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

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

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

CONFLICT OF INTEREST CODE

AMENDMENT

STATE AGENCIES: Secretary of State

A written comment period has been established commencing on **March 7, 2008**, and closing on **April 21, 2008**. Written comments should be directed to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814.

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

The Executive Director of the Commission will review the above-referenced amendment to the conflict of interest code, proposed pursuant to Government Code section 87300, which designates, 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 her own motion or at the interest of any interested person, will approve, or revise and approve, or return

the amendment 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 amendment to the conflict of interest code. Any written comments must be received no later than **April 21, 2008**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS
AND BUSINESSES

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

AUTHORITY

Government Code sections 82011, 87303, and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest code 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 Adrienne Korchmaros, 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 (hereafter, “the 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 Commission will consider the proposed regulation at a public hearing on or after **April 10, 2008**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **April 9, 2008**.

BACKGROUND/OVERVIEW

Government Code Section 83115 permits the Commission to pursue investigations of violations of the Political Reform Act (Government Code Sections 81000–91014; hereafter, “the Act”) on its own initiative or in response to a sworn complaint filed with the Commission. If the Commission receives a sworn complaint, the complainant is entitled to receive written notification from the Commission within a specified time period on the action it intends to take on the complaint.

The Commission adopted 2 Cal. Code Regs. Section 18360 to implement and interpret Government Code Section 83115 in 1975 and the last substantive amendment to the regulation was made in 1982. The regulation has never been modified to implement amendments to Government Code Section 83115 made in 1985. Also, court rulings in recent years concerning issues of procedural due process make it necessary for the Commission to reconsider some of the procedures contained in the regulation. In addition, the provisions of the regulation must be modified to facilitate the Commission’s compliance with the California Public Records Act (Government Code Section 6250 et seq.). Finally, it is necessary to make several clarifying, stylistic and other nonsubstantive amendments to the regulation.

The Commission also proposes amending 2 Cal. Code Regs. Section 18361 to correct an incorrect cross-reference and permit the Commission’s Executive Director to delegate his or her duties under 2 Cal. Code Regs. Section 18360 in specified circumstances.

REGULATORY ACTION

Amend 2 Cal. Code Regs. Section 18360

The substantive amendments to the regulation to be considered by the Commission, and the reasons for the amendments, are set forth below.

Subdivision (a) of the existing regulation only applies the formal complaint process to complaints alleging violations of the Act at the state level. Government Code Section 83115 does not confine its application to alleged state-level violations. Therefore, the Commission proposes modifying the regulation to apply the formal complaint process to any alleged violations of the Act, whether at the state or local level. The Commission also proposes adding language to clarify that the Commission may investigate complaints on its own initiative.

Subdivision (b) of the existing regulation permits a formal complaint to be filed by use of either the Commission’s own form or a document created by the complainant that includes specified minimum information. The Commission has developed a formal complaint form, available online, to ensure consistency in format and save staff time in processing these complaints. Also, since the formal complaint is signed under penalty of perjury, the Commission proposes adding a provision requiring that a formal complainant state in the complaint the basis for his or her personal knowledge that the allegations are true and correct.

Subdivision (c) of the existing regulation permits persons to file “informal” complaints with the Commission. Government Code Section 83115 makes no mention of informal complaints and the regulation does not specify their format. The Commission proposes modifying the regulation to permit a person who does not desire to file a formal complaint to supply information concerning possible violations to the Commission by telephone and, at the complainant’s option, do so anonymously. This will save staff time in not only processing unnecessary paper but also in obtaining more focused information on the alleged violation. As clarified in subdivision (a), the Commission retains the ability to “investigate possible violations,” pursuant to Section 83115, “on its own initiative” and can use this focused information to do so.

Also, the existing regulation requires staff to provide the Commissioners with unspecified information on informal complaints on a regular basis (subdivision (c)) and provide Commissioners with a copy of each formal complaint (subdivision (d)).

To avoid potential due process issues, the Commissioners should be provided with the minimal information necessary to inform them of the matters under consideration by the Commission’s Enforcement Division. Therefore, the Commission proposes amending the regulation to define exactly what information will be provided to the Commissioners on both formal complaints and matters the Commission is pursuing on its own initiative. The amendments also clarify that a Commissioner may request a copy of any formal complaint, unless it is determined that providing the complaint will

compromise his or her impartiality in that matter. (See proposed subdivision (d).)

Subdivisions (e) through (i) of the existing regulation require the Commission and staff to engage in a potentially elaborate process to arrive at a decision on the action to take on the formal complaint and notify the complainant of that decision. The process could involve as many as three Commission closed sessions and internal deliberations of indeterminate length. Most of these procedures are unduly complicated, unnecessarily consume time of the Commission and staff, pose serious due process concerns, and delay providing the information to the complainant required by Section 83115.

The Commission therefore proposes eliminating this process and amending the regulation to instead provide that the Executive Director's response to the complainant as set forth in new subdivision (f) serve as the Commission's statutorily-required response to the formal complaint. When the Commission informs the complainant it will investigate the complaint, the letter will caution the complainant that the culpability of the person who is the subject of the complaint has not been determined. When the Commission informs the complainant it will take no action on the complaint, the letter will indicate that the complainant can submit additional information. Also in subdivision (f), the Commission proposes providing persons who are the subject of a formal complaint with information on the complaint, subject to the Commission's discretion to withhold all or part of the information and the nondisclosure is consistent with the requirements of law, which would include the California Public Records Act.

In new subdivision (g), the Commission proposes providing a person who files a formal complaint with continuing information on the status of the case after the Commission's Enforcement Division commences an investigation of the complaint.

Amend 2 Cal. Code Regs. Section 18361

This regulation currently permits the Commission's Executive Director to delegate his or her authority under the Commission's enforcement regulations when the Executive Director is unavailable or cannot be fair or impartial in a particular enforcement matter. The regulation must be amended to correct an incorrect cross-reference to a Commission regulation that does not exist. In addition, the Commission proposes amending this regulation to permit the Executive Director to be able to also delegate his or her duties under 2 Cal. Code Regs. Section 18360.

SCOPE

The Commission may adopt or reject all or part of the language noticed herein, or it may choose new language

to implement its decisions concerning the issues identified above or related issues.

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

Government Code 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 2 Cal. Code Regs. Section 18360 is to implement, interpret, and make specific Government Code Section 83115. The purpose of 2 Cal. Code Regs. Section 18361 is to implement, interpret, and make specific Government Code Sections 83115, 83115.5 and 83116.

CONTACT

Any inquiries should be made to Scott Hallabrin, 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 <http://www.fppc.ca.gov/index.html?id=351>.

TITLE 4. STATE ATHLETIC COMMISSION

NOTICE IS HEREBY GIVEN that the State Athletic Commission (hereinafter "Commission") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Junipero Serra State Building located at 320 West Fourth Street, Carmel Room, Los Angeles, California 90013, at 9:00 a.m., on April 22, 2008. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by

the Commission at its office not later than 5:00 p.m. on April 22, 2008 or must be received by the Commission at the hearing. The Commission, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 18611 and 18763 of the Business and Professions Code, and to implement, interpret or make specific Sections 18640, 18642, 18710, 18714, 18724, 18725, 18765, 18842, and 18843 of said Code, the Commission is considering changes to Division 2 of Title 4 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

1. Adopt Rule 227.

Existing regulation does not include any procedures for arbitration of a contract dispute between licensees of the Commission. This proposed regulation will establish procedures for mediating contracts by a representative of the California State Athletic Commission.

2. Amend Rule 281.

Existing law gives the Commission sole direction, management, control of, and jurisdiction over all professional and amateur boxing, professional and amateur kickboxing, all forms and combinations of full contact martial arts contests, including mixed martial arts, and matches or exhibitions conducted, held, or given within this state.

Existing law authorizes the Commission to license professional and amateur boxers and professional and amateur martial arts fighters.

Existing regulation does not describe the specific indicators that the Commission uses to evaluate the physical condition of a boxer in order to determine the boxer's eligibility for a license. This proposal would include a description of the specific physical factors used by the Commission to evaluate the condition of the boxer as the Commission must ensure that applicants are qualified to engage in combative sports.

This proposal would also renumber existing subsections to reflect the addition of the new language.

3. Amend Rule 303.

Existing Section 303 prohibits the administration or use of any drugs, alcohol or stimulants, or injections in any part of the body, either before or during a match.

This proposal would provide specific health and safety requirements regarding drug testing and the consequences surrounding a positive drug test result by setting out the procedures for testing and the substances being tested.

4. Adopt Rule 314.

Existing law contains certain specifications for the ring in which professional or amateur boxing contests are held.

It also authorizes the Commission to establish glove weights, equipment standards, safety standards, and the length of rounds in order to protect the health and safety of contestants.

This proposal would permit the Commission to allow professional boxing matches to be held in a roped enclosure that meets the specifications of Section 523 if Commission approval is granted.

5. Amend Rule 323.

Existing Rule 323 specifies hand bandage requirements.

This proposal would conform the rule to the hand bandage requirements established by the Association of Boxing Commissions in its Regulatory Guidelines and Rules modified July 27, 2005, which reflects the national standard.

6. Amend Rule 368.

Existing regulation does not permit the Commission to change final decisions in athletic contests after the victor has tested positive for a prohibited substance.

This proposed amendment would permit the Commission to change a decision where the victor tested positive for a prohibited substance and would renumber the remaining subsections accordingly. It would also establish that a change of decision shall be referred to as "no decision."

7. Adopt Rule 389.

Existing law authorizes the Commission, the Executive Officer and other employees duly authorized by the Executive Officer to temporarily suspend any license until final determination by the Commission, when in his or her opinion, the action is necessary to protect the public welfare or is in the best interest of boxing or martial arts. The suspension may be without advance hearing, but the suspended licensee may apply to the Commission for a hearing on the matter to determine if the suspension should be modified or set aside.

Existing law authorizes the Commission, the Executive Officer and other employees duly authorized by the Executive Officer to assess fines not to exceed two

thousand five hundred dollars (\$2,500) for each violation of any provisions of the chapter or any of the rules and regulations of the Commission. The fine may be assessed without advance hearing, but the licensee may apply to the Commission for a hearing on the matter to determine if the fine should be modified or set aside.

This proposal would establish procedures for those hearings.

8. Amend Rule 523.

Existing Section 523(a) references Sections 310 through 312 regarding ring requirements for kickboxing contests. This proposal would permit an alternate ring for kickboxing events.

FISCAL IMPACT ESTIMATES

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

The proposal for Section 227 will not have any fiscal impact. It simply formalizes a procedure in the California Code of Regulations.

The amendment of Section 281 will not have any fiscal impact. It simply formalizes health and safety licensing guidelines in the California Code of Regulations.

The amendment of Section 303 will not have a significant financial impact on businesses. However, the Commission may be required to submit a revised contract proposal to the Department of General Services to revise current drug testing methods and to acquire new drug testing supplies. The current cost utilizing current methods for drug testing is \$99,500 over a period of twenty months. It is not anticipated there will be a financial increase in the cost of services but it may require a contractual change to establish services with another drug testing provider.

The proposal for Section 314 will not have a significant financial impact on businesses. However, the Commission may experience an increase in the number of events as more licensed promoters attempt to hold "mixed" events showcasing multiple sports. It should be noted the Commission may experience a decrease in the number of events as more licensed promoters hold "mixed" events because it will decrease their business expenses per event. In either case, the Commission may experience an increase or decrease of approximately \$5,000 per event from revenue generated from the event. Additionally, licensed officials in the State of California may experience an increase or decrease in the amount of wages earned per event. This could positively or negatively impact approximately 75 officials statewide. While the potential effects of this proposal

are neither greatly positive nor adverse, they are potential effects nonetheless.

No fiscal impact is expected from amendments to Section 323 to conform to the hand bandage requirements established by the Association of Boxing Commissions in their Regulatory Guidelines and Rules modified July 27, 2005.

The amendment of Section 368 is not expected to have any fiscal impact as it strictly pertains to the change of decision in an athletic contest.

The appeal procedure set out in Section 389 will not have any fiscal impact. The proposal merely formalizes the procedure for appeal in the California Code of Regulations.

The proposed change for Section 523 will not have a significant financial impact on businesses. The Commission may experience an increase in the number of events as licensed promoters attempt to hold "mega events" showcasing multiple sports. However, the Commission could experience a decrease in the number of events as promoters hold "multiple-sport" events because it will decrease their business expenses per event. In either case, the Commission may experience an increase or decrease of approximately \$5,000 per event from revenue generated from the event. Additionally, licensed officials in the State of California may experience an increase or decrease in the amount of wages earned per event. This could positively or negatively impact approximately 75 officials statewide. While the potential effects of this proposal are neither greatly positive nor adverse, they are potential effects nonetheless.

Nondiscretionary Costs/Savings to Local Agencies:
None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

After a review of the proposed additions and changes to the existing rules, the Commission has made an initial determination that the proposed regulatory action would not have any significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

and

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

The Commission has determined that these regulatory proposals would not have any significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of busi-

nesses in the State of California, although it is expected to result in a significant increase in events in California.

Cost Impact on 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 regulatory actions. The proposals give the licensees guidelines for arbitration, formalize health and safety guidelines, specify the details of the Commission's drug testing program, allow professional boxing to be held in a five roped ring, set standards for the wrapping of an athlete's hands, change the outcome of an athletic contest after an athlete tests positive for prohibited substances, set the guidelines in place for an appeal by a licensee, and allow kickboxing and mixed martial arts to be contested in the same competition enclosure during the same event.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Commission has determined that some of the proposed regulations would have a minimal impact on small businesses that are operating as promoters of boxing, kickboxing, and mixed martial arts in the State of California. The businesses will benefit if multiple sports may compete in one competition enclosure. This could potentially increase or decrease the number of events in the State of California.

CONSIDERATION OF ALTERNATIVES

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

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

INITIAL STATEMENT OF REASONS AND INFORMATION

The Commission has prepared an initial statement of the reasons for the proposed actions and has available all of the information upon which the proposals are based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of

the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California State Athletic Commission at 1424 Howe Avenue, Suite 33, Sacramento, California 95825.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name: Bill Douglas
Address: 1424 Howe Avenue, Suite 33
Sacramento, CA 95825
Telephone No.: (916) 263-2195
Fax No.: (916) 263-2197
E-Mail Address: william_douglas@dca.ca.gov

The backup contact person is:

Name: Armando Garcia
Address: 1424 Howe Avenue, Suite 33
Sacramento, CA 95825
Telephone No.: (916) 263-2195
Fax No.: (916) 263-2197
E-Mail Address: armando_garcia@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.dca.ca.gov/csac.

