authorized by the director or his/her designee.

Title 15  
California Code of Regulations  
AMEND: 3276  
Filed 04/17/02  
Effective 05/17/02  
Agency Contact: Peggy McHenry (916) 324-6775

**DEPARTMENT OF FOOD AND AGRICULTURE**

hours of inspection at salesyards

This regulatory action changes the hours during which an inspector may perform a brand inspection at a public auction salesyard.

Title 3  
California Code of Regulations  
ADOPT: 899.2 AMEND: 899.1  
Filed 04/23/02  
Effective 05/23/02  
Agency Contact: Nancy Grillo (916) 654-0881

**DEPARTMENT OF FOOD AND AGRICULTURE**

Peach Fruit Fly Eradication Area

This Certificate of Compliance adds the county of Riverside as an eradication area for the Peach fruit fly.

Title 3  
California Code of Regulations  
AMEND: 3591.12(a)  
Filed 04/23/02  
Effective 04/23/02  
Agency Contact:  
Barbara J. Hass (916) 654-1017

**DEPARTMENT OF JUSTICE**

Proposition 65 Private Enforcement

This emergency readoption provides that a notice of motion (and supporting materials) by a private enforcer for judicial approval of a settlement of a Proposition 65 lawsuit must be served on the Attorney General no later than 45 days prior to the date of the hearing of the motion, or for the maximum time permitted by the court if court rules or other applicable orders do not permit a forty-five day period. The action repeals an existing provision which allowed the Attorney General thirty days after actual receipt to review a settlement. The action also conforms existing regulations to changes made by chapter 678, statutes of 2001.

Title 11  
California Code of Regulations  
AMEND: 3000, 3001, 3003, 3007, 3008  
Filed 04/23/02  
Effective 05/01/02  
Agency Contact: Edward G. Weil (510) 622-2149

**DEPARTMENT OF JUSTICE**

Child Abuse Reports Recordkeeping

This action amends the regulations governing child abuse reports recordkeeping, required for purposes of reporting information to the statewide Child Abuse Central Index, also currently known as the Automated Child Abuse System. This includes the updated Form SS 8583, Child Abuse Investigation Report.

Title 11  
California Code of Regulations  
AMEND: 900, 901, 902, 903, 904, 905, 906, 907, 908, 911  
Filed 04/22/02  
Effective 05/22/02  
Agency Contact: Martha Cook (916) 227-3347

**DEPARTMENT OF MANAGED HEALTH CARE**

Electronic Filing

This is the emergency readoption of a regulation that requires plans to submit statutorily mandated documents electronically to assist the Department in speedy and accurate data retrieval and delivery of service.

Title 28  
California Code of Regulations  
ADOPT: 1300.41.8  
Filed 04/24/02  
Effective 04/24/02  
Agency Contact:  
Lyn Amor Macaraeg (916) 322-9727

**DEPARTMENT OF PESTICIDE REGULATION**  
Pesticides and Pest Control Operations

The Department of Pesticide Regulation is amending section 6510, title 3, California Code of Regulations, pertaining to renewals and new applications to accommodate the two year continuing education requirement set out in section 6511, title 3, California Code of Regulations. The amendment to section 6793, title 3, California Code of Regulations corrects a cross-reference to the regulation which defines a "closed system", section 6000.4 was deleted and replaced with section 6000.

Title 3  
California Code of Regulations  
AMEND: 6510, 6793  
Filed 04/18/02  
Effective 05/18/02  
Agency Contact:  
Margaret M Graham (916) 323-6133

**EMPLOYMENT DEVELOPMENT DEPARTMENT**  
Barbering and Cosmetology Industry

The Employment Development Department is amending the captioned section (section 4304-12, title 22, California Code of Regulations) pertaining to whether or not an individual is an employee or an independent contractor performing services applying the common law rules specifically to a professional licensed by the Bureau of Barbering and Cosmetology, within the meaning of the Unemployment Insurance Code.

Title 22  
California Code of Regulations  
AMEND: 4304-12  
Filed 04/18/02  
Effective 05/18/02  
Agency Contact: Laura Colozzi (916) 654-7712

**FAIR POLITICAL PRACTICES COMMISSION**  
Prop. 34—Carryover of Contributions

The Fair Political Practices Commission is adopting section 18537.1 of title 2, California Code of Regulations, pertaining to the movement of campaign funds to the candidate's controlled committee, etc. The Office of Administrative Law has filed the above regulatory action with the Secretary of State in accordance with the decision of the Third District Court of Appeal in *Fair Political Practices Commission v. Office of Administrative Law, et al.*, 3 Civil CO 10924, dated April 27, 1992.

Title 2  
California Code of Regulations  
ADOPT: 18537.1  
Filed 04/19/02  
Effective 05/19/02  
Agency Contact: John Wallace (916) 445-4812

**OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**

Energized Equipment or Systems/ Personal Protective Equipment

This rulemaking clarifies that hand protection is required when employees are exposed to energized parts at voltages of 250 and below.