TITLE 4. CALIFORNIA HORSE RACING BOARD

- CALIFORNIA CODE OF REGULATIONS
- NOTICE OF PROPOSAL TO AMEND
- RULE 1481. OCCUPATIONAL LICENSES AND FEES
- RULE 1783. REGISTRATION OF STABLE NAMES
- RULE 1784. REGISTRATION TO DISCLOSE ALL PARTNERS

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1481, Occupational Licenses and Fees, to add the term “Stable Name Group” to subsection 1481(e) and (f). The Board also proposes to amend Rule 1783, Registration of Stable Names and Rule 1784, Registration to Disclose All Partners, to provide for the registration of stable name groups.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, April 24, 2008**, or as soon after that as business before the Board will permit, at **Hollywood Park Racetrack, 1050 South Prairie Avenue, Inglewood, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representatives, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on April 21, 2008**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
 California Horse Racing Board
 1010 Hurley Way, Suite 300
 Sacramento, CA 95825
 Telephone (916) 263-6397
 Fax: (916) 263-6022
 E-Mail: harolda@chr.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Rule 1481: sections 19440, 19510, 19520 and 19704, Business and Professions Code. Reference: sections 19510, 19520 and 19704, Business and Professions Code.

Business and Professions Code sections 19440, 19510, 19520 and 19704 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19510, 19520 and 19704, Business and Professions Code.

Authority cited: Rule 1783: sections 19440 and 19460, Business and Professions Code. Reference: sections 19460 and 19520 Business and Professions Code.

Business and Professions Code sections 19440 and 19460 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19460 and 19520, Business and Professions Code.

Authority cited: Rule 1784: sections 19440 and 19460, Business and Professions Code. Reference: 19460 and 19520, Business and Professions Code.

Business and Professions Code sections 19440 and 19460 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19460 and 19520, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include licensing of each racing association and all persons, other than the public at large, who participate in a horse race meeting with pari-mutuel wagering. Business and Professions Code section 19510 states every steward and racing official not required to be licensed under Article 4 (commencing with section 19480) shall be licensed by the Board pursuant to Article 5 (commencing with section 19510). Business and Professions Code section 19520 states every person not required to be licensed under Article 4 (commencing with section 19480) who participates in, or has anything to do with the racing of horses, shall be licensed by the Board pursuant to rules and regulations that the Board may adopt. Business and Professions Code section 19704 provides that the Board shall issue a license for participants in mule racing. The license shall be limited to mule races only. Business and Professions Code section 19460 states all licenses granted under this chapter shall be in writing; are subject to all rules, regulations, and conditions prescribed by the Board; and shall contain such conditions as are deemed necessary or desirable by the Board for the purposes of this chapter.

The Board proposes to amend Rule 1481. The rule lists the various classes of occupational licenses issued by the Board, and types of entities that must register with the Board. The proposed amendment to Rule 1481 adds stable name groups to subsections 1481(e) and 1481(f). Subsection 1481(e) requires that a person or persons electing to conduct racing operations by use of a stable name group shall register the stable name group and pay a fee of \$300. The stable name group is a stable

name under which one or more entities may run. Each entity running under a stable name group would own one or more horses independent of other entities that may run under the same stable name group. Subsection 1481(f) provides that an entity running under a stable name group shall register with the Board as an entity running under a stable name group and pay a fee of \$300. Registering the entity that runs under a stable name group ensures the Board knows who is participating in the entity, and which partners in that entity must be licensed as horse owners. It also tells the Board how many entities are running under a stable name group.

The proposed amendment to Rule 1783 adds a new subsection 1783(b), which provides that a stable name group may be registered with the Board, and is subject to subparagraph 1783(a)(1) through (a)(5). These subparagraphs provide the conditions under which a stable name may be registered. This will ensure the Board has oversight, and eliminates confusion for the racing office and the Board's licensing staff due to the large numbers of persons who may be involved in stable name groups. Subsection 1783(b) also states the stable name group may establish multiple entities that shall run under the name of the registered stable name group. The entities that run under a stable name group are what differentiate a stable name group from a stable name. A stable name is an assumed name under which a person or persons (partners) races horses. A stable name group is an assumed name that will buy a horse and form a partnership or limited liability company (entity) that sells ownership shares in the horse. When the horse is ready to run, it will run under the name of the stable name group. The stable name group may establish one or more such entities.

Subparagraph 1783(b)(1) states each entity that runs under a stable name group shall register in accordance with Rule 1481, 1506, 1507 and 1784 of this division. Rule 1481 provides that the entity shall register with the Board and pay a fee of \$300. Rule 1506, Horse Ownership by Corporation or Limited Liability Company, states if a horse owner is a limited liability company it shall appoint one or more managing employee(s), who if qualified, may be granted a license as horse owner, and who shall assume all responsibilities of an owner. Some large stables currently buy horses that they sell to investors as limited liability companies. In these instances the "employee" is the stable name owner who manages the horse for the LLC. Rule 1507, Partnerships, states that all general partners assume equal responsibilities as owner and no limited partner shall be licensed as a horse owner. Some large stables form partnerships around individual horses. The general partners in such entities must be licensed. Rule 1784, Registration to Disclose All Partners, provides that a stable name registration shall disclose the real names of all

ownership interests, and the percentage of ownership of each. The Board desires stable name groups to comply with the disclosure requirement to ensure it is informed regarding the true ownership of a horse, and that all owners are licensed, if required. If the ownership interest is an entity, such as a partnership, corporation or LLC, it must comply with the Board's registration requirements.

Subsection 1783(b)(2) states the entity formed under a stable group name shall name the horse(s) it owns, and it states the horse(s) shall be owned separately from other entities within the stable name group. This will serve to keep the entities separate within the stable name group. This is an issue because of the large numbers of persons who may form an entity. Mixing ownership of horses amongst different entities under a stable name group could lead to a lot of confusion for the racing office and Board occupational licensing staff, as they must keep track of horse ownership and the licensing status of such owners. This does not preclude a person from participating in one or more entities.

Subsection 1783(b)(3) requires each entity to possess a unique roster of owners that names each owner, the percentage of ownership of each and if an owner is a general or limited partner. The roster shall be filed with the Board and the racing office. The unique roster helps to keep the entities separate for licensing staff and the racing office. Information regarding the percentage of ownership of each owner and if an owner is a general or limited partner will help Board licensing staff to determine if a person participating in an entity must be licensed as a horse owner. The Board uses the terms "general" and "limited" partner for partnerships and LLCs. This helps Board staff determine who should be licensed. The rosters must be filed with the racing office and Board staff, as the racing office maintains the horse's papers, and the Board's occupational licensing staff is responsible for licensing and checking the daily program to ensure that the trainers and owners of horses entered to race are properly licensed.

Subsection 1783(b)(4) provides that a licensed owner may participate in the horse ownership of one or more entities that run under a stable name group. This will allow any owner to invest in multiple entities running under stable name groups. The Board wishes to encourage horse ownership, but many persons who desire to participate in horse racing as an owner cannot afford to own a horse in its entirety. Stable name groups provide a vehicle that allows persons interested in horse racing to enjoy the benefits of horse ownership without the full burden of its costs. Additionally, it is not uncommon for horse owners to form partnerships with other horse owners. The Board has no restrictions on the number of partnerships in which an owner may participate.

Subsection 1783(b)(4)(A) provides that a partner whose ownership interest in an entity running under a stable name is 10 percent or less of such entity may elect not to obtain a license a horse owner. This will allow the stable name group to market horse ownership to persons who may not wish to be licensed. However, it also puts a limit on the percentage of ownership interest for a person who does not wish to be licensed. This will prevent an unlicensed person from owning a significant interest in an entity. If a partner who owns 10 percent or less of an entity that runs under a stable name group chooses not to be licensed, they shall be considered a limited partner for the purposes of Rule 1783. Board Rule 1507 states no limited partner may be granted a license as horse owner. If such partner decided they wish to be licensed as a horse owner, they shall be considered a general partner under Rule 1783. The Board requires that all general partners shall be licensed.

Subsection 1783(c) provides that a partner who owns 10 percent or less of an entity that runs under a stable name group is not subject to the provisions of Rule 1606, Coupling of Horses, when a horse owned by the entity in which the partner participates is entered to race in the same race in which the partner has ownership interest in another horse that is entered to race. The Board determined that ownership of 10 percent or less of a horse would not provide the opportunity or incentive for an owner to influence how the horse performs in a race. Uncoupling the horses where an owner has such a small interest in one of the horses also promotes larger fields with more wagering interests. Uncoupling horses is not without precedent, as under Rule 1606, Quarter horse races are currently exempt from coupling.

Subsection 1783(b)(5) has been modified to add "stable name group." A stable name group is a fictitious name, and is subject to the laws of the State of California regarding the use of fictitious names for business purposes.

The proposal to amend Rule 1784 adds a new subparagraph 1784(b), which provides that a registered stable name group shall comply with subparagraph 1784(a) for each entity that runs under the stable name group. This would require the stable name group to disclose the real name and ownership interest of all persons or entities participating in each entity that runs under the stable name group. The Board has an interest in knowing who owns a horse, as it is charged under Business and Professions Code section 19401 with assuring the protection of the public.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Section 17500 through 17630: none.

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

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

The Board has made an initial determination that the proposed amendment of Rule 1481, Rule 1783 and Rule 1784 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.

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

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1481, Rule 1783 and Rule 1784 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1481, Rule 1783 and Rule 1784 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

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

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

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed texts of the regulations, the initial statement of reasons, the modified texts of the regulations, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E mail: harolda@chrb.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Regulation Analyst
Telephone: (916) 263-6033

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed texts, the modified texts, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulations in their current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the no-

tice, the proposed texts of the regulations and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

**TITLE 10. MANAGED RISK MEDICAL
INSURANCE BOARD**

**NOTICE OF PROPOSED RULEMAKING
R-1-07**

**TITLE 10. CALIFORNIA CODE OF
REGULATIONS
AMEND SECTION 2699.6611
REGARDING
HEALTHY FAMILIES PROGRAM
DELETION OF HFP TO MEDI-CAL BRIDGE**

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Managed Risk Medical Insurance Board (MRMIB) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal will be held on April 21, 2008, at 10:00 a.m. at 1000 G Street, Suite 450, Sacramento, CA 95814.

Following the public hearing MRMIB may thereafter adopt the proposal substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony if a public hearing is held, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulation action to the

Managed Risk Medical Insurance Board
Attn: JoAnne French
1000 G Street, Suite 450
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at (916) 327-6580 or by e-mail to jfrench@mrmib.ca.gov. Comments must be submitted prior to 5:00 p.m. on April 21, 2008.

AUTHORITY AND REFERENCE

Authority: Insurance Code section 12693.21 and 12693.755, Insurance Code and References: 12693.21,

12693.45, 12693.74, 12693.77, 12693.755, 12693.98, and 12693.981 of the Government Code, the Managed Risk Medical Insurance Board is considering changes to Title 10, Chapter 5.8, of the California Code of Regulations as follows: Amend section 2699.6611.

LOCAL MANDATE

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

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The MRMIB operates the Healthy Families Program (HFP), which was established in 1997 pursuant to Chapter 623, Statutes of 1997 (AB1126) to provide health insurance for low-income children. The program is targeted to serve children whose family's income, although low, is too high to qualify for the Title XIX Medicaid Program, called Medi-Cal in California.

AB 430 (Chapter 171, Statutes of 2001) originally established the Healthy Families-to-Medi-Cal Bridge benefits (Bridge). The Bridge was approved in 2002 by the Centers for Medicare and Medicaid Services (CMS) as a component of the parental waiver under Title XXI of the Social Security Act (the Medicaid statute). The waiver expired on January 24, 2007. CMS offered to extend the parental waiver through June 30, 2007, but conditioned the extension on a retroactive change of the federal/state cost from 65/35 to 50/50 to 2002 when the Bridge was first implemented. Under Title XIX of the Social Security Act, the state has the authority to provide presumptive eligibility (PE) to children who appear to be eligible for full-scope Medi-Cal benefits. Under PE, full-scope Medi-Cal fee-for-service benefits are provided to children pending an eligibility determination. The federal financial participation under the program is 50/50.

AB 203 (Chapter 188, Statutes of 2007) is the state's response to CMS' condition. Instead of agreeing to the condition, the bill directs MRMIB to eliminate the Healthy Families-to-Medi-Cal bridge benefits when the director of the Department of Health Care Services (DHCS) declares that PE for no-cost Medi-Cal has been implemented. On November 30, 2007, the director of DHCS released the directive that the HFP to Medi-Cal Presumptive Eligibility program was implemented, commencing September 1, 2007. Implementing AB 203 requires changes to the current HFP regulations to reflect that subscriber children will be disenrolled at the end of the anniversary month in which they are determined no longer eligible for HFP and Healthy Families-to-Medi-Cal bridge benefits will not be provided.

There are no comparable provisions of federal law related to this proposal.

FISCAL IMPACT ESTIMATES

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

COSTS OR SAVINGS TO STATE AGENCIES

Fiscal Effect on State Government:

AB 203 amended section 12693.981 of the Insurance Code to discontinue the Healthy Families Program-to-Medi-Cal bridge benefit and, instead, place children who are no longer eligible for HFP, and appear eligible for Medi-Cal, in a presumptive eligibility coverage program in lieu of bridge benefits.

California has a presumptive eligibility program infrastructure currently in place for Medi-Cal which provides immediate benefits to uninsured children who appear eligible for Medi-Cal while the full eligibility determination is being processed. This presumptive eligibility is approved by the federal government at 50%-50% fund sharing.

Since the Medi-Cal program already has authority to grant presumptive eligibility and current processes are already in place to transfer case information to the 58 counties for final determination, the administrative costs for this option would be minimal since administrative processes were already established.

The cost for the bridge program would have been \$4.8 million (\$2.4 million GF @ the reduced 50% Medicaid federal participation rate) based on updated 2007 May Revision caseload projections for the 2007 State Budget. The cost included in the 2007 Budget to implement this proposal is \$4.4 million (\$2.2 million GF @ the 50% Medicaid federal participation rate); a \$200,000 savings in annual GF cost.