Title 8  
California Code of Regulations  
AMEND: 2320.2 of the Low voltage Electrical safety orders  
Filed 04/22/02  
Effective 05/22/02  
Agency Contact: Marley Hart (916) 274-5721

**STATE WATER RESOURCES CONTROL BOARD**  
Request To Print Conflict of Interest Code As Approved Under The Political Reform Act

This is a Conflict of Interest Code filing that has been approved by the Fair Political Practices Commission and is being submitted for filing with the Secretary of State and printing in the California Code of Regulations only.

Title 23  
California Code of Regulations  
AMEND: Article 6, section 645  
Filed 04/17/02  
Effective 05/17/02  
Agency Contact: Marleigh Wood (916) 341-5169

**CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN DECEMBER 19, 2001 TO APRIL 24, 2002**

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

**Title 1**  
02/22/02 AMEND: 121, Appendix A  
01/08/02 AMEND: 1402, 1414, 1437

**Title 2**  
04/19/02 ADOPT: 18537.1  
04/10/02 ADOPT: 1859.74.4 AMEND: 1859.2, 1859.20, 1859.21, 1859.30, 1859.33, 1859.40, 1859.41, 1859.42, 1859.43, 1859.50, 1859.51, 1859.60, 1859.70, 1859.73.1, 1859.73.2, 1859.74.1,

**CALIFORNIA REGULATORY NOTICE REGISTER 2002, VOLUME NO. 18-Z**

1859.74.4, 1859.75.1, 1859.76,  
1859.78.2, 1859.79.3, 1859.81,  
1859.81.1, 1859.  
04/04/02 ADOPT: 60, 60.1, 60.2, 60.3, 60.4, 60.5,  
60.6, 60.7, 60.8, 60.9, 60.10  
03/27/02 ADOPT: 59100  
03/19/02 ADOPT: 599.930  
03/18/02 AMEND: 599.502, 599.508  
03/15/02 ADOPT: 1859.200, 1859.201, 1859.202,  
1859.203, 1859.204, 1859.205, 1859.206,  
1859.207, 1859.208, 1859.209, 1859.210,  
1859.211, 1859.212, 1859.213, 1859.214,  
1859.215, 1859.216, 1859.217, 1859.218,  
1859.219, 1859.220  
03/13/02 AMEND: 56800  
03/07/02 ADOPT: 2351  
02/19/02 ADOPT: 18450.11  
02/19/02 ADOPT: 18543 REPEAL: 18543  
02/19/02 ADOPT: 18530.8  
02/14/02 ADOPT: 18404.1 REPEAL: 18404.2  
02/05/02 ADOPT: 433.1 AMEND: 433  
01/31/02 ADOPT: 18421.4  
01/30/02 AMEND: 55300  
01/24/02 ADOPT: 18450.3, 18450.4, 18450.5  
AMEND: 18402  
01/24/02 ADOPT: 58500  
01/22/02 AMEND: 18706  
01/16/02 ADOPT: 18539, 18550  
01/16/02 AMEND: 18232, 18702.1, 18705.5,  
18708  
12/27/01 AMEND: 18428  
12/26/01 AMEND: 2554(b)(4), 2555(a)(1)  
12/21/01 AMEND: 1859.2, 1859.81  
12/20/01 AMEND: 2300(b)  
12/20/01 AMEND: 45100

**Title 3**

04/23/02 AMEND: 3591.12(a)  
04/23/02 ADOPT: 899.2 AMEND: 899.1  
04/18/02 AMEND: 6510, 6793  
04/12/02 AMEND: 3423(b)  
04/11/02 ADOPT: 3664, 3665, 3666, 3667, 3668,  
3669  
04/08/02 AMEND: 6450.2, 6450.3, 6784  
04/04/02 AMEND: 3033.2, 3033.3, 3033.4  
04/02/02 ADOPT: 480.9 AMEND: 480.7  
03/12/02 AMEND: 3423(b)  
03/12/02 AMEND: 3423(b)  
03/08/02 ADOPT: 306, 6188, 6780 AMEND: 6000  
02/22/02 AMEND: Div. 1, Chapter 1.1, Section 2  
and Appendix  
02/20/02 AMEND: 3591.16(a)  
02/07/02 AMEND: 3591.12 (a)  
02/04/02 AMEND: 1392.1, 1392.2, 1392.4,  
1392.9.1  
02/04/02 AMEND: 3591.13 (a)

01/30/02 ADOPT: 2681, 2799 AMEND: 2675,  
2676, 2694, 2695, 2697, 2701, 2734,  
2773.1, 2773.5, 2774, 2774.5, 2775,  
2778, 2782, 2783, 2783.5, 2788, 2789,  
2790, 2790.5, 2793, 2794, 2796, 2798,  
2801, 2802  
01/14/02 AMEND: 3406 (b)  
01/14/02 AMEND: 3423 (b)  
01/08/02 AMEND: 576.1  
01/04/02 AMEND: 3591.16 (a)  
12/27/01 AMEND: 2  
12/26/01 ADOPT: 950, 951, 952, 953, 954, 955  
AMEND: 900.1, 901, 927, 930, 931  
12/26/01 AMEND: 6650, 6654, 6656  
12/20/01 ADOPT: 7010