Since the previous base budget for the Bridge waiver would have been \$4.8 million with a GF cost of \$1.7 million (reflecting the previous 65% federal participation rate), the net increase to the base budget is \$500,000 in GF costs (\$2.2 million in the 2007 Budget, less the existing \$1.7 million base budget).

This presumptive eligibility cost is already included in the 2007 State Budget.

Fiscal Effect On Federal Funding Of State Programs:

Under the Title XXI State Children's Health Insurance Program (S-CHIP), the Federal government covers 65% of all eligible program costs for the Healthy Families Program. The regulations will result in reduced federal fund expenditures of \$900,000.

BUSINESS IMPACT/SMALL BUSINESS

MRMIB has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610. The determination that the proposal would not affect small business is based upon the fact that the proposal applies only to the procedures followed by MRMIB should a determination of insufficient funding be made by the Board. It has no impact at all on any entity that is not a state agency as defined in section 11000 of the California Government Code as the regulations only establish procedures.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

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

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

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

EFFECT ON HOUSING COSTS

None

ALTERNATIVES

The MRMIB must determine that no reasonable alternative considered by the agency, or that has been otherwise identified and brought to the agency's atten-

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

CONTACT PERSONS

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to:

JoAnne French
Managed Risk Medical Insurance Board
1000 G Street, Suite 450
Sacramento, CA 95814
(916) 327-7978

or

Randi Turner
Managed Risk Medical Insurance Board
1000 G Street, Suite 450
Sacramento, CA 95814
(916) 327-8243

INITIAL STATEMENT OF REASONS

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which this proposal is based, may be obtained upon request from the Managed Risk Medical Insurance Board at 1000 G Street, Suite 450, Sacramento, CA 95814. These documents may also be viewed and downloaded from the MRMIB website at www.mrmib.ca.gov.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.mrmib.ca.gov.

TITLE 10. MANAGED RISK MEDICAL INSURANCE BOARD

AUTHORITY AND REFERENCE

**NOTICE OF PROPOSED RULEMAKING
R-2-07**

Pursuant to the authority vested by Section 12693.21 and 12693.755, Insurance Code, and Reference Sections 12693.21, 12693.45, 12693.70, 12693.71, 12693.73, 12693.74, 12693.77, 12693.755, 12693.765, 12693.96, 12693.98, and 12693.981, Insurance Codes, the Managed Risk Medical Insurance Board is considering changes to Title 10, Chapter 5.8, of the California Code of Regulations as follows: Adoption of sections 2699.6603 and 2699.6604 and amendment of sections 2699.6603 (renumbered to 2699.6602), 2699.6605, 2699.6607, 2699.6608, 2699.6611 and 2699.6625.

**TITLE 10. CALIFORNIA CODE OF REGULATIONS
ADOPT SECTIONS, 2699.6603 and 2699.6604
AND AMEND SECTIONS 2699.6603
(renumbered to 2699.6602), 2699.6605, 2699.6607,
2699.6608, 2699.6611, and 2699.6625.
REGARDING ESTABLISHING A WAITING
LIST AND DISENROLLMENT PROCEDURES
IN THE HEALTHY FAMILIES PROGRAM**

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

NATURE OF PROCEEDING

The MRMIB operates the Healthy Families Program (HFP), which was established in 1997 pursuant to Chapter 623, Statutes of 1997 (AB1126) to provide health insurance for low-income children. The program is targeted to serve children whose family's income, although low, is too high to qualify for the Title XIX Medicaid Program, called Medi-Cal in California. HFP currently provides health insurance for more than 845,635 low-income children. Approximately two-thirds of the program is funded through the federal State Children's Health Insurance Program (SCHIP) (42 U.S.C. 1397aa et seq.) The federal reimbursement is known as "federal financial participation."

NOTICE IS HEREBY GIVEN that the Managed Risk Medical Insurance Board (MRMIB) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal will be held on April 21, 2008, at 1:30 p.m. at 1000 G Street, Suite 450, Sacramento, CA 95814.

Following the public hearing MRMIB may thereafter adopt the proposal substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony if a public hearing is held, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulator action to the

The authorization for SCHIP was scheduled to expire on September 30, 2007. In late September 2007, Congress passed, and the President signed, a continuing resolution to continue SCHIP and provide the states with the same, or "flat," level of funding as the previous federal fiscal year (FFY).¹ (House Joint Resolution 52.) Two further continuing resolutions were passed by Congress and signed by the President providing flat funding (House Joint Resolution 3222, signed by the President on November 13, 2007 and House Resolution 69 signed by the President on December 14, 2007). Finally, on December 29, 2007, Congress passed and the President signed legislation authorization to continue SCHIP until March 29, 2009 (Senate Bill 2499). The legislation included sufficient funding to maintain projected enrollment levels through March 2009. With a new Administration and Congress in place after the 2008 election, the prospects for federal funding beyond March 2009 are unknown.

Managed Risk Medical Insurance Board
Attn: JoAnne French
1000 G Street, Suite 450
Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at (916) 327-6580 or by e-mail to jfrench@mrmib.ca.gov. Comments must be submitted prior to 5:00 p.m. on April 21, 2008.

The enabling HFP statute requires the Board to maintain enrollment and expenditures to ensure that expenditures do not exceed amounts available and, if sufficient funds are not available to cover the estimated cost of program expenditures, the program must institute ap-

¹ The federal fiscal year is from October 1 to September 30.

propriate measures to limit enrollment. The proposed regulations would provide regulatory authority for the Board to establish waiting lists and disenroll children subscribers at their Annual Eligibility Reviews. The present regulations do not provide for specific measures to limit enrollment.

In Fall 2007, because of the uncertainty of federal funding as described above, the Board found an emergency under Government Code sections 11342.545 and submitted the proposed regulations to OAL on an emergency basis to enable the Board to meet its statutory obligations: (1) to ensure that expenditures do not exceed amounts available and (2) if sufficient funds are not available to cover the estimated cost of program expenditures, to institute appropriate measures to limit enrollment.² (Ins. Code sec. 12693.21(n).) These proposed regulations were approved by the OAL on November 30, 2007, as emergency regulations. While the short-term uncertainty of federal funding has lessened, the proposed regulations are still needed for the Board to meet its statutory obligations should funds become insufficient to cover the estimated cost of program expenditures in the future.

There are no comparable provisions of federal law related to this proposal.

LOCAL MANDATE

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

FISCAL IMPACT ESTIMATES

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

COSTS OR SAVINGS TO STATE AGENCIES

No additional costs or savings to state agencies are anticipated.

² The adoption of the proposed regulations would not be itself establish a waiting list or disenroll subscriber children. Further Board actions would be required as set forth in the proposed regulations. The adoption would only provide for the process to limit enrollment as circumstances dictate.

BUSINESS IMPACT/SMALL BUSINESS

MRMIB has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610. The determination that the proposal would not affect small business is based upon the fact that the proposal applies only to the procedures followed by MRMIB should a determination of insufficient funding be made by the Board. It has no impact at all on any entity that is not a state agency as defined in section 11000 of the California Government Code as the regulations only establish procedures.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

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

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

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

EFFECT ON HOUSING COSTS

None

ALTERNATIVES

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

CONTACT PERSONS

Inquires concerning the proposed adoption of this regulation and written comments may be directed to:

JoAnne French
Managed Risk Medical Insurance Board
1000 G Street, Suite 450
Sacramento, CA 95814
(916) 327-7978

or

Randi Turner
 Managed Risk Medical Insurance Board
 1000 G Street, Suite 450
 Sacramento, CA 95814
 (916) 327-8243

INITIAL STATEMENT OF REASONS

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

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which this proposal is based, may be obtained upon request from the Managed Risk Medical Insurance Board at 1000 G Street, Suite 450, Sacramento, CA 95814. These documents may also be viewed and downloaded from the MRMIB website at www.mrmib.ca.gov.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the final statement of reasons once it has been prepared by making a written request to the contact person named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.mrmib.ca.gov.

TITLE 14. DEPARTMENT OF PARKS AND RECREATION

**TITLE 14. NATURAL RESOURCES
 DIVISION 3. CALIFORNIA DEPARTMENT OF PARKS AND RECREATION
 CHAPTER 12. LAND AND WATER CONSERVATION**

[Notice published March 7, 2008]

NOTICE OF PROPOSED RULEMAKING

The California Department of Parks and Recreation (Department) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has scheduled a public hearing on this proposed action starting at 9:00 a.m. on April 29, 2008, at Rusch Park Community Center, Room 1 located at 7801 Auburn Blvd. Citrus Heights, California 95610. The Community Center is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at **5:00 p.m. on April 29, 2008**. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Ms. Debra Gonzalez
 Office of Grants and Local Services
 California Department of Parks and Recreation
 P.O. Box 942896
 Sacramento, CA 94296-0001
 Email: dgonzalez@parks.ca.gov
 Fax: (916) 653-6511
 Phone: (916) 654-1618

AUTHORITY AND REFERENCE

Public Resources Code (PRC) §5099.10 authorize the Department to adopt the proposed regulation, which would implement, interpret, or make specific PRC §§5099-5099.12 and 16 USC 4601-4601-11 (Public Law 88-578 78 Stat 897).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The LWCF was established through the Land and Water Conservation Fund Act of 1965 (Act). The Act provides federal funds to assist States and Federal agen-

cies in meeting present and future outdoor recreation demands and needs of the citizens of the United States for planning, acquisition, and development of needed land and water areas and facilities and funds for the Federal acquisition and development of certain lands and other areas. The funds are allocated to the states each federal fiscal year by apportionment established by the Act and authorized by the Secretary of the Interior.

Public Resources Code (PRC) §§5098–5098.3 established a State fund in which the funds received from the federal government could be deposited. Public Resources Code (PRC) §§5099–5099.12 was enacted to enable California to participate in the LWCF (Public Law 88–578 78 Stat 897). It also defined eligible applicants, and how the funds were to be divided between local government and state agencies.

Regulations for the Land and Water Conservation Fund were developed to comply with PRC §5099.10. Over time the Department has developed Procedural Guides to update and provide more guidance for the administration of the program. The procedural guide has not been submitted to the Office of Administrative Law to update and amend existing regulations.

The Department proposes to amend §4900 in Title 14, Division 3, Chapter 12 of the California Code of Regulations (CCR), and repeal §4901, §4902, §4903 and §4904 concerning the Land and Water Conservation.

- The proposed regulation will amend §4900 Definitions and incorporate by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007 to implement, interpret, and make specific PRC §5099.10. Section 4900 Definitions lists eight terms and their meanings. The Proposed regulation will amend §4900 to incorporate and update the Land and Water Conservation Fund program description, application requirements, project administration, administrative procedures, and post selection federal requirements, including authority, allocation of funds, eligibility criteria, and expand the definitions section to 38 terms and their meanings.
- The proposed regulation will repeal §4901 Authority because it is contained in the proposed Amended §4900 incorporating by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007 which sites the statutory authority for the proposed regulation.
- The proposed regulation will repeal §4902 Allocation of Funds because it is contained in the proposed Amended §4900 incorporating by reference the Land and Water Conservation Fund

Program Procedural Guide, Revised September 2007 which updates how funds are distributed for the Land and Water Conservation Fund program.

- The proposed regulation will repeal §4903 Project Criteria because it is contained in the proposed Amended §4900 incorporating by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007 which updates and expands the program criteria and description including purpose of the program and funding, summary of the competitive grant process, timeline, eligibility criteria of applicants, eligible and ineligible projects, land tenure requirements, match requirements, updates application requirements including application submission instructions, application requirements checklist, resolution form and instructions, project proposal criteria and instructions, cost estimate form and instructions, eligible cost chart, overview of CEQA/NEPA compliance, proposal description and environmental screening form, section (6)(f)(3) Boundary Map requirements, State Historic Preservation Act MOU form and contact information, certification of compliance for development projects, lower tier covered transactions, debarment and suspension instructions for certification, certification regarding lobbying, civil rights assurance, post selection federal requirements, and updates project administration including sample grant contract, contract provisions, grant payments, grant progress status report, reimbursement payments, payment request, sample performance report, performance report, grant completion packet requirements, project certification form, grant expenditure form, force labor costs summary form, equipment costs summary form and MOU of unrecorded grant agreement, and updates administrative procedures including changes to grant scope, changes to project liquidation date, signage, surcharge project costs, expenditure guidelines, accounting requirements, record retention, compliance inspections, conversions, program income and audit requirement.
- The proposed regulation will repeal §4904 Priorities Among Eligible Projects because it is contained in the proposed Amended §4900 incorporating by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007 which details information on how the LWCF funds are distributed, provides a summary of the competitive grant process including a LWCF program process flowchart.

FEDERAL REGULATION AND
STATUTE CONFORMITY

The LWCF is established on the federal level by the Land and Water Conservation Fund Act of 1965 [16 U.S.C. §4601–4 through 4601–11].

The federal statute recommended:

- Creation of a national recreation policy
- That all agencies administering outdoor recreation resources adopt programs designed to make the best possible use of available resources in light of people’s needs
- That each State, through a central agency, should develop a long – range plan for outdoor recreation
- Establishment of an independent Bureau of Outdoor Recreation
- Establishment of a federal funding program to provide grants to States

The federal Land and Water Conservation Fund Manual Release Number 151, December 9, 1991 serves as a basic reference for States to administer the Land and Water Conservation Grants uniformly. This manual provides broad outlines that are the basis for the LWCF program. The manual requires States to develop a State Comprehensive Outdoor Recreation Plan; and the State Comprehensive Outdoor Recreation Plan requires the establishment of an open project selection process for LWCF grants, Title 36, Chapter 1, Part 59 U.S. Code of Federal Regulations outlines State responsibility for compliance and enforcement of these provisions for State and locally sponsored projects. In order to achieve the expected outcomes of the LWCF program and the open project selection process, the Department has developed the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007.

The Department finds that it is authorized to adopt a regulation that differs from federal statute. The proposed amendment to the existing regulations supports the provisions found in State statute.

INCORPORATION BY REFERENCE

The purpose of the proposed amendment to §4900 is to incorporate by reference the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007.

DISCLOSURES REGARDING
THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.
Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

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

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None. Only California governmental organizations with management responsibilities over public lands in the state of California are eligible to compete for grants under this program.

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

Adoption of this regulation will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Effect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

Business reporting requirement: None.