**Title 4**

04/16/02 AMEND: 1405, 1527  
03/21/02 ADOPT: 8090, 8091, 8092, 8093, 8094,  
8095, 8096, 8097, 8098, 8099, 8100,  
8101  
03/19/02 ADOPT: 12100, 12102, 12104, 12106,  
12108, 12120, 12130  
02/13/02 AMEND: 1691  
02/06/02 AMEND: 1858  
01/31/02 AMEND: 1467  
01/28/02 AMEND: 1844  
01/18/02 ADOPT: 2081  
01/11/02 ADOPT: 4160, 4161, 4162, 4263, 4164,  
4165, 4166, 4167, 4168, 4169, 4170,  
4171 REPEAL: 4160, 4161, 4162, 4164,  
4167, 4168, 4169, 4170, 4171, 4172,  
4173, 4174, 4175  
01/10/02 ADOPT: 2078  
01/07/02 ADOPT: 2082  
01/07/02 ADOPT: 2073  
01/07/02 ADOPT: 2071  
01/07/02 ADOPT: 2072  
01/07/02 ADOPT: 2076  
01/04/02 ADOPT: 2083  
01/03/02 ADOPT: 2077  
01/03/02 ADOPT: 2075  
01/03/02 ADOPT: 2074  
01/03/02 ADOPT: 2080  
01/03/02 ADOPT: 2079  
01/03/02 ADOPT: 2070

**Title 5**

03/25/02 ADOPT: 11980, 11981, 11982, 11983,  
11984, 11985, 11986  
03/15/02 ADOPT: 11963, 11963.1, 11963.2,  
11963.3, 11963.4  
03/12/02 ADOPT: 18400, 18405, 18406, 18407,  
18408, 18409, 18409.5, 18410, 18411,  
18412, 18413, 18414, 18415, 18416,  
18417, 18418, 18419, 18420, 18421,  
18422, 18423, 18424, 18425, 18426,



**CALIFORNIA REGULATORY NOTICE REGISTER 2002, VOLUME NO. 18-Z**

18427, 18428, 18429, 18430, 18431,  
18432, 18433, AMEND: 18409.5,  
18409(e),  
03/01/02 ADOPT: 11967.5, 11967.5.1  
02/20/02 AMEND: 41906.5  
02/19/02 ADOPT: 55753.5, 55753.7 AMEND:  
55753  
02/08/02 ADOPT: 43095 REPEAL: 43101  
02/08/02 AMEND: 40407.1  
02/08/02 AMEND: 42350.6  
01/24/02 AMEND: 43880, 43881, 43882, 43883,  
43884  
01/24/02 AMEND: 11530, 11531  
01/08/02 AMEND: 1031, 1032, 1033, 1034, 1035,  
1036, 1037, 1038, 1039  
01/08/02 REPEAL: 11820, 11822, 11823, 11827,  
11828, 11829, 11831, 11832, 11833,  
11834  
01/07/02 AMEND: 42713  
01/07/02 AMEND: 73000, 73010, 73100, 73110,  
73120, 73130, 73140, 73150, 73160,  
73165, 73170, 73180, 73190, 73200,  
73210, 73230, 73240, 73260, 73270,  
73280, 73290, 73300, 73310, 73320,  
73330, 73340, 73350, 73360, 73380,  
73390, 73400, 73410, 73420, 73430,  
73440,  
12/27/01 ADOPT: 31000, 31001, 31003, 31004,  
31005, 31006, 31007  
12/26/01 AMEND: 80487  
12/21/01 ADOPT: 31000, 31001, 31002, 31003,  
31004, 31005, 31006, 31007  
12/21/01 ADOPT: 1215, 1216, 1217, 1217.5, 1218,  
1219, 1219.5

**Title 7**

04/04/02 ADOPT: 237

**Title 8**

04/22/02 AMEND: 2320.204/03/02 AMEND:  
1626  
03/28/02 ADOPT: 341.15  
03/05/02 AMEND: 3251  
02/22/02 ADOPT: 11010, 11020, 11030, 11040,  
11050, 11060, 11070, 11080 REPEAL:  
11010, 11020, 11020, 11040, 11050,  
11060, 11070, 11080  
02/14/02 AMEND: 17  
02/08/02 AMEND: 3641, 3648  
01/30/02 ADOPT: New Appendix D AMEND:  
450, 453, 471, 475, 477, 494 REPEAL:  
486, 487  
01/17/02 AMEND: 5155