Small business determination: The Department has determined that the proposed regulation does not affect small business. Only California governmental organizations with management responsibilities over public lands in the state of California are eligible to compete for grants under this program.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code §11346.5(a)(13), the Department must determine that no reasonable alternative it considered 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.

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

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Debra Gonzalez
Office of Grants and Local Services
Department of Parks and Recreation
1416 Ninth Street Room 918
P.O. Box 942896
Sacramento, CA 94296-0001
Email: dgonzalez@parks.ca.gov
Fax: (916) 653-6511
Phone: (916) 654-1618

The backup contact person for these inquiries is:

Barbara Baker
Office of Grants and Local Services
Department of Parks and Recreation
P.O. Box 942896
Sacramento, CA 94296-0001
Email: bbaker@parks.ca.gov
Fax: (916) 651-6511
Phone: (916) 651-7743

Please direct requests for copies of the proposed text (the "express terms") of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Debra Gonzalez at the above address.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department will have the entire rule making file available for inspection and copying throughout the rule making process at its office at the above address. As of the date the notice is published in the Notice Register, the rulemaking file consists of (1) this notice, (2) the proposed text of the regulation, (3) the Land and Water Conservation Fund Program Procedural Guide, Revised September 2007, (4) the initial statement of reasons, (5) C.C.R §§4900-4904, (6) "A quick History of the Land and Water Conservation Fund Program" history from National Park Service, U.S. Department of the Interior website, (7) Compliance Responsibilities and Legal Protection (Title 36, Chapter 1, Part 59 U.S. Code of Federal Regulations) from National Park Service, U.S. Department of the Interior website, (8) Public Resources Code §5098, §5098.3, §5099, §5099.2, §5099.3, §5099.35, §5099.4, §5099.5, §5099.7, §5099.10, §5099.11, §5099.12, (9) Land and Water Conservation Fund Technical Assistance Workshops, (10) Land and Water Conservation Fund Draft Technical Assistance Workshops, (11) Land and Water Conservation Fund Act of 1965.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Debra Gonzalez at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at www.parks.ca.gov and by following the link to *Grants*.

TITLE 17. DEPARTMENT OF DEVELOPMENTAL SERVICES

NOTICE OF PROPOSED RULEMAKING

RESPITE CARE RATE INCREASE 2008

The California Department of Developmental Services (DDS) proposes to amend Title 17, California Code of Regulations (CCR), Division 2, Chapter 3, Subchapter 7, Article 5, Section 57310(b)(3), Method of Reimbursement for Voucher Services, and 57332(c)(3)(A) & (c)(9)(A), Maximum Rates of Reimbursement for Non-Residential Services.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action of DDS. The written com-

ment period closes at 5:00 p.m. on Monday, April 21, 2008. Please submit any written comments, via U.S. Mail or fax or email, to the DDS contact persons designated below by 5:00 p.m. on Monday, April 21, 2008.

NO PUBLIC HEARING

No public hearing is scheduled for this rulemaking. However, any interested person or his or her duly authorized representative may request a public hearing no later than 15 days prior to the close of the written comment period.

AUTHORITY AND REFERENCE

Authority: Section 4690, Welfare and Institutions Code.

Reference: Sections 4648(a), and 4690, Welfare and Institutions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Welfare and Institutions Code, Section 4690 mandates DDS to establish, maintain, and revise an equitable process for setting rates of payment for nonresidential services provided to the developmentally disabled. Title 17 establishes the maximum reimbursement rate for vouchered respite and in-home respite care workers.

Effective January 1, 2008, California law increased the minimum wage to \$8.00 per hour. The regulation changes are intended to reflect the increase in the maximum rates of reimbursement appropriated for in the Budget Act for Fiscal Year 2007–08 for respite services provided under In-Home Respite Worker, Service Codes 864, and 869, and Vouchered Respite Service, Service Code 420 to \$10.71 per consumer, per hour.

Section 57310(b)(3) — Method of Reimbursement for Voucher Services

The Department proposes to increase the maximum reimbursement rate for in-home respite workers providing respite services under the voucher to \$10.71 per consumer per hour, effective January 1, 2008.

Section 57332(c)(3)(A) — Maximum Rates for Reimbursement for Non-Residential Services — In-Home Respite Worker — Service Code 864.

The Department proposes to increase the maximum reimbursement rate for in-home respite workers providing respite services to \$10.71 per consumer per hour, including certain allocated costs, effective January 1, 2008.

Section 57332(c)(9)(A)(2)(a) — Maximum Rates for Reimbursement for Non-Residential Services — Respite Facility — Service Code 869.

The Department proposes to increase the maximum reimbursement rate for respite facilities providing respite services to \$10.71 per hour, including certain allocated costs, effective January 1, 2008.

EFFECT ON SMALL BUSINESS

DDS has determined that the proposed regulations will not affect small businesses as costs incurred due to this regulation change will be reimbursed by the Department.

LOCAL MANDATE AND FISCAL IMPACT DETERMINATIONS

DDS has determined that the proposed regulatory action does not impose: 1) a mandate on local agencies or school districts, 2) significant costs or savings to any state agency, 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630, 4) other nondiscretionary costs or savings imposed on local agencies, or 5) costs or savings in federal funding to the state.

ECONOMIC IMPACT AND BUSINESS ASSESSMENT

Based on DDS's findings it is anticipated that the proposed action will have no economic effect on the creation of new jobs and new businesses within the state, nor on the expansion of businesses currently doing business within the State of California. DDS has also determined this proposed action will not eliminate jobs or existing businesses.

DDS has determined that the proposed regulations will not have: 1) a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states, or 2) a significant effect on housing cost. DDS is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES CONSIDERED

DDS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or

would be as effective and less burdensome to affected private persons than the proposed action.

DDS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period or at the public hearing.

CONTACT PERSON

General and substantive inquiries concerning the proposed action may be directed to:

Department of Developmental Services
Community Rate Section
1600 Ninth Street, Room 310
Sacramento, CA 95814
Attention: David Temme
Phone: (916) 654-2982 Facsimile: (916) 654-1578
E-Mail Address: david.temme@dds.ca.gov

If the above person is unavailable, you may also contact Greg Saul, Branch Manager, Programs Operations Branch at (916) 654-2982.

AVAILABILITY OF RULEMAKING DOCUMENTS

DDS has prepared and has copies ready for public review, an Initial Statement of Reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the exact text of the proposed regulations.

Copies of the Notice, Initial Statement of Reasons and text of the proposed regulations will be made available through DDS's website at www.dds.ca.gov.

All other public records, reports, documentation or other material related to the proposed regulations will be contained in the rulemaking file and will be available for inspection and copying throughout the rulemaking process from the contact persons at the above address. Upon completion, the Final Statement of Reasons will be made available by either contacting the persons above or through DDS's website.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After close of the comment period DDS may adopt the proposed regulations as described in this notice. If DDS makes modifications that are sufficiently related to the originally proposed text, it will make the modified text, with changes clearly indicated, available for public comment at least 15 days before DDS adopts the regulations as revised. Requests for the modified text should be made to the contact person named above.

TITLE 24. BUILDING STANDARDS COMMISSION

BUILDING STANDARDS OF THE DEPARTMENT OF FOOD AND AGRICULTURE (AGR)

REGARDING AMENDMENT OF THE 2007 CALIFORNIA PLUMBING CODE (CPC), FOR USE IN THE CALIFORNIA CODE OF REGULATIONS (CCR), TITLE 24, PART 5

Notice is hereby given that the Department of Food and Agriculture proposes to adopt changes to building standards contained in the CCR, Part 5, Title 24 for dairies and places of meat inspection.

PUBLIC COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from **March 7, 2008 until 5:00 p.m. on April 21, 2008**. Please address your comments to:

California Department of Food and Agriculture
1220 N Street, A-114
Sacramento, CA 95814
Attention: Nancy Grillo, Regulation and Legislation Coordinator
Animal Health and Food Safety Services

Written Comments may also be faxed to (916) 263-0959 or E-Mailed to CBSC@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a)17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Following the public comment period, AGR may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). AGR will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

The Department of Food and Agriculture proposes to adopt these building standards under the authority granted by Food and Agriculture Code Sections 18735, 18960, and 33481. The purpose of these building standards is to implement, interpret, and make specific the provisions of Food and Agriculture Code Sections 18735, 18960, 19834, 33481, and 33731.

INFORMATIVE DIGEST

Summary of Existing Laws

Food & Agriculture Code Section 18735. Adoption of federal rules and regulations. The director may adopt, by reference or otherwise, such provisions of the rules and regulations under the federal acts, with such changes therein as he deems appropriate to make them applicable to operations and transactions subject to this chapter.

Food & Agriculture Code Section 18960. The director may adopt, by regulation, standards and requirements relating to inspection, sanitation, facilities, equipment, reinspection, preparation, processing, buying, selling, transporting, storing, identification, recordkeeping, registration and labeling, and marking for carrying out the purposes of this chapter.

Food & Agriculture Code Section 19384. Processing, transportation and storage of carcasses, etc., for pet food; diversion into human food channels. The director shall establish by regulation the condition under which carcasses or parts or products of animals for pet food may be processed, transported, and stored so as to prevent diversion into human food channels.

Food & Agriculture Code Section 33481. Regulations, plans and specifications. The director shall establish regulations and provide plans and specifications at cost for the construction of sanitary milk barns and milk houses which are used in the production of market milk. (Dairies and places of meat inspection)

Food & Agriculture Code Section 33731. Approval of plans and specifications for new milk product plants.

Summary of Existing Regulations

The existing 2007 California Plumbing Code is a part of the California Code of Regulations, Title 24, also referred to as the California Building Standards Code and incorporates, by adoption, by the California Building Standards Commission, the 2006 Uniform Plumbing

Code of the International Association of Plumbing and Mechanical Officials. Currently, AGR does not adopt model code standards for PEX water supply piping for applications under its authority.

Summary of Effect

The proposed action would amend Part 5 of Title 24 (2007 California Plumbing Code) by repealing amendments contained in Sections 604.1 and 604.11 which prescribe AGR’s non-adoption of model plumbing code provisions regulating the use of PEX water supply piping. AGR proposes to adopt CPC Sections 604.1, 604.11, 604.11.1, and 604.11.2 regarding the use of PEX in potable water supply systems.

Comparable Federal Statute or Regulations

There are no comparable Federal Statutes or regulations related to the proposed action.

Policy Statement Overview

The broad objective of the proposed action is to repeal building regulations, in conformance with current state law, and adopt model code standards for applications within the agency’s authority.

OTHER MATTERS PRESCRIBED BY
STATUTE APPLICABLE TO THE AGENCY
OR TO ANY SPECIFIC REGULATION OR
CLASS OF REGULATIONS

The Department of Food and Agriculture has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations

MANDATE ON LOCAL AGENCIES
OR SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **None**
 - B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**
 - C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**
 - D. Other nondiscretionary cost or savings imposed on local agencies: **None**
 - E. Cost or savings in federal funding to the state: **None**
- Estimate: **None**

INITIAL DETERMINATION OF NO
SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESSES

The Department of Food and Agriculture has made an initial determination that the amendment of these regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

No facts, evidence, testimony or other evidence has been relied upon to support the initial determination of no effect.

FINDING OF NECESSITY FOR THE PUBLIC'S
HEALTH, SAFETY, OR WELFARE

The Department of Food and Agriculture has made an assessment of the proposed code changes and has determined that these changes do not require a report.

COST IMPACT ON REPRESENTATIVE PRIVATE
PERSON OR BUSINESS

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

ASSESSMENT OF EFFECT OF REGULATIONS
UPON JOBS AND BUSINESS EXPANSION,
ELIMINATION OR CREATION

The Department of Agriculture has assessed whether or not and to what extent this proposal will affect the following:

- The creation or elimination of jobs within the State of California.**
These regulations will not affect the creation of or elimination of jobs within the State of California.
- The creation of new businesses or the elimination of existing businesses within the State of California.**
These regulations will not affect the creation of or the elimination of existing business within the State of California.
- The expansion of businesses currently doing business with the State of California.**

These regulations will not affect the expansion of businesses currently doing business within the State of California

INITIAL DETERMINATION OF SIGNIFICANT
EFFECT ON HOUSING COSTS

The Department of Food and Agriculture has made an initial determination that this proposal would not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

The Department of Food and Agriculture must determine that no reasonable alternative considered by the state 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.

AVAILABILITY OF RULEMAKING
DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below.

Interested parties may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CBSC CONTACT PERSON FOR PROCEDURAL
AND ADMINISTRATIVE QUESTIONS

General questions regarding procedural and administrative issues should be addressed to:

Jane Taylor, Senior Architect
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
jane.taylor@dgs.ca.gov
Telephone No: (916) 263-0916
Facsimile No: (916) 263-0959

PROPOSING STATE AGENCY CONTACT
PERSON FOR SUBSTANTIVE AND/OR
TECHNICAL QUESTIONS ON THE PROPOSED
CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

**Nancy Grillo, Regulation and Legislation
Coordinator
Animal Health and Food Safety Services
California Department of Food and Agriculture
(916) 651-7280
ngrillo@cdfa.ca.gov
FAX (916) 653-4249**

GENERAL PUBLIC INTEREST

**TITLE 2. 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 State contracts. The prospective contractor's signature on Standard Form 17A, 17B, or 19, therefore, does not constitute a valid self-certification. Until further notice, each of these prospective contractors 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

**RULEMAKING PETITION
DECISIONS**

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

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

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Division 3, Adult Institutions, Programs and
Parole**

PETITIONER

Tuvalu Tutuila, D-19029.

AUTHORITY

The authority granted by Government Code (GC) Section 12838.5 vests to the California Department of Corrections and Rehabilitation (CDCR) all the powers, functions, duties, responsibilities, obligations, liabili-

ties, and jurisdiction of the abolished Youth and Adult Correctional Agency, California Department of Corrections, Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and the State Commission on Juvenile Justice, Crime and Delinquency Prevention. Penal Code (PC) Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections refers to the Secretary of the CDCR. PC Section 5054 vests with the Secretary of the CDCR the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein. PC Section 5055 provides that commencing July 1, 2005, all powers/duties previously granted to and imposed upon the CDC shall be exercised by the Secretary of the CDCR. PC Section 5058 provides that the Director may prescribe and amend regulations for the administration of prisons.

CONTACT PERSON

Please direct any inquiries regarding this action to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283-0001.