01/17/02 ADOPT: 206, 207 AMEND: 201, 205,  
208, 212, 212.01, 212.2, 212.3, 212.4,  
228, 229, 230, 231, 230.1, 230.2, 234.2  
01/15/02 ADOPT: 17201, 17202, 17203, 17204,  
17205, 17206, 17207, 17208, 17209,  
17210, 17211, 17212, 17220, 17221,  
17222, 17223, 17224, 17225, 17226,  
17227, 17228, 17229, 17230, 17231,  
17232, 17234, 17235, 17236, 17237,  
17240, 17241, 17242, 17243, 17244,  
17245,  
01/15/02 ADOPT: 14300.1, 14300.2, 14300.03,  
14300.04, 14300.05, 14300.06, 14300.07,  
14300.08, 14300.09, 14300.10, 14300.11,  
14300.12, 14300.13, 14300.14, 14300.15,  
14300.16, 14300.17, 14300.18, 14300.19,  
14300.20, 14300.21, 14300.22, 14300.23,  
14300.24, 14300.25,  
01/04/02 ADOPT: 11170 AMEND: 11160  
01/03/02 AMEND: 3472, 4884, 4885, 4886, 4907,  
4924, 4965, 4966, 4968  
12/31/01 AMEND: 9792.1  
12/26/01 AMEND: 1532.1  
12/24/01 AMEND: 31100

**Title 9**

01/17/02 ADOPT: 9533 AMEND: 9500, 9505,  
9510, 9515, 9517, 9520, 9525, 9530,  
9532, 9535, 9540, 9545

**Title 10**

04/16/02 AMEND: 2698.73  
03/27/02 ADOPT: 260.204.9  
03/26/02 AMEND: 250.30  
03/22/02 AMEND: 2698.200, 2698.201, 2698.301,  
2698.302  
03/21/02 ADOPT: 2130, 2130.1, 2130.2, 2130.3,  
2130.4, 2130.5, 2130.6, 2130.7.8  
03/18/02 ADOPT: 1422 & 1423  
02/27/02 AMEND: 2498.6  
02/26/02 ADOPT: 2581.1, 2581.2, 2581.3, 2581.4  
02/11/02 AMEND: 4019  
02/11/02 AMEND: 10.3154  
02/11/02 AMEND: 5002  
02/07/02 AMEND: 260.102.19, 260.140.41,  
260.140.42, 260.140.45, 260.140.46  
01/31/02 ADOPT: 2130, 2130.1, 2130.2, 2130.3,  
2130.4, 2130.5, 2130.6, 2130.7, 2130.8  
01/31/02 ADOPT: 2192.1  
01/10/02 AMEND: 2318.6, 2353.1  
01/09/02 AMEND: 2248.31, 2248.32, 2248.35,  
2248.40, 2248.41, 2248.42, and 2248.47  
01/08/02 AMEND: 5460, 5461, 5462, 5463, 5464,  
5465  
12/31/01 ADOPT: 2695.30  
12/31/01 ADOPT: 1729, 1741.5, 1950.302  
AMEND: 1741.5  
12/26/01 AMEND: 2698.70, 2698.71

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12/26/01 ADOPT: 2278, 2278.1, 2278.2, 2278.3, 2278.4, 2278.5

**Title 11**

04/23/02 AMEND: 3000, 3001, 3003, 3007, 3008  
04/22/02 AMEND: 900, 901, 902, 903, 904, 905, 906, 907, 908, 911  
04/15/02 ADOPT: 999.10, 999.11, 999.12, 999.13, 999.14, Appendix A  
03/14/02 ADOPT: 1081(a) [31]  
03/11/02 AMEND: 1005, 1007  
03/07/02 AMEND: 1018  
03/06/02 ADOPT: Article 20, Section 51.19  
02/25/02 ADOPT: 410, 411, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426  
02/19/02 AMEND: 20  
01/14/02 AMEND: 1005  
01/09/02 AMEND: 1081  
12/31/01 AMEND: 3000, 3001, 3003, 3007

**Title 13**

04/04/02 ADOPT: 565  
03/25/02 AMEND: 345.04, 345.41  
03/20/02 ADOPT: 1235.1, 1235.2, 1235.3, 1235.4, 1235.5, 1235.6 AMEND: 1200  
03/08/02 ADOPT: 593.3  
02/19/02 ADOPT: 156.00  
02/05/02 AMEND: 160.00, 170.00  
01/30/02 AMEND: 553.70  
01/18/02 AMEND: 599  
01/10/02 AMEND: 50.45 REPEAL: 50.40

**Title 14**

04/11/02 ADOPT: 104.1  
04/10/02 AMEND: 17943(b)(26)  
04/10/02 AMEND: 27.67  
04/04/02 AMEND: 670.2  
03/26/02 AMEND: 28.59  
03/25/02 AMEND: 2090, 2105, 2420, 2425, 2530, 2690  
03/25/02 ADOPT: 180.15  
03/14/02 AMEND: 180.3  
03/14/02 AMEND: 150  
03/13/02 ADOPT: 18627  
03/04/02 AMEND: 2030  
03/04/02 ADOPT: 17211, 17211.1, 17211.2, 17211.3, 17211.4, 17211.5, 17211.6, 17211.7, 17211.8, 17211.9  
02/28/02 ADOPT: 4971  
02/22/02 AMEND: 2135  
02/04/02 AMEND: 17979  
01/16/02 AMEND: 17943(b)(26)  
01/10/02 ADOPT: 2.10, 5.60, 28.59 AMEND: 1.24, 2.06, 4.00, 4.15, 5.00, 5.05, 5.15, 5.20, 5.35, 5.40, 5.75, 7.00, 7.50, 8.00, 27.60, 27.65, 27.82, 28.27, 28.54, 28.55,