AVAILABILITY OF PETITION

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

SUMMARY OF PETITION

Petitioner contends that the CDCR is implementing a statewide toilet flushing policy requiring each of its institutions to install control flushing toilets in inmate cells without complying with the Administrative Procedure Act (APA), which constitutes the enforcement of an underground regulation.

DEPARTMENT DECISION

The Secretary of the CDCR declines the petition in its entirety.

The CDCR acknowledges that control flushing devices are being installed on inmate toilets in many of its institutions. However, the CDCR has not issued a statewide mandate requiring the installation of these devices. Rather, the various CDCR institutions that are installing these devices are doing so at the directive of their respective Regional Water Quality Control Boards. Further, the Control Boards in California have become much more assertive in requiring a reduction in both water consumption and sewage discharge for all of

their customers due to federal and state mandates, governor's executive order, and legislation that have all been imposed concurrently.

The Federal Clean Water Act places requirements on water usage and cleanliness, and mandates that states enforce those requirements. California's enforcement agency is the California Water Control Board, which has jurisdiction over the state's Regional Control Boards. On July 27, 2004, Governor Schwarzenegger issued Executive Order S-20-04, setting goals for energy conservation for all energy users within specific time frames which include such things as waste water treatment. Assembly Bill (AB) 900, known as the Public Safety and Offender Rehabilitation Services Act of 2007, was signed by Governor Schwarzenegger on May 3, 2007. The goal of AB 900 is improved and expanded rehabilitation and community reentry programs designed specifically to reduce crime and enhance public safety. This effort provides for the first and largest prison capital outlay program in California in decades by providing \$7.7 billion in funding and bond resources to add 53,000 in prison and jail beds. Many of the new facilities will be located adjacent to existing prisons.

Expanding existing or building new water treatment facilities can take from 5 to 10 years, which is considered a long term solution to increased sewage discharge from increased water usage by CDCR institutions. Regional Control Boards, however, have moved to require reduced water discharge by all of its larger customers immediately. For example, the California Regional Water Control Board, Lahontan Region, found that both the California Correctional Center at Susanville and High Desert State Prison were consistently exceeding their monthly average design sewage treatment capacity. The Lahontan Water District advised the prisons they were in violation on numerous occasions, and finally on July 13, 2005 issued a cease and desist order that specifically ordered the prisons to impose conservation measures to include installation of low flow showerheads, toilets and urinals, hot water solenoids, and flush limiters with limits on the number of flushes per hour. The Lahontan Water District does not have jurisdiction over any other CDCR institutions, except these two.

As another example, the California Regional Water Quality Control Board, Central Valley Region, issued cease and desist order no. R5-2006-0130 on December 8, 2006, mandating Mule Creek State Prison (MCSP) cease and desist from discharging waste water in excess of waste water design capacity. Hefty fines were imposed on MCSP, resulting in the prison implementing immediate conservation measures to include flush limiters. Similarly, Ironwood State Prison, located in yet another Regional Control Board jurisdiction, was noticed by that Regional Control Board that it was exceed-

ing its sewage design capacity and ordered to immediately implement conservation measures.

As stated previously, the CDCR acknowledges that control flushing devices are being installed on inmate toilets in many of its institutions. However, the CDCR has not issued a statewide rule requiring the installation of these devices. The circumstances that are driving various state prisons to impose more restrictive conservation measures apply to all water users in a region, not just the local state prison. The CDCR maintains that it is not within its authority to promulgate a statewide regulation arising from a mandate issued by a Regional Control Board. Local mandates do not have a statewide application, even though other Regional Control Boards may be issuing similar orders to their local water users. The CDCR believes it does not have clear authority to adopt water and waste water regulations for its institutions. Like other building and facility standards, these authorities lie with other state agencies.

<p>ACCEPTANCE OF PETITION TO REVIEW ALLEGED UNDERGROUND REGULATIONS</p>
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OFFICE OF ADMINISTRATIVE LAW

**ACCEPTANCE OF PETITION TO REVIEW
ALLEGED UNDERGROUND REGULATIONS**

**(Pursuant to title 1, section 270, of the
California Code of Regulations)**

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Agency being challenged:

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Rick Smith, Staff Counsel
Office of Administrative Law
300 Capitol Mall, Ste. 1250
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Raul Aldrete, J-25863
D2-243 L
Calipatria State Prison
P.O. Box 5002
Calipatria, CA 92233-5002

Agency contact:

Timothy Lockwood, Chief of Regulations & Policy
Management Branch
Department of Corrections and Rehabilitation
P.O. BOX 942883
Sacramento, CA 94283-0001

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

**PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW**

RE: Alleged Underground Regulation
FROM: Raul Aldrete (Petitioner)
DATE: 12-12-07

Use of this form is entirely optional. It requests the information required by Title 1, California Code of Regulations, section 260, for a petition challenging an alleged underground regulation. Although you are not required to use this specific form, the mandatory information required by 1 CCR 260, including the supporting documentation, must be included somehow in your petition. If you create a separate petition, or if you use this form and need to add extra pages, be sure that each page is labeled clearly.

1. Identifying Information:

Your name: Raul Aldrete, Prisoner ID# J-25863
Your address: Calipatria State Prison, D2-243 L
P.O. Box 5002
Calipatria, CA 92233-5002

Your telephone number (if you have one): N/A

Your email (if you have one): N/A

2. State agency or department being challenged:

California Department of Corrections and
Rehabilitation (CDCR)

3. Provide a complete description of the purported underground regulation. Attach a written copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible. As pertaining to inmates, "[N]o in-level transfers unless there is a medical/mental health necessity (of the inmate) or transfers required to maintain the safety and security of the insti-

tution.” (NOTE: The above quotation is taken directly from petitioner’s own CDCR Director’s Level Appeal Decision, under III. A, and the September 1, 2005 memorandum addressed to all CDCR wardens signed by the Deputy Director.

SEE ATTACHED CONTINUATION PAGE—“LABELED CLEARLY”

4. Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation. CDCR has denied, and continues to deny petitioner’s/prisoner’s legitimate, legally-grounded request to be housed in an “institution of the appropriate security level and gender population nearest the prisoner’s home.” Penal Code (PC) 5068.

On 10/24/06 petitioner/prisoner appeared before the Classification Committee at Calipatria State Prison (CAL). This committee refused to even submit petitioner’s/prisoner’s case to a classification staff representative.

SEE ATTACHED CONTINUATION PAGE—“LABELED CLEARLY”

PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW
CONTINUATION PAGE TO:
PAGE 1; PART 3: DESCRIPTION OF PURPORTED
UNDERGROUND REGULATION

The five-page September 1, 2005 memorandum is attached hereto. The specific language complained of begins on line three of page three: “This directive (Bulletin 91/15) is hereby rescinded; with the exception that there continues to be no in-level transfers unless there is a medical/mental health necessity (of the inmate) or transfers required to maintain the safety and security of the institution.”

Also attached is the certification of CDCR stating that AB 91-15 was rescinded. This certification is not entirely true as the exception noted in the September 1, 2005 and the July 26, 2007 documents is currently being enforced.

(DIRECTOR’S LEVEL APPEAL DECISION), written by upper CDCR staff, states, “As directed in the September 1, 2005 Memorandum entitled Institution Bed Management states, (sic) that there continues to be no in-level transfers unless there is a medical/mental health necessity (of the inmate) or transfers required to maintain the safety and security of the institution.” Dated July 26, 2007

Petitioner requests that the OAL reconsider its decision dated October 25, 2007 because the “exception” was clearly not rescinded and the certification that is the basis of the OAL decision is factually incorrect. The

October 25, 2007 OAL letter signed by Director Susan Lapsley is attached hereto.

PAGE 1; PART 4; DESCRIPTION OF AGENCY
ACTIONS WHICH DEMONSTRATE IT HAS
ISSUED, USED, ENFORCED, OR ATTEMPTED
TO ENFORCE PURPORTED UNDERGROUND
REGULATION

<<<. . . (CSR) for transfer consideration pursuant to Title 15, California Code of Regulations (CCR), sections (§§)3375(f)(3)(C)1-2; 3379(a)(1); i.e., improve the inmate’s conditions of confinement by removing a previously imposed restriction; approve an action requested by the inmate; and submit the case to the CSR for CSR’s approval or denial.

On 11/29/06 petitioner/prisoner submitted an Inmate/Parolee Appeal Form appealing the Classification Committee’s action.

On 4/17/07 petitioner/prisoner requested a Director’s Level Review of the appeal.

On JUL 26 2007, the Director’s Level Review (DLR) denied Petitioner’s appeal, citing language found in the September 1, 2005 memorandum addressed to all California’s prison wardens and stated further that, “the [DLR] determined that the institution [Calipatria State Prison; RA] was in compliance with California Penal Code Section (PC) 5068 as the appellant’s transfer would be unreasonable at this time based upon current population pressures and the aforementioned memorandum.”

Petitioner’s Name: Raul Aldrete
Date: Sept. 29, 2007

5. State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code AND that no express statutory exemption to the requirements of the APA is applicable. Petitioner, here, will be making direct quotations from a recent OAL Determination, and will supplant the particulars in the instant case in brackets ([]) so as to make the distinction. Quoting from the CALIFORNIA REGULATORY NOTICE REGISTER 2007, VOLUME NO. 9-Z; OAL REGULATORY DETERMINATIONS; DEPARTMENT OF CORRECTIONS AND REHABILITATION; DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS; 2007 OAL DETERMINATION NO.3 (OAL FILE # CTU 06-0628-01); **SEE PAGE 418: ANALYSIS**

SEE ATTACHED CONTINUATION PAGE —“LABELED CLEARLY”

6. Provide information demonstrating that the petition raises an issue of considerable public importance

requiring prompt resolution. PC 5068, which is cited in petitioner's/prisoner's Inmate/Parolee Appeal Form, states in pertinent part: "the maintenance of [any strong community and family ties] may aid in the person's rehabilitation." In relation to PC 5068 Section 1 of Stats. 1989, c.1061, provides; "(a) The Legislature finds and declares that the maintenance of family ties and the development of familial relationships is crucial to rehabilitation efforts. It is the intent of the Legislature to facilitate the maintenance and development of family relationships by incarcerating inmates in the institution closest to the. . .>>>

SEE ATTACHED CONTINUATION PAGE
— "LABELED CLEARLY"

7. (Optional) Please attach any additional relevant information that will assist OAL in evaluating your petition.

SEE ATTACHED

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to:

Name: **K. W. Prunty, Undersecretary,
Operations**

Agency: California Department of Corrections and
Rehabilitation

Address: P.O. Box 942883
Sacramento, CA 94283-0001

Telephone number: (916) 322-1843

I certify that all of the above information is true and correct to the best of my knowledge.

/s/

Raul Aldrete
Signature of Petitioner

12-12-07
Date

**PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW
CONTINUATION PAGE TO:
PAGE 2; PART 5: PROCEDURE IS
REGULATION DEFINED IN §11342.600 AND
NO EXEMPTION TO THE REQUIREMENTS
OF APA IS APPLICABLE**

CALIFORNIA REGULATORY NOTICE
REGISTER 2007, VOLUME NO. 9-Z, p. 418:
"ANALYSIS

"A determination of whether the challenged rules are 'regulations' subject to the Administrative Procedure Act (APA) depends on (1) whether the challenged rules

contain 'regulations' within the meaning of section 11342.600, and (2) whether the challenged rules fall within any recognized exemption from APA requirements.

"A regulation is defined in section 11342.600:

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

"In Tidewater Marine Western Inc. v. Victoria Bradshaw, 14 Cal.4th 557, 571 (1996), the California Supreme Court found that

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

"The first element of a regulation is whether the rule applies generally. The [memo(s)] in question here applies to all prisoners in California institutions and therefore it applies to a clearly identified class of persons. CDCR, [in the following documents and citations thereof,] indicated that the [memo(s)] were disseminated and intended for use] throughout California institutions[: the classification document, CDC 128-G, dated 10/24/06—"no inter-level transfers. . . ." **Ultimately this classification committee action was upheld at the Director's level of review based on the "exception" to the rescinding of AB 91-15 noted in the memorandum distributed system-wide on September 1, 2005. Clearly, the rescission of AB 91-15 did not encompass that portion of AB 91-15 dealing with "in-level transfers." The fact that the prohibition against in-level transfers is still being enforced is evidenced by the Director's Level Appeal Decision dated JUL 26 2007—"As directed in the September 1, 2005 Memorandum entitled Institution Bed Management states, (sic) that there continues to be no in-level transfers. . . .The institution has complied with the. . .directive and has informed the appellant that will (sic) not be referred. . .for transfer consideration. . . . the Director's Level of Review (DLR) determined that the institution was in compliance with**

California Penal Code Section (PC) 5068. . .based upon. . .the aforementioned memorandum”]. The first element is, therefore, met.

“The second element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure. Penal Code section 5058 gives CDCR broad authority to prescribe and amend rules and regulations for the administration of California institutions. It is well within CDCR’s statutory mandate to determine [where and why an inmate can be housed in any one of California’s institutions. Penal Code section 5068 narrows the scope of section 5058 to ‘examination and study of prisoners; classification; determination of prison; psychiatric or psychological reports; (and) written evaluations.’ PC 5068 specifically states: ‘Upon the basis of the examination and study, the Director of Corrections shall classify prisoners; and when reasonable, the director shall assign a prisoner to the institution of the appropriate security level and gender population nearest the prisoner’s home, unless other classification factors make such a placement unreasonable.’ And Penal Code section 6400 narrows the scope of sections 5058 and 5068 even further to ‘amendments to Department of Corrections regulations pertaining to visitation of inmates.’ PC 6400 specifically states: ‘Any amendments to existing regulations and any future regulations adopted by the Department of Corrections which may impact the visitation of inmates shall do all of the following: (a) Recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and inmates. (b) Recognize and consider the important role of inmate visitation in establishing and maintaining a meaningful connection with family and community. (c) Recognize and consider the important role of inmate visitation in preparing an inmate for successful release and rehabilitation.’] This clearly implements or makes specific Penal Code[s] section[s] 5058, [5068, 6400, and] the law enforced or administered by CDCR. The second element in the Tidewater case is met.