29.15, 40 REPEAL: 2.01, 2.02, 2.03, 2.04, 2.07, 2.10, 2.13, 2.14, 5.70, 41, 41.5, 42., 42.5

01/09/02 ADOPT: 14021, 14022, 14023, 14024, 14025, 14026, 14027, 14028, 14029, 14030, 14031, 14032

12/31/01 ADOPT: 749.1

12/20/01 AMEND: 2.00

12/19/01 ADOPT: 180.4

**Title 15**

04/17/02 AMEND: 3276

03/20/02 AMEND: 3401.5

03/11/02 ADOPT: 3501

03/07/02 AMEND: 3375.2

02/28/02 AMEND: 2005

01/31/02 AMEND: 3041.3

01/09/02 ADOPT: 4742, 4743, 4744, 4745, 4746, 4747 AMEND: 4730, 4732, 4733, 4734, 4735, 4736, 4737, 4739, 4740

01/08/02 REPEAL: 3074

**Title 16**

04/09/02 AMEND: 2010.1, 2024, 2025

04/02/02 AMEND: 2068.5

03/29/02 AMEND: 2620.5, 2649, 2671

03/29/02 REPEAL: 1044.4

03/26/02 AMEND: 1950, 1950.2, 1970.4 REPEAL: 1990.1, 1991.1

03/25/02 AMEND: Section 1888

03/20/02 AMEND: 1083

02/28/02 ADOPT: 4100, 4101, 4102, 4110, 4111, 4112, 4113, 4114, 4120, 4121, 4122, 4130

02/26/02 AMEND: 3394.4, 3394.6

02/20/02 AMEND: 1388, 1388.6, 1389, 1392, 1397.63 REPEAL: 1388.5

02/19/02 AMEND: 1387.6, 1387.7, 1387.8

02/13/02 AMEND: 3361.1

02/11/02 ADOPT: 2085.4

02/04/02 AMEND: 1399.157

02/04/02 ADOPT: 2085, 2085.1, 2085.2, 2085.3, 2085.4, 2085.5, 2085.6, 2085.7, 2085.8, 2085.9, 2085.10, 2085.11, 2085.12, 2085.13 AMEND: 2070

01/31/02 ADOPT: 1399.698

01/31/02 AMEND: 411

01/28/02 AMEND: 1531

01/18/02 AMEND: 1391.7

01/14/02 ADOPT: 1711

01/14/02 ADOPT: 980.1 AMEND: 974

12/19/01 AMEND: 1388, 1388.6, 1389, 1392, 1397.63 REPEAL: 1388.5

**Title 17**

04/22/02 AMEND: 70500, 70600  
 04/11/02 AMEND: 58420  
 04/10/02 ADOPT: 54327.2 AMEND: 54302, 54327, 54327.1, 56002, 56026, 56093, 58651  
 03/27/02 AMEND: 57310, 57332, 57530  
 03/12/02 ADOPT: 33001, 33002, 33003, 33004, 33005, 33006, 33007, 33008, 33009, 33010, 33011, 33012, 33013, 33014, 33015, 33025 AMEND: 33020, 33030, 33040 REPEAL: 3001, 33010  
 03/01/02 ADOPT: 2638 AMEND: 2500, 2502, 2505, 2551, 2552, 2553, 2596, 2614, 2626  
 02/28/02 AMEND: 56002, 56031, 56033, 56034, 56134.1, 56035, 56036, 56037, 56038, 56048, 56054, 56057, 56059, 56060  
 12/28/01 AMEND: 6508

**Title 18**

04/17/02 ADOPT: 305.3  
 04/16/02 AMEND: 1668  
 04/16/02 AMEND: 1525.2  
 04/16/02 AMEND: 1532  
 04/03/02 AMEND: 25110  
 04/03/02 ADOPT: 138  
 04/02/02 AMEND: 25111-1  
 04/02/02 AMEND: 25114  
 03/19/02 AMEND: 25112  
 03/13/02 AMEND: 24411  
 03/12/02 REPEAL: 25111.1  
 03/12/02 REPEAL: 25111  
 03/12/02 AMEND: 24344(c)  
 03/11/02 AMEND: 25106.5-0, 25106.5  
 03/08/02 AMEND: 6001  
 02/28/02 REPEAL: 25115  
 01/16/02 ADOPT: 4063.5, 4098 AMEND: 4018, 4021, 4022, 4023, 4026, 4027, 4034, 4047, 4055, 4056, 4057, 4058, 4059, 4060, 4062, 4063, 4064, 4065, 4080, 4081, 4091, 4092 REPEAL: 4028, 4067, 4079, 4082  
 01/10/02 ADOPT: 29  
 01/08/02 AMEND: 1620  
 01/07/02 AMEND: 122.5  
 12/24/01 AMEND: 17000.30  
 12/24/01 ADOPT: 17951-6 AMEND: 17951-4