“The final issue to examine in determining whether CDCR has created an underground regulation by issuing the [memo(s)] is determining if there is an exemption from the APA. [In PC 5068, the annotation states: ‘Director of Corrections was required to follow notice and hearing procedures of Administrative Procedure Act (Gov. C. §11370 et seq.) prior to implementing new standardized classification system for purposes of determining proper level of custody and place of confinement of inmates as well as for planning and budgeting considerations, since embodying as it did a rule of general application significantly affecting male prison population in custody of department, the comprehensive classification system was not exempt as a rule of internal management nor did it fall within statutory ex-

emption (§11342) relating to operational form. Stoneham v. Rushen (App. 1 Dist. 1982) 188 Cal.Rptr. 130, 137 Cal.App.3d 729. Prisons (key) 13(5).’ The annotation and case encompasses every aspect of the memo(s) in question. Petitioner] therefore concludes that APA rulemaking requirements generally apply to the CDCR.”

**PAGE 2; PART 6: INFORMATION
DEMONSTRATING PETITION RAISES
ISSUE OF CONSIDERABLE PUBLIC
IMPORTANCE**

<<<. . .inmate’s home, whenever practical and when requested by the inmate.” West’s Ann. Cal. Penal Code § 5068

The family and friends of an incarcerated person are severely impacted by virtue of the loss. The incarcerated inmate is one, but the family and friends of the one, left in the community, are many, and are the public itself. They need their incarcerated family member or friend as close as possible in order to facilitate the necessary visits, for them.

It is the public that needs to have rehabilitated persons being released from prison. And the California Legislature, as quoted above, has determined that these visits are “crucial to rehabilitation efforts.”

**OAL REGULATORY
DETERMINATIONS**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATIONS**

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

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

STATE OF CALIFORNIA

OFFICE OF ADMINISTRATIVE LAW

**2008 OAL DETERMINATION NO. 1
(OAL FILE # CTU 07-0924-01)**

REQUESTED

BY: ROBERT K. WALTERS
CONCERNING: DEPARTMENT OF CORRECTIONS AND REHABILITATION — INDETERMINATE SECURITY HOUSING UNIT STATUS FOR DISRUPTIVE INMATES.

DETERMINATION ISSUED PURSUANT TO GOVERNMENT CODE SECTION 11340.5.

SCOPE OF REVIEW

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

ISSUE

On September 24, 2007, Mr. Walters submitted a petition to OAL challenging rules issued in a memorandum by the California Department of Corrections and Rehabilitation (Department). The rules contained in this memorandum are alleged underground regulations¹ issued in violation of Government Code section 11340.5.² The alleged underground regulations are

¹ An underground regulation is defined in title 1, California Code of Regulations, section 250:

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

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

contained in Memorandum DD81-02 (Memorandum), issued by W.A. Duncan, Deputy Director, Institutions Division, addressed to “Wardens, Classification and Parole Representatives, Classification Staff Representatives and Correctional Counselor III’s/Reception Centers.” The subject of the Memorandum is “Indeterminate Security Housing Unit Status for Disruptive Inmates.”

DETERMINATION

OAL determines that the Memorandum meets the definition of a “regulation” as defined in section 11342.600 and that it should have been adopted pursuant to the APA.

FACTUAL BACKGROUND

The Memorandum was issued on August 26, 2002. It is attached to this determination as Attachment #1. It states, in part:

Effective immediately, during the pre-Minimum Eligible Release Date review, classification staff shall consider Indeterminate SHU status for inmates who have demonstrated the desire to be disruptive and endanger the safety of others or the security of the institution. The following are examples of inmates who may qualify for consideration of Indeterminate SHU status:

1. Inmates currently serving a Determinate SHU term whose in-custody behavior reflects a propensity towards disruptive conduct, regardless of whether the inmate is not eligible for additional Determinate SHU term assessment.
2. Specifically, inmates who have been assessed three Determinate SHU terms for any offense or assessed two Determinate SHU terms for participation in a riot, melee, or disturbance. This requirement shall be subject to all SHU terms assessed on the same prison identification number different to the inmate’s term status; e.g., “PVRTC”, “PVWNT”, etc.

Mr. Walters states that disciplinary action has been taken against him based upon enforcement of this Memorandum. Due to the Memorandum, the Determinate SHU sentence he had received was altered to an Indeterminate SHU term.

UNDERGROUND REGULATIONS

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

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion,

bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in [Government Code] Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to [the APA].

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

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

To determine whether an agency issues, utilizes, enforces, or attempts to enforce an underground regulation in violation of section 11340.5, it must be demonstrated that the agency rule is a regulation not adopted pursuant to the APA and not exempt from the APA.

ANALYSIS

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

A regulation is defined in section 11342.600 as:

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

In *Tidewater Marine Western, Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557, 571, the California Supreme Court found that:

A regulation subject to the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.) has two principal identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies

generally so long as it declares how a certain class of cases will be decided. Second, the rule must implement, interpret, or make specific the law enforced or administered by the agency, or govern the agency’s procedure (Gov. Code, § 11342, subd. (g)).

The first element of a regulation is whether the rule applies generally. The Memorandum requires that all inmates in the SHU with determinate sentences that are considered disruptive and a danger to others or the institution be considered for Indeterminate SHU status. The Memorandum also lists the criteria to be used to classify an inmate as requiring consideration of Indeterminate SHU status. As *Tidewater* pointed out, a rule need not apply to all persons in the state of California. It is sufficient if the rule applies to a clearly defined class of persons or situations. The Memorandum applies to such a clearly defined class of persons — inmates housed in the SHU. The first element is, therefore, met.

The second element is that the rule must implement, interpret or make specific the law enforced or administered by the agency, or govern the agency’s procedure. On July 1, 2005, the Department of Corrections, under which this Memorandum was issued, was reorganized into the Department of Corrections and Rehabilitation.³ Penal Code section 5054 provides that:

Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline and employment of persons confined therein are vested in the Secretary of the Department of Corrections and Rehabilitation.

Penal Code section 5058, subdivision (a), states:

The director may prescribe and amend rules and regulations for the administration of the prisons and for the administration of the parole of persons sentenced under Section 1170 except those persons who meet the criteria set forth in Section 2962. The rules and regulations shall be promulgated and filed pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as otherwise provided in this section and Sections 5058.1 to 5058.3, inclusive. All rules and regulations shall, to the extent practical, be stated

³ Penal Code section 5055:

Commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the Department of Corrections and Rehabilitation, except where those powers and duties are expressly vested by law in the Board of Parole Hearings.

Whenever a power is granted to the secretary or a duty is imposed upon the secretary, the power may be exercised or the duty performed by a subordinate officer to the secretary or by a person authorized pursuant to law by the secretary.

in language that is easily understood by the general public.

The Departmental policy requiring certain inmates to be considered for Indeterminate SHU status and the criteria for classifying these inmates expressed in the Memorandum directly affects “the care, custody, treatment, training, discipline and employment of persons” in correctional institutions. The policy has a direct impact on inmates by resulting in an Indeterminate SHU status. The Memorandum, then, implements, interprets, or makes specific Penal Code sections 5054 and 5058. Furthermore, the Memorandum implements, interprets and makes specific title 15 California Code of Regulations, sections 3339 and 3341.5(c).⁴ The second element in *Tidewater* is therefore met.

The final issue to examine in determining whether the Department has created an underground regulation by issuing the Memorandum is determining if the Memorandum falls within an exemption from the APA. Exemptions from the APA can be general exemptions that apply to all state rulemaking agencies.⁵ Exemptions may also be specific to a particular rulemaking agency or a specific program. Pursuant to section 11346, the procedures established in the APA “shall not be superseded or modified by any subsequent legislation except to the extent that the legislation shall do so expressly.”

Penal Code section 5058 establishes exemptions expressly for the Department:

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility, provided that the following conditions are met:

(A) All rules that apply to prisons or other correctional facilities throughout the state are adopted by the director pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(B) All rules except those that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code are made available to all inmates confined in the particular prison or other correctional facility to which the rules apply and to all members of the general public.

(2) Short-term criteria for the placement of inmates in a new prison or other correctional facility, or subunit thereof, during its first six

months of operation, or in a prison or other correctional facility, or subunit thereof, planned for closing during its last six months of operation, provided that the criteria are made available to the public and that an estimate of fiscal impact is completed pursuant to Sections 6650 to 6670, inclusive, of the State Administrative Manual.

(3) Rules issued by the director that are excluded from disclosure to the public pursuant to subdivision (f) of Section 6254 of the Government Code.

The first of these exemptions in Penal Code section 5058(c)(1) is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution. In the case of this Memorandum, the requirements apply to all institutions in California. The Memorandum, therefore, cannot be classified as a “local rule.”

The second exemption applies to situations where an institution is opening or is closing within six months. Again, that is not applicable here.

The final exemption is for rules that are excluded from disclosure to the public. The Memorandum has been widely distributed. There is no evidence that it is excluded from disclosure to the public.

We can find no other APA exemptions that would apply to this Memorandum. The Department has not identified any express exemption from the APA that would include this Memorandum.

AGENCY RESPONSE

The Department did not submit a response to this petition.

CONCLUSION

The Memorandum meets the definition of a “regulation” as defined in section 11342.600 and does not fall within any express APA exemption, and therefore, it should have been adopted pursuant to the APA.

Date: February 20, 2008

/s/
Peggy J. Gibson
Staff Counsel

/s/
Susan Lapsley
Director

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225

⁴ The subject matter of these sections is confinement and release from the SHU.

⁵ See Government Code section 11340.9.

Memorandum

Date August 26, 2002

To Wardens
Classification and Parole Representatives
Classification Staff Representatives
Correctional Counselor IIIs/Reception Centers

Subject: **INDETERMINATE SECURITY HOUSING UNIT STATUS FOR DISRUPTIVE INMATES**

The purpose of this memorandum is to provide institution staff with direction relevant to the review and program consideration of inmates who complete a Determinate Security Housing Unit (SHU) term and continue to pose a threat to the safety of others or security of the institution. This perceived threat may be based on the inmate's behavior while in SHU housing or due to the inmate's disciplinary history while housed in the California Department of Corrections. Due to escalating violence occurring within the institutions, administrative staff are encouraged to review for appropriate housing those inmates who have a history of participating in disruptive behavior or fomenting violence and unrest.

This direction is appropriate and within the parameters of the California Code of Regulations, Title 15, Section 3341.5(c), which states, "An inmate whose conduct endangers the safety of others or the security of the institution shall be housed in a SHU."

Effective immediately, during the pre-Minimum Eligible Release Date review, classification staff shall consider Indeterminate SHU status for inmates who have demonstrated the desire to be disruptive and endanger the safety of others or the security of the institution. The following are examples of inmates who may qualify for consideration of Indeterminate SHU status:

1. Inmates currently serving a Determinate SHU term whose in-custody behavior reflects a propensity towards disruptive conduct, regardless of whether the inmate is not eligible for additional Determinate SHU term assessment.
2. Specifically, inmates who have been assessed three Determinate SHU terms for any offense or assessed two Determinate SHU terms for participation in a riot, melee, or disturbance. This requirement shall be subject to all SHU terms assessed on the same prison identification number indifferent to the inmate's term status; e.g., "PVRTC", "PVWNT", etc.

This directive does not negate institution staff's responsibility to properly identify and process inmates suspected of prison gang membership or association.

If you have questions or require additional information, please contact Marilyn Kalvelage, Chief, Institution Operations, Institutions Division, at or for technical information, contact Linda Rianda, Chief, Classification Services Unit, at

/s/
W.A. Duncan
Deputy Director
Institutions Division

cc: Edward S. Alameida, Jr.
David Tristan
Michael T. Pickett
E. Roe
Ana Ramirez-Palmer
K.W. Prunty
Judy Buckman
Wendy Still
Jan Sale
Merrie M. Koshell
Jim L'Etoile
E.A. Mitchell
Roderick Q. Hickman
Gregory W. Harding
Marilyn Kalvelage
M. Shepherd
Yvette M. Page
Ernest C. Van Sant
Karl Kerkseick
Linda Rianda
R. Manuel
Gloria Rea
Carlos Sanchez
Paul Bestolarides
Ombudsmen's Office (7)

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

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

File# 2008-0122-01
BOARD OF EDUCATION
Educational Interpreters

The federal Individuals with Disabilities Education Improvement Act (IDEA 2004) requires that interpret-

ers for pupils who are deaf or hard of hearing meet state approved or recognized certification, licensing, registration or other comparable requirements as defined in the Code of Federal Regulations, section 300.156(b)(1). These amendments change the requirements for qualifications of personnel to provide educational interpreter services in public and private schools and agencies. This is the resubmittal of the file 07-1015-04 SR which was disapproved on December 5, 2007.

Title 5
 California Code of Regulations
 AMEND: 3051.16, 3065
 Filed 02/22/2008
 Effective 03/22/2008
 Agency Contact: Connie Diaz (916) 319-0860

File# 2008-0110-01
**CALIFORNIA INTEGRATED WASTE
 MANAGEMENT BOARD**

Closure and Postclosure Maintenance Cost Estimates

This regulatory action amends existing closure and postclosure maintenance regulations to clarify that cost estimates are to reflect the State's costs should the responsible party fail to perform closure or postclosure maintenance at a solid waste landfill. This regulatory action also amends requirements for use of insurance and the financial means test and includes cleanup language in the financial assurances regulations.

Title 27
 California Code of Regulations
 ADOPT: 21815 AMEND: 21780, 21790, 21800,
 21820, 21825, 21830, 21840, 21865, 22234, 22240,
 22243, 22244, 22246, 22247, 22248, 22249,
 22249.5, 22251, 22252, 22253, Division 2 — Ap-
 pendix 3
 Filed 02/25/2008
 Effective 02/25/2008
 Agency Contact: Robert Holmes (916) 341-6376

File# 2008-0131-01
CALIFORNIA STATE UNIVERSITY
Procedures — Additional Proposals

California State University is amending a regulation regarding the Standards for Student Conduct.

Title 5
 California Code of Regulations
 AMEND: 41301
 Filed 02/25/2008
 Effective 02/25/2008
 Agency Contact:
 Cassandra M. Andrews (562) 951-4500

File# 2008-0204-02
**DEPARTMENT OF CORRECTIONS AND
 REHABILITATION**
Earned Discharge From Parole

This regulatory action is a readoption of an operational necessity emergency to implement a new decision-making process with accompanying assessment forms, which are incorporated by reference. The purpose of this process is to effectively identify non-violent, non-serious offenders who are at low risk for a re-offense and who, following completion of 180 days of continuous uninterrupted parole, may be eligible for an earned discharge from parole.