**Title 19**

04/02/02 ADOPT: 2575, 2575.1, 2575.2, 2576, 2576.1, 2577, 2577.1, 2577.2, 2577.3, 2577.4, 2577.5, 2577.6, 2577.7, 2577.8, 2578, 2578.1, 2578.2

02/08/02 AMEND: 2900, 2910, 2915, 2940, 2945, 2955, 2970, 2980, 2990  
 12/28/01 AMEND: 981.3  
 12/27/01 ADOPT: 565.1, 567.1, 567.2, 567.3, 567.4, 567.5, 567.6, 567.7, 567.8, 573, 575 AMEND: 550, 550.2, 557.1, 557.3, 557.4, 557.5, 557.6, 557.8, 557.9, 557.12, 557.13, 557.14, 557.16, 557.18, 557.19, 557.20, 557.21, 557.22, 557.23, 560, 560.1, 560.2, 560.3,

**Title 20**

03/08/02 ADOPT: 1207, 1212, 1710, 1712, 1714.5, 1718, 1741, 1748, 1751, 1752, 1755, 1940, 1945, 2021  
 01/16/02 AMEND: 201

**Title 21**

02/05/02 AMEND: 7101, 7102, 7111, 7114, 7116

**Title 22**

04/18/02 AMEND: 4304-12  
 04/16/02 AMEND: 4408, 4409, 4414  
 04/16/02 AMEND: 12000  
 04/11/02 AMEND: 66261.6  
 04/08/02 ADOPT: 68300, 68301, 68302, 68303, 68304, 68305, 68306, 68307, 68308, 68309  
 04/04/02 ADOPT: 66270.42.5, 66271.20 AMEND: 66270.42, 66271.18, 66270.21  
 04/04/02 AMEND: 66262.54, 66264.71, 66264.71, 66265.71, 66265.72, 66270.30, Appendix  
 04/04/02 AMEND: 66270.69, 67800.1, 67800.5  
 03/26/02 ADOPT: 66273.6, 66273.80, 66273.81, 66273.82, 66273.83, 66273.84, 66273.85, 66273.86, 66273.87, 66273.88, 66273.89, 66273.90 AMEND: 66261.9, 66273.1, 662173.8, 66273.9  
 03/21/02 AMEND: 926-3, 926-4, 926-5  
 03/19/02 ADOPT: 110250, 110374, 117016, 117019, 117021, 117025, 117030, 117036, 117042, 117047, 117049, 117052, 117054, 117064, 117074, 117080, 117083, 117085, 117089, 117091, 117094, 117200, 117300, 117301, 117302, 117303, 117400, 117401, 117402, 117403, 117404,  
 03/07/02 ADOPT: 67900.1, 67900.2, 67900.3, 67900.4, 67900.5, 67900.6, 67900.7, 67900.8, 67900.9, 67900.10, 67900.11, 67900.12  
 03/06/02 ADOPT: 64860  
 03/05/02 ADOPT: 111900, 111910, 111920, 121100, 121120, 121140

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03/01/02 ADOPT: 68200, 68201, 68202, 68203, 68204, 68205, 68206, 68207, 68208, 68209, 68210, 68211, 68212, 68213

03/01/02 AMEND: 14000

02/28/02 AMEND: 12000

02/21/02 ADOPT: 110041, 110098, 110284, 110299, 110428, 110430, 110473, 110539, 112002, 112015, 112025, 112034, 112035, 112100, 112110, 112130, 112140, 112150, 112152, 112154, 112155, 112200, 112210, 112300, 11230.1, 112302 AMEND: 110042, 110431, 110609

02/20/02 AMEND: 100209 (c)

02/13/02 ADOPT: 68300, 68301, 68302, 68303, 68304, 68305, 68306, 68307, 68308, 68309

02/11/02 ADOPT: 110413, 110550, 113100, 113200, 113300 REPEAL: 12-104.1, 12-104.432, 12-221

02/08/02 AMEND: 66260.10, 66261.9, 66262.11, 66264.1, 66265.1, 66268.1, 66270.1, 66273.1, 66273.2, 66273.3, 66273.4, 66273.5, 66273.6, 66273.7, 66273.8, 66273.9, 66273.10, 66273.11, 66273.12, 66273.13, 66273.14, 66273.15, 66273.16, 66273.17, 66273.18, 66273.19,

01/30/02 ADOPT: 67450.40, 67450.41, 67450.42, 67450.43, 67450.44, 67450.45, 67450.46, 67450.47, 67450.48, 67450.49, 67450.50 AMEND: 66262.20, 66270.6

01/24/02 REPEAL: Repeal the language ” (See Section 3901.1, Retraining Benefits Definitions)” below Article 1.5. Retraining Benefits.