Title 15
 California Code of Regulations
 ADOPT: 3075.4 AMEND: 3000
 Filed 02/25/2008
 Effective 02/25/2008
 Agency Contact: Randy Marshall (916) 341-7328

File# 2008-0219-02
DEPARTMENT OF FOOD AND AGRICULTURE
Light Brown Apple Moth Interior Quarantine

This emergency amendment will expand the existing regulated area in Marin County to include an area of Muir Beach as an additional quarantine area with respect to the light brown apple moth (LBAM; *Epiphyas postvittana*).

Title 3
 California Code of Regulations
 AMEND: 3434(b)
 Filed 02/22/2008
 Effective 02/22/2008
 Agency Contact: Stephen Brown (916) 654-1017

File# 2008-0123-02
DEPARTMENT OF INSURANCE
Sales to Military Personnel

This action adopts provisions which protect members of the armed forces from dishonest and predatory life insurance sales practices. The provisions adopted are patterned on the National Association of Insurance Commissioners' (NAIC) Military Sales Practices Model Regulation.

Title 10
 California Code of Regulations
 ADOPT: 2695.20, 2695.21, 2695.22, 2695.23,
 2695.24, 2695.25, 2695.26, 2695.27, 2695.28
 Filed 02/22/2008
 Effective 02/22/2008
 Agency Contact: George Teekell (415) 538-4390

File# 2008-0114-04
DEPARTMENT OF PESTICIDE REGULATION
Mill Assessment Criteria

This is a file submitted as a change without regulatory effect for processing under section 100 proposed by the Department of Pesticide Regulation seeking to amend Title 3, section 6393(b)(8) to be consistent with the changes made by Assembly Bill 126 (Ch. 279, Stat of 2007) which amended Business and Professions Code section 8698.5 relating to funds collected through the structural fumigation enforcement program. B&P section 8698.5 was changed by AB 126 to provide that the fees collected for the structural fumigation enforcement program shall be paid to the counties for that sole purpose and shall not be used to “supplant any other funds provided to the county agricultural commissioner pursuant to Section 12844 of the Food and Agricultural Code.” Food and Ag section 12844 authorizes the Department to develop regulations allocating funds from pesticide mill assessment. Currently, those mill assessment regulations, in particular 6393(b)(8), require that a county receiving structural fumigation enforcement funds must subtract the structural fumigation fund amount from any mill assessment allocation they are seeking. Thus 6393(b)(8) currently requires that structural fumigation funds supplant the mill assessment funds.

The proposed revision to 6393 is to make the regulation consistent with the statutory change.

Title 3
California Code of Regulations
AMEND: 6393
Filed 02/21/2008
Agency Contact:
Linda Irokawa-Otani (916) 445-3991

File# 2008-0130-04
OFFICE OF ADMINISTRATIVE LAW
Procedures for Adopting Emergency Regulations

This rulemaking action implements, interprets and makes more specific the amendments made to the Administrative Procedure Act by Assembly Bill 1302 (Horton) regarding procedures for adopting and reviewing emergency regulations. The action informs agencies (and provides model notice language) of their five working day notice responsibilities prior to submitting proposed emergency regulations to the Office of Administrative Law (OAL), except in cases of emergency situations posing such immediate serious harm that delay is not in the public interest. It itemizes the content of an appropriate emergency submission to OAL and specifies the factual standards and statements necessary for an agency to avoid the five working day notice requirement. It emphasizes the requirement for

five working days notice prior to an agency submitting emergency regulations for reoption and outlines the contents of an adequate agency request for approval of a reoption. It clarifies that OAL shall not consider comments sent directly to OAL in connection with Section 100 filings, but that OAL shall consider comments received directly by it in connection with emergency regulations for five calendar days following posting on OAL’s website, except in cases of emergencies for which delay would not be in the public interest. It also reminds the regulated public that it must simultaneously send emergency regulation comments to OAL and the adopting agency.

Title 1
California Code of Regulations
ADOPT: 48, 50, 52 AMEND: 55
Filed 02/25/2008
Effective 03/26/2008
Agency Contact: George C. Shaw (916) 323-4217

File# 2008-0108-02
OFFICE OF EMERGENCY SERVICES
T 19, Div. 2, Ch. 4, Article 4, Section 2729.2 and Appendices A I, II, III & B I, II, III

This change without regulatory effect conforms three Office of Emergency Services hazardous materials reporting forms and instructions in title 19 with counterpart forms in title 27, which were changed in December of 2007 by the California Environmental Protection Agency. The forms are used in administration of the Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (hereafter “Unified Program”). Forms and instructions must be the same in the Unified Program so that regulated entities use the same forms and follow the same instructions no matter which code they consult or which agency website they use to download forms and instructions from. This action also amends one title 19 regulation which makes reference to the now superseded forms.

Title 19
California Code of Regulations
AMEND: Division 2, Chapter 4, Article 4, Section 2729.2 and Appendices A I, II, III and Appendices B I, II, III
Filed 02/20/2008
Agency Contact: Brian A. Abeel (916) 845-8510

File# 2008-0206-04
STATE PERSONNEL BOARD
DMV—Special Examination and Appointment

The State Personnel Board is amending section 549.80, title 2, California Code of Regulations, entitled “Department of Motor Vehicles: Managerial and Supervisory Selection and Examination”. The amend-

ment is exempt from review by the Office of Administrative Law pursuant to Government Code Sections 18211 and 18213.

Title 2

California Code of Regulations

AMEND: 549.80

Filed 02/25/2008

Effective 01/22/2008

Agency Contact:

Dorothy Bacskai Egel (916) 653-1403

File# 2008-0206-03

VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

Reimbursement rates for mileage travel expenses

The Victim Compensation and Government Claims Board is amending section 714, title 2, California Code of Regulations, entitled "Transportation by Automobile". The amendment is exempt from review by the Office of Administrative Law pursuant to Government Code Section 11340.9(g), which exempt regulations that establish or fix rates, prices or tariffs.

Title 2

California Code of Regulations

AMEND: 714

Filed 02/25/2008

Effective 01/01/2008

Agency Contact: Kevin D. Kwong (916) 491-3742

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN SEPTEMBER 26, 2007 TO
FEBRUARY 27, 2008**

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

Title 1

02/25/08 ADOPT: 48, 50, 52 AMEND: 55

01/29/08 AMEND: 1, 6, 90, and Appendix A (Std. Form 400)

Title 2

02/25/08 AMEND: 549.80

02/25/08 AMEND: 714

01/07/08 AMEND: 1859.2, 1859.43, 1859.50, 1859.51, 1859.81, 1859.106

01/07/08 AMEND: 18531.61

01/03/08 ADOPT: 547.69, 547.70, 547.71
AMEND: 547.69 renumbered as 547.72, 547.70 renumbered as 547.74, 547.71 renumbered as 547.73

12/26/07 AMEND: div. 8, ch. 54, sec. 54300

12/19/07 ADOPT: 18413

12/18/07 ADOPT: 1859.324.1, 1859.330
AMEND: 1859.302, 1859.318, 1859.320, 1859.321, 1859.322, 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.326, 1859.328, 1859.329

12/17/07 AMEND: 58700

12/17/07 AMEND: 18351

12/13/07 ADOPT: 18531.2

12/13/07 AMEND: 18530.4

12/13/07 AMEND: 18421.2

12/06/07 AMEND: 649, 649.1 (Renumbered to 649.15), 649.1.1 (Renumbered to 649.16), 649.2 (Renumbered to 649.12), 649.3 (Renumbered to 649.24), 649.7 (Renumbered to 649.35), 649.8 (Renumbered to 649.36), 649.9 (Renumbered to 649.7), 649.10 (Renumbered to 649.22), 649.11 (Renumbered to 649.8), 649.12 (Renumbered to 649.9), 649.13 (Renumbered to 649.23), 649.14 (Renumbered to 649.27), 649.15 (Renumbered to 649.11), 649.16 (Renumbered to 649.30), 649.17 (Renumbered to 649.31), 649.18 (Renumbered to 649.26), 649.20, 649.21, 649.22 (Renumbered to 649.10), 649.71 (Renumbered to 649.25), 649.72 (Renumbered to 649.4), 650.1 (Renumbered to 649.6), 651.1 (Renumbered to 649.1), 651.2 (Renumbered to 649.14), 651.3 (Renumbered to 649.13), 651.4 (Renumbered to 649.34), 651.5 (Renumbered to 649.5), 652.1 (Renumbered to 649.39), 652.2 (Renumbered to 649.40), 653.1 (Renumbered to 649.42), 653.2 (Renumbered to 649.2), 653.3 (Renumbered to 649.41), 653.4 (Renumbered to 649.37), 653.5 (Renumbered to 649.38), 653.6 (Renumbered to 649.61), 654.1 (Renumbered to 649.3), 654.2

CALIFORNIA REGULATORY NOTICE REGISTER 2008, VOLUME NO. 10-Z

	(Renumbered to 649.43), 654.3	01/22/08	AMEND: 3591.5(a)
	(Renumbered to 649.46), 654.4	01/18/08	AMEND: 3423(b)
	(Renumbered to 649.44), 654.5	01/18/08	ADOPT: 3152
	(Renumbered to 649.45), 654.6	01/11/08	AMEND: 3406(b)
	(Renumbered to 649.47), 655.1	01/10/08	AMEND: 3433(b)
	(Renumbered to 649.51), 656.1	01/07/08	AMEND: 1180.3.1
	(Renumbered to 649.52), 656.2	12/26/07	AMEND: 3433(b)
	(Renumbered to 649.54), 656.3	12/26/07	AMEND: 3963
	(Renumbered to 649.55), 656.4	12/21/07	AMEND: 3434(b)
	(Renumbered to 649.53), 656.5	12/20/07	ADOPT: 606
	(Renumbered to 649.56), 656.6	12/19/07	AMEND: 3700(c)
	(Renumbered to 649.50), 656.7	12/19/07	AMEND: 3433(b)
	(Renumbered to 649.58), 656.8	12/10/07	AMEND: 3406(b)
	(Renumbered to 649.57), 657.1	12/06/07	AMEND: 3589
	(Renumbered to 649.59), 657.2	12/03/07	AMEND: 3434(b)
	(Renumbered to 649.60), 657.3	11/29/07	AMEND: 3434(b)
	(Renumbered to 649.62)	11/29/07	AMEND: 3591.2
		11/27/07	AMEND: 3406(b)
10/31/07	ADOPT: 18200	11/27/07	AMEND: 3433(b)
10/30/07	AMEND: 1138.10, 1138.30, 1138.72, 1138.90	11/21/07	AMEND: 3433(b)
10/17/07	ADOPT: 2970	11/16/07	AMEND: 3417(b)
10/15/07	ADOPT: 2291, 2292, 2293, 2294, 2295, 2296	11/15/07	AMEND: 3434
10/09/07	AMEND: 1896.98, 1896.99.100, 1896.99.120	11/14/07	AMEND: 3589
10/03/07	ADOPT: 1859.167.2, 1859.167.3 AMEND: 1859.2, 1859.163.3, 1859.167 REPEAL: 1859.167.1	11/14/07	AMEND: 3591.20
10/01/07	ADOPT: 1859.71.6, 1859.77.4 AMEND: 1859.2	11/09/07	AMEND: 3434(b)
		11/06/07	AMEND: 3406(b)
		11/01/07	AMEND: 1380.19, 1437.12
		10/29/07	AMEND: 3433(b)
		10/29/07	AMEND: 3406(b)
		10/25/07	AMEND: 3591.20 (a & b)
		10/15/07	AMEND: 3406(b)
		10/03/07	AMEND: 3433(b)
		09/28/07	AMEND: 3434(b)
Title 3			
02/22/08	AMEND: 3434(b)		
02/21/08	AMEND: 6393		
02/11/08	AMEND: 3434(b)		
02/08/08	AMEND: 3591.20		
02/04/08	AMEND: 3434(b)		
01/29/08	AMEND: 3700(c)		
01/28/08	AMEND: 3433(b)		
01/28/08	AMEND: 4500		
01/25/08	ADOPT: 6445, 6445.5, 6448, 6448.1, 6449, 6449.1, 6450, 6450.1, 6450.2, 6451, 6451.1, 6452, 6452.1, 6452.2, 6452.3(a), 6452.3(b), 6452.3(c), 6452.3(d), 6452.3(e), 6452.3(f), 6452.4, 6536(a), 6536(b)(1-3), 6536(b)(4) AMEND: 6000, 6400, 6450, 6450.1, 6450.2, 6450.3, 6452, 6453, 6502, 6624, 6626, 6784		
01/24/08	AMEND: 1391, 1391.1		
01/22/08	AMEND: 3591.6		
01/22/08	AMEND: 3591.6		
01/22/08	AMEND: 3591.2(a)		
		Title 4	
		01/22/08	AMEND: 8070, 8072, 8073
		01/10/08	AMEND: 1632
		12/26/07	AMEND: 12002, 12122, 12202, 12203.2, 12222
		11/21/07	ADOPT: 12347
		11/09/07	AMEND: 1371
		10/25/07	ADOPT: 1747, 1748
		10/24/07	AMEND: 1486
		Title 5	
		02/25/08	AMEND: 41301
		02/22/08	AMEND: 3051.16, 3065
		12/20/07	ADOPT: 1202 AMEND: 1200, 1204, 1204.5, 1205, 1207, 1207.1, 1207.2, 1207.5, 1209, 1210, 1211, 1211.5, 1215, 1215.5, 1216, 1217, 1218, 1219, 1225
		11/19/07	ADOPT: 11981.3, 11984.5, 11984.6, 11985, 11985.5, 11985.6 AMEND:

	11981 (renumber to 11980), 11982 (renumber to 11981), 11985 (renumber 11981.5), 11980 (renumber to 11982), 11986 (renumber to 11982.5), 11983, 11983.5, 11984	3520, 3530, 3530.10, 3530.20, 3530.30, 3530.40, 3540, 3610, 3615, 3620, 3620.05, 3620.10, 3630, 3640, 3650
11/05/07	ADOPT: 18134	REPEAL: 3100, 3200.000, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3310, 3400, 3405, 3410, 3415
10/29/07	ADOPT: 24010, 24011, 24012, 24013	
10/24/07	ADOPT: 11996, 11996.1, 11996.2, 11996.3, 11996.4, 11996.5, 11996.6, 11996.7, 11996.8, 11996.9, 11996.10, 11996.11	12/10/07 AMEND: 13035
10/02/07	AMEND: 80001	12/06/07 AMEND: 9100
10/01/07	AMEND: 43726	
Title 8		
12/31/07	AMEND: 3650	
12/28/07	AMEND: 1604.24	
12/11/07	ADOPT: 9767.16, 9813.1, 9813.2 AMEND: 9767.1, 9810, 9811, 9812, 9813	02/22/08 ADOPT: 2695.20, 2695.21, 2695.22, 2695.23, 2695.24, 2695.25, 2695.26, 2695.27, 2695.28
12/10/07	ADOPT: 13800	02/14/08 ADOPT: 2790.8, 2790.9
12/04/07	AMEND: 3214, Figure E-1 of 3231, Plate B-17	02/11/08 AMEND: 5101
11/29/07	ADOPT: 33485 AMEND: 32135, 32166, 32500, 32630, 32700, 32781, 32784, 32786, 33480, 61020, 61450, 61470, 61480, 81020, 81450, 81470, 81480, 91020, 91450, 91470, 91480	01/14/08 ADOPT: 2844 AMEND: 2840, 2842
11/26/07	ADOPT: 392.4 AMEND: 347, 350.1, 355, 359, 359.1, 371.2, 374, 385, 392.5	01/08/08 ADOPT: 2240.5 AMEND: 2240, 2240.1, 2240.2, 2240.3, 2240.4
11/05/07	AMEND: 4324	12/27/07 ADOPT: 1436, 1950.314.8
10/31/07	AMEND: 1704	12/19/07 AMEND: 2698.82(b), 2698.84, 2698.87, 2698.89.1
10/30/07	AMEND: 1532.2, 5203, 5206, 8359	11/30/07 AMEND: 2699.6611
10/23/07	ADOPT: 3324	11/30/07 ADOPT: 2699.6603, 2699.6604 AMEND: 2699.6603 (renumbered to 2699.6602), 2699.6605, 2699.6607, 2699.6608, 2699.6611, 2699.6625
10/10/07	ADOPT: 5349, 5350, 5351, 5352, 5353, 5354, 5355.1 AMEND: 5355, 5356, 5357, 5358	11/15/07 AMEND: 2498.6
10/10/07	AMEND: 4884	11/07/07 AMEND: 1409, 1422, 1423
10/09/07	AMEND: 2320.2	11/02/07 AMEND: 2498.6
10/03/07	ADOPT: 3458.1	10/31/07 AMEND: 2318.6, 2353.1
Title 9		
02/13/08	ADOPT: 3100, 3200.010, 3200.020, 3200.030, 3200.040, 3200.050, 3200.060, 3200.070, 3200.080, 3200.090, 3200.100, 3200.110, 3200.120, 3200.130, 3200.140, 3200.150, 3200.160, 3200.170, 3200.180, 3200.190, 3200.210, 3200.220, 3200.225, 3200.230, 3200.240, 3200.250, 3200.260, 3200.270, 3200.280, 3200.300, 3200.310, 3300, 3310, 3315, 3320, 3350, 3360, 3400, 3410, 3500, 3505, 3510,	10/10/07 AMEND: 2498.6
		10/10/07 AMEND: 2218.63(b)
		10/09/07 AMEND: 5.2001
		Title 11
		01/16/08 REPEAL: 1305
		12/19/07 ADOPT: 2021
		12/11/07 AMEND: 300
		12/10/07 AMEND: 1005, 1007, 1008
		10/15/07 AMEND: 1053, 1054, 1055, 1058, 1070
		09/28/07 AMEND: 51.19
		Title 13
		02/08/08 AMEND: 621, 691, 693, 699
		02/01/08 ADOPT: 1300, 1400, 1401, 1402, 1403, 1404, 1405 REPEAL: 1300, 1301, 1302, 1303, 1304, 1304.1, 1305, 1310, 1311, 1312, 1313, 1314, 1315, 1320, 1321, 1322, 1323, 1324, 1325, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1339.1, 1339.2, 1339.3, 1339.4, 1339.5, 1339.6, 1340, 1341,

	1342, 1343, 1344, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1370, 1371, 1372, 1373, 1374, 1375, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1420, 1421, 1422, 1423, 1424, 1425 and Article 15 text.		943.9.1, 923.9.2, 943.9.2 AMEND: 859.1, 916.9, 936.9, 956.9, 923.9, 943.9, 963.9
12/10/07	AMEND: 553.70	11/29/07	AMEND: 895.1, 1052, 1052.1, 1052.4
12/05/07	ADOPT: 2166, 2166.1, 2167, 2168, 2169, 2170, 2171, 2172, 2172.1, 2172.2, 2172.3, 2172.4, 2172.5, 2172.6, 2172.7, 2172.8, 2172.9, 2173, 2174 AMEND: 1956.8, 1958, 1961, 1976, 1978, 2111, 2122, 2136, 2141, Incorporated Test Procedures	11/29/07	ADOPT: 1093, 1093.1, 1093.2, 1093.3, 1093.4, 1093.6 AMEND: 895, 895.1, 1037
11/09/07	AMEND: 1968.2, 1968.5, 2035, 2037, 2038	11/28/07	AMEND: 163, 164
11/08/07	AMEND: 423.00	11/13/07	AMEND: 1038(i)
10/23/07	AMEND: 156.00	11/07/07	AMEND: 550, 551, 552
10/22/07	AMEND: 1090	11/05/07	AMEND: 825.05
10/17/07	AMEND: 811, 813	10/25/07	AMEND: 502
10/16/07	AMEND: 425.01	10/24/07	AMEND: 895.1, 898, 914.8, 916, 916.2, 916.9, 916.11, 916.12, 923.3, 923.9, 934.8, 936, 936.2, 936.9, 936.11, 936.12, 943.3, 943.9, 954.8, 956, 956.2, 956.9, 956.11, 956.12, 963.3, 963.9
10/15/07	AMEND: 2023.1, 2023.3, 2023.4	10/16/07	ADOPT: 1.46, 28.38, 28.41, 28.42 AMEND: 1.17, 1.59, 27.60, 27.90, 28.59, 159, 195
10/12/07	AMEND: 1201, 1212, 1212.5, 1213, 1234	10/12/07	AMEND: 815.05
		10/09/07	AMEND: 29.85
Title 14		Title 14, 27	
02/19/08	AMEND: 7.50	10/17/07	Title 14: 18050, 18051, 18060, 18070, 18072, 18075, 18077, 18078, 18081, 18104.4, 18105.4, 18105.6, 18209, 18304, 18304.2, 18306, 18307, 18831 Title 27: 21563, 21615, 21620, 21650, 21680
02/13/08	ADOPT: 704		
02/11/08	ADOPT: 787.0, 787.1, 787.2, 787.3, 787.4, 787.5, 787.6, 787.7, 787.8, 787.9	Title 15	
01/29/08	ADOPT: 25202, 25203, 25204, 25205, 25206, 25207, 25208, 25209, 25210, 25211	02/25/08	ADOPT: 3075.4 AMEND: 3000
01/28/08	ADOPT: 17987, 17987.1, 17987.2, 17987.3, 17987.4, 17987.5	02/04/08	ADOPT: 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.5, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1756, 1757, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, 1792
01/17/08	AMEND: 890	01/23/08	AMEND: 3190, 3191
01/10/08	AMEND: 1670	01/17/08	AMEND: 2275
01/08/08	AMEND: 251.3	01/08/08	AMEND: 3282
01/04/08	ADOPT: 11970 AMEND: 11900	12/28/07	ADOPT: 3269.1 AMEND: 3005, 3315, 3341.5
12/28/07	AMEND: 1280	12/18/07	AMEND: 3052, 3054.1
12/27/07	AMEND: 2.25, 2.30, 5.75, 5.86, 5.93, 5.95, 6.37, 7.50, 8.00, 670.5	12/11/07	AMEND: 176
12/26/07	ADOPT: 2990, 2995, 2997 AMEND: 2125, 2518	11/29/07	AMEND: 2600.1
12/26/07	AMEND: 2.00	11/29/07	AMEND: 2616
12/17/07	AMEND: 17210.2, 17210.4, 17855.2, 17862, 17867	10/22/07	REPEAL: 3999.1.8, 3999.1.9, 3999.1.10, 3999.1.11
12/17/07	AMEND: 632	10/18/07	ADOPT: 3486 AMEND: 3482, 3484, 3485
12/14/07	ADOPT: 700.4, 700.5 AMEND: 1.74, 29.15, 116, 300, 551, 705	10/16/07	AMEND: 3000, 3045.2, 3170.1, 3176, 3177, 3815
11/29/07	ADOPT: 916.9.1, 936.9.1, 916.9.2, 936.9.2, 916.11.1, 936.11.1, 923.9.1,	10/09/07	ADOPT: 2536.1
		10/01/07	ADOPT: 3075.4 AMEND: 3000

Title 16

02/19/08 AMEND: 1887.2, 1887.3
 02/15/08 AMEND: 30, 95, 95.2, 95.6
 02/04/08 AMEND: 2751
 02/01/08 ADOPT: 1028.2, 1028.3, 1028.4, 1028.5
 AMEND: 1021
 01/11/08 ADOPT: 3340.43 AMEND: 3340.42
 12/27/07 AMEND: 1833.1, 1870
 12/27/07 ADOPT: 1887.13, 1887.14 AMEND:
 1816.7, 1887.7
 12/18/07 AMEND: 1707, 1709.1, 1715, 1717,
 1746, 1780.1, 1781, 1787, 1790, 1793.8,
 Form 17M-13, Form 17M-14 REPEAL:
 1786
 12/13/07 ADOPT: 1044.4 AMEND: 1044, 1044.1,
 1044.3, 1044.5
 11/30/07 AMEND: 1805, 1806, 1816, 1816.1,
 1816.2, 1816.4, 1816.6, 1854, 1856,
 1858 REPEAL: 1833.3, 1855, 1857
 11/26/07 ADOPT: 4400, 4402, 4404, 4406, 4420,
 4422, 4424, 4426, 4428, 4443, 4500,
 4520, 4522, 4540, 4542
 11/26/07 ADOPT: 4580
 11/21/07 AMEND: 998
 11/19/07 AMEND: 1749
 11/07/07 AMEND: 1523
 11/02/07 ADOPT: 4440, 4442, 4444, 4446, 4448,
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 10/31/07 AMEND: 1707.2
 10/05/07 AMEND: 306, 306.1, 310, 390, 390.2,
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 10/04/07 AMEND: 1399.678
 10/01/07 AMEND: 3394.6

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 02/14/08 ADOPT: 30410, 30410.2 AMEND:
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 02/13/08 AMEND: 2500, 2502
 02/06/08 ADOPT: 2641.56, 2641.57 AMEND:
 2641.5, 2641.30, 2641.35, 2641.45,
 2641.55, 2643.5, 2643.10, 2643.15
 REPEAL: 2641.75, 2641.77
 02/06/08 ADOPT: 2641.56, 2641.57 AMEND:
 2641.5, 2641.30, 2641.35, 2641.45,
 2641.55, 2643.5, 2643.10, 2643.15
 REPEAL: 2641.75, 2641.77
 01/11/08 AMEND: 60201
 12/27/07 ADOPT: 93109.1, 93109.2 AMEND:
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 11/16/07 AMEND: 57310, 57332
 11/08/07 AMEND: 94508, 94509, 94510, 94511,
 94512, 94513, 94514, 94515, 94523

10/29/07 AMEND: 93119

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01/24/08 AMEND: 1699
 01/23/08 AMEND: 101, 171
 01/23/08 AMEND: 101, 171
 01/07/08 ADOPT: (new Division 2.1) 5000, 5200,
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 5215.6, 5216, 5217, 5218, 5219, 5220,
 5220.4, 5220.6, 5221, 5222, 5222.4,
 5222.6, 5223, 5224, 5225, 5226, 5227,
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 5232.4, 5232.6, 5232.8, 5233, 5234,
 5234.5, 5235, 5236, 5237, 5238, 5239,
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 5250, 5260, 5261, 5262, 5263, 5264,
 5265, 5266, 5267, 5268, 5270, 5271,
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 5323, 5323.2, 5323.4, 5323.6, 5323.8,
 5324, 5324.2, 5324.4, 5324.6, 5324.8,
 5325, 5325.4, 5325.6, 5326, 5326.2,
 5326.4, 5326.6, 5327, 5327.4, 5327.6,
 5328, 5328.5, 5331, 5332, 5332.4,
 5332.6, 5333, 5333.4, 5333.6, 5334,
 5334.4, 5334.6, 5335, 5335.4, 5334.6,
 5336, 5336.5, 5337, 5337.4, 5337.6,
 5338, 5338.4, 5338.6, 5340, 5341, 5342,
 5343, 5344, 5345, 5410, 5411, 5412,
 5420, 5421, 5422, 5423, 5424, 5430,
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 5443, 5444, 5450, 5451, 5452, 5454,
 5460, 5461, 5462, 5463, 5464, 5465,
 5510, 5511, 5512, 5521, 5521.5, 5522,
 5522.2, 5522.4, 5522.6, 5522.8, 5523,
 5523.1, 5523.2, 5523.3, 5523.4, 5523.5,
 5523.6, 5523.7, 5523.8, 5530, 5540,
 5541, 5550, 5551, 5560, 5561, 5562,
 5563, 5570, 5571, 5572, 5573, 5574,
 5575, 5576 AMEND: Renumber
 Division 2.1 to 2.2, renumber Division
 2.2 to 2.3, renumber Division 2.3 to 2.4,
 5090 (amend and renumber to 5600),
 5091 (amend and renumber to 5601),
 5092 (amend and renumber to 5602),
 5093 (amend and renumber to 5603),
 5094 (amend and renumber to 5604),
 5095 (amend and renumber to 5605),
 5200 (amend and renumber to 5700)
 REPEAL: 5010, 5011, 5012, 5020, 5021,
 5022, 5023, 5024, 5030, 5031, 5032,
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02/25/08 ADOPT: 21815 AMEND: 21780, 21790,
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21865, 22234, 22240, 22243, 22244,
22246, 22247, 22248, 22249, 22249.5,
22251, 22252, 22253, Division
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12/18/07 AMEND: 15290 (reports 3, 4 & 6),

15400.1, Division 3 — Subdivision 1 —
Chapters 1, 2, 3, 4, 5, 6

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01/10/08 AMEND: 1300.67.60

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11/28/07 AMEND: 47-110, 47-260, 47-301,
47-430, 47-601, 47-602, 47-620,
47-630 REPEAL: 47-610