01/17/02 ADOPT: 84400, 84401, 84422, 84461, 84465, 84468.1, 84468.2, 84468.4, 84478 REPEAL: 84001, 84022, 84061, 84063, 84065, 84300, 84322, 84322.1, 84322.2, 84361, 84365, 84365.5, 84368.3, 84369

01/08/02 ADOPT: 7630, 7632, 7632.1, 7632.3, 7632.5, 7634, 7634.1, 7634.3, 7634.5, 7636, 7636.1, 7636.3, 7636.5, 7637.7, 7636.9, 7638, 7638.1, 7638.3, 7638.5, 7638.7, 7638.9, 7638.11, 7638.13

12/31/01 AMEND: 66260.10, 66262.12, 66263.40, 66268.7 REPEAL: 66263.42

12/19/01 AMEND: 5151 (c), 5151 (e), 51518 (b), 51521 (i), 51527 (b)

**Title 22, MPP**

04/08/02 ADOPT: 85081, 87593 AMEND: 85001, 87101

03/25/02 ADOPT: 110385, 110449, 110554, 118020, 118203 REPEAL: 12-301.1, 12-301.2, 12-301.3, 12-302.1, 12-302.2, 12-302.3, 12-302.4, 12-302.5

**Title 23**

04/17/02 AMEND: Article 6, section 645

04/03/02 AMEND: 2712(e)

04/03/02 AMEND: 3954

02/13/02 AMEND: 3923

01/03/02 AMEND: 3904

12/28/01 AMEND: 451.1, 451.4, 451.5

**Title 25**

04/04/02

01/08/02 ADOPT: 7300, 7301, 7302, 7303, 7304, 7305, 7306, 7307, 7308, 7309, 7310, 7311, 7312, 7313, 7314, 7315, 7316, 7317, 7318, 7319, 7320, 7321, 7322, 7323, 7224, 7325, 7326, 7327, 7328, 7329, 7330, 7331, 7332, 7333, 7334, 7335, 7336

01/03/02 ADOPT: 1302, 1316, 1317, 1318, 1319 AMEND: 1300, 1304, 1306, 1310

12/19/01 AMEND: 8202, 8203, 8212, 8212.1

**Title 27**

03/05/02 AMEND: 15110, 15240

**Title 28**

04/24/02 ADOPT: 1300.41.8

02/14/02 ADOPT: 1300.67.05

12/27/01 ADOPT: 1300.41.8

02/21/02 AMEND: 87102, 87564.3, 87730

**Title MPP**

03/06/02 AMEND: 63-403

02/28/02 AMEND: 63-102, 63-103, 63-300, 63-301, 63-503

02/28/02 ADOPT: 40-107.141, 40-107.142, 40-107.143, 40-107.15, 40-107.151, 40-107.152, 42-302.114, 42-302.114(a)-(c), 42-302.21(h)(1), 42-302.3, 44-133.8, 82-833 AMEND: 40-107.14, 40-107.16, 40-107.17, 40-107.18, 40-107.19, 42-301.2, 44-133.51, 82-832

02/21/02 AMEND: 63-102, 63-300, 63-301, 63-402, 63-405, 63-501, 63-502, 63-503, 63-504, 63-507

01/30/02 ADOPT: 69-209, 69-210 AMEND: 69-201, 69-202, 69-203, 69-204, 69-205, 69-206, 69-207, 69-208, 69-211, 69-212, 69-213, 6-214, 69-215, 69-216, 69-217, 69-301 REPEAL: 69-210, 69-221

01/23/02 ADOPT: 33-135 AMEND: 33-120, 33-510, 33-805

01/14/02 ADOPT: 63-016 AMEND: 63-102, 63-300, 63-504, 63-801, 63-802, 63-804

<b>OAL REGULATORY DETERMINATIONS</b>
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**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

**2002 OAL DETERMINATION NO. 4-L  
(Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 123(c))**

April 22, 2002

Malissa Hathaway McKeith  
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1000 Wilshire Blvd., Suite 1800  
Los Angeles, CA 90017-2475

**Re: Request for Determination concerning the  
Office of Emergency Services document en-  
titled “Sequence of Steps in Inundation Map  
Preparation”; OAL File No. 01-001**

Dear Ms. McKeith:

You have requested the Office of Administrative Law (“OAL”) to issue a determination as to whether certain rules set forth in the Office of Emergency Services (“OES”) document titled “Sequence of Steps in Inundation Map Preparation” are “regulations” which must be adopted pursuant to the Administrative Procedure Act (“APA”; Government Code section 11340 et seq.).

In order to facilitate the development of emergency procedures for the evacuation and control of populated areas in the event of the failure of dams, Government Code section 8589.5 generally provides that local government organizations, utilities, and other owners of dams must prepare “inundation maps” showing the areas of potential flooding in the event of dam failures. This statute further provides that the proposed inundation maps are to be submitted to OES for review, possible revision, and approval. The rules set forth in the OES document titled “Sequence of Steps in Inundation Map Preparation” (the “challenged rules”) have essentially provided OES’ guidelines and requirements for the preparation of inundation maps by those organizations and entities required to prepare the inundation maps pursuant to Government Code section 8589.5.

In issuing a determination, OAL renders an opinion as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600, which should have been, but was not, adopted pursuant to the APA.

Government Code section 11342.600 defines “regulation” to mean “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.” For an agency rule to be a “standard of general application,” it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind or order.<sup>1</sup>

We think that, at the time your request for determination was submitted to OAL, the challenged rules of OES included provisions which met the definition of “regulation.” These rules applied generally to all members of the open class of local government organizations, utilities, and other owners of dams that were required to prepare inundation maps and submit those inundation maps to OES for review and approval under Government Code section 8589.5. These challenged rules further implemented, interpreted, or made specific Government Code section 8589.5.

However, since the time of the original request for determination, the challenged rules as contained in the document “Sequence of Steps in Inundation Map Preparation” have been declared by OES to no longer be in effect.<sup>2</sup> In addition, OES has now adopted emergency regulations under the APA with respect to many of the dams subject to inundation mapping requirements.

In a letter to OAL dated March 22, 2002, the Director of OES stated and certified (in accordance with Code of Civil Procedure section 2015.5) as follows:

“At this time, OES has taken two actions that address the Request for Determination and the fundamental need for standards for developing inundation maps. First, . . . OES proposes to adopt emergency regulations consistent with Government Code Section 11349.6 for developing inundation maps and related administrative actions for dams that are not designed primarily for the control of debris flows . . . OES will follow this emergency rulemaking with the adoption of permanent regulations for non-debris dams, consistent with the Administrative Procedure Act[.]”

1. *Roth v. Department of Veteran Affairs* (1980) 110 Cal.App.3d 622, 630, 167 Cal.Rptr. 552, 556; see *Faulkner v. California Toll Bridge Authority* (1953) 40 Cal.2d 317, 323-324 (a standard of general application applies to all members of any open class).

2. Letter submitted by the Director of OES, dated March 22, 2002.

“Second, OES has discontinued the use of its “Sequence of Steps in Inundation Map Preparation” as a standard for all dams, including those dams whose primary purpose is retention of debris. Since the engineering methodologies for inundation mapping for debris basins are still undergoing development, OES will hold in abeyance rulemaking and inundation map review for, those dams denoted as ‘debris basins’ in Department of Water Resources Bulletin 17-00, published in July 2000. [Emphasis added.]”

In addition, on March 22, 2002, OES submitted to OAL for review emergency regulations dealing with “Dam Inundation Mapping Procedures.” These regulations were approved by OAL and filed with the Secretary of State on April 2, 2002, became operative upon filing with the Secretary of State, and have been published as subchapter 4 (sections 2575 through 2578.2), chapter 2, division 2, title 19, of the California Code of Regulations (“CCR”). These regulations now establish the required dam inundation mapping procedures for many of the dams in this state (in lieu of the challenged rules formerly set forth in the OES document “Sequence of Steps in Inundation Map Preparation”).<sup>3</sup>

Thus, as discussed above, OES has declared that it has discontinued the use of the document titled “Sequence of Steps in Inundation Map Preparation” as a standard for mapping procedures for all dams (i.e., the document is no longer in effect). Furthermore, OES has now adopted emergency regulations that

3 . The regulations by their terms (CCR, title 19, section 2575.1) do not apply to “those structures identified as Debris Basins in Department of Water Resources Division of Safety of Dams Bulletin 17-00 dated July 2000 and incorporated by reference herein.” CCR, title 19, section 2575.2, subsection (j), defines “Debris Basin” as follows: “A permanent flood control facility that has the primary purpose of separating debris from the floodwaters and storing the debris for future removal.” Furthermore, CCR, title 19, section 2575.2, subsection (k), defines “Debris Dam” as: “A dam that has the primary purpose of holding back debris captured in, and stored by the debris basin.” As indicated above, OES stated in its March 22, 2002 letter to OAL that engineering methodologies for inundation mapping for debris basins are still undergoing development and that OES will hold in abeyance rulemaking and inundation map review for those dams denoted as “debris basins” in Department of Water Resources Bulletin 17-00, published in July 2000.

establish the required inundation mapping procedures for many of the dams formerly subject to the rules contained in “Sequence of Steps in Inundation Map Preparation.” Consequently, the matter having been disposed of, we contemplate no further action in its regard.<sup>4</sup>

Sincerely,

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4. Section 123 of title 1 of the CCR provides in part the following:  
“(b) OAL shall not accept for filing any request for determination if OAL finds that the state agency rule being challenged:  
(1) has been superseded;  
(2) has expired by its own terms;  
(3) *has been declared in writing by the state agency under penalty of perjury, in accordance with Code of Civil Procedure Section 2015.5, to have been rescinded or to no longer be in effect;*  
(4) has been nullified by a court in a judgment that has become final;  
(5) *is contained in a regulation adopted pursuant to the APA;*  
(6) is contained in a California statute;  
(7) is clearly within the scope of an express statutory exemption from the APA; or  
(8) is the same rule, or is substantially the same (i.e., has the same effect) as a rule from the same state agency, on which OAL has already issued a determination.  
“(c) If, after accepting a request for determination, OAL finds that the challenged state agency rule falls within subsection (b), OAL may at any time issue a summary determination letter instead of a determination pursuant to sections 124, 125, and 126. Any summary determination letter shall be issued pursuant to section 127. [Emphasis added.]”

This summary determination letter is being issued pursuant to section 123, subsection (c), because the challenged agency rules fall within section 123, subsections (b)(3) and (b)(5).

