



California Regulatory Notice Register

REGISTER 2016, NO. 33-Z

PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW

AUGUST 12, 2016

PROPOSED ACTION ON REGULATIONS

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

Conflict-of-Interest Code — Notice File No. Z2016-0802-02 1429
Amendment

Multi-County: California Mental Health Services Authority
Superior California Economic Development District

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

Surplus Funds — Notice File No. Z2016-0801-06 1430

TITLE 2. STATE PERSONNEL BOARD

Career Executive Assignment (CEA) Appeals — Notice File No. Z2016-0728-02 1431

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Asian Citrus Psyllid Interior Quarantine — Notice File No. Z2016-0727-01 1433

TITLE 4. CALIFORNIA HORSE RACING BOARD

Use of Riding Crop — Notice File No. Z2016-0729-01 1436

TITLE 4. STATE ATHLETIC COMMISSION

Examination of Boxer Applicants and Neuro Assessment — Notice File No. Z2016-0801-04 1439

TITLE 4. STATE ATHLETIC COMMISSION

Payment of Contestants — Notice File No. Z2016-0801-03 1442

TITLE 16. BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

Requirements — Professional Land Surveyor — Notice File No. Z2016-0802-09 1444

TITLE 16. BOARD OF PHARMACY

Renewal Requirements — Notice File No. Z2016-0802-04 1446

TITLE 16. CALIFORNIA ARCHITECTS BOARD

Form of Examinations — Notice File No. Z2016-0802-08 1450

(Continued on next page)

**Time-
Dated
Material**

TITLE 16. DENTAL BOARD OF CALIFORNIA
Statute of Limitations and Filing — Notice File No. Z2016-0802-06 1452

TITLE 19. OFFICE OF EMERGENCY SERVICES
Fee on Hazardous Materials Transported by Rail — Notice File No. Z2016-0802-03 1455

TITLE 22/MPP. DEPARTMENT OF SOCIAL SERVICES
Foster Care Services: Cultural Competency — Notice File No. Z2016-0801-01 1458

GENERAL PUBLIC INTEREST

CALIFORNIA GAMBLING CONTROL COMMISSION
*Notice of Rescheduled Public Hearing Concerning Playing Books for TPPPS and Gambling Businesses
(Previously Published in Notice Register 2016, No. 24-Z)* 1462

DEPARTMENT OF FISH AND WILDLIFE
Stemple Creek — Fish and Game Code Section 1653 1462

DEPARTMENT OF HEALTH CARE SERVICES
In-Home Supportive Services (IHHS) Overtime Hours 1463

FISH AND GAME COMMISSION
Livermore Tarplant Final Notice 1463

FISH AND GAME COMMISSION
Lassics Lupine Petition Notice of Receipt 1463

FISH AND GAME COMMISSION
Northern Spotted Owl 2nd Notice 1464

FISH AND GAME COMMISSION
Townsend's Big-Eared Bat Final Notice 1464

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
*Proposition 65 Developmental and Reproductive Toxicant Identification Committee (DARTIC)
Hazard Identification Materials (HIM) Notice — Chloroform* 1464

(Continued on next page)

DECISION NOT TO PROCEED

DEPARTMENT OF FISH AND WILDLIFE

Concerning Nest Regulations (Previously Published in Notice Register 2015, No. 33-Z) 1465

DEPARTMENT OF MOTOR VEHICLES

Concerning Annual Consumer Price Index Fee Adjustment (Previously Published in Notice Register 2016, No. 19-Z) 1465

SUSPENSION OF ACTION REGARDING UNDERGROUND REGULATIONS

OFFICE OF EMERGENCY SERVICES

CSTI Certification and Card Fee Increase 1466

SUMMARY OF REGULATORY ACTIONS

Regulations filed with the Secretary of State 1466

Sections Filed, March 2, 2016 to August 3, 2016 1471

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

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002-931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for \$205.00 (annual price). To order or make changes to current subscriptions, please call (800) 888-3600. "Periodicals Postage Paid in Saint Paul, MN." **POSTMASTER:** Send address changes to the: CALIFORNIA REGULATORY NOTICE REGISTER, Barclays, a subsidiary of West, a Thomson Reuters Business, P.O. Box 2006, San Francisco, CA 94126. The Register can also be accessed at <http://www.oal.ca.gov>.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, 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 Board at 2005 Evergreen Street, Suite 1550, Sacramento, California 95815 or by accessing the Board's website at <http://www.dbc.ca.gov/lawsregs/index.shtml>.

Website Access: Materials regarding this proposal can be found at Board's Web Site at: <http://www.dbc.ca.gov/lawsregs/index.shtml>.

TITLE 19. OFFICE OF EMERGENCY SERVICES

The California Governor's Office of Emergency Services (Cal OES) proposes to complete the certification process for the emergency regulations approved on June 20, 2016, OAL No. 2016-0609-01, after considering all comments, objections, and recommendations regarding the proposed action.

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.

PUBLIC HEARING

Cal OES has not scheduled a public hearing on this proposed action. However, Cal OES will hold a hearing if Cal OES receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

CONTACT PERSON

Inquiries or comments concerning the proposed rule-making action may be addressed to:

Name: Lusine M Sarkisyan,
Legislative & Regulatory
Analyst
Dental Board of California
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2027
Fax No.: (916) 263-2140
E-Mail Address: Lusine.Sarkisyan@dca.ca.gov

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to Cal OES. Comments may also be submitted by e-mail to HMBR.Regis@CalOES.ca.gov. The written comment period closes at 5:00 p.m. on September 26, 2016. Cal OES will consider only comments received at the Cal OES Headquarters by that time. Submit comments to:

Mark Ghilarducci, Director
c/o Jennifer Plescia, Senior Counsel
Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, CA 95655

The backup contact person is:

Name: Sarah Wallace,
Assistant Executive Officer
Dental Board of California
Address: 2005 Evergreen Street, Suite 1550
Sacramento, CA 95815
Telephone No.: (916) 263-2187
Fax No.: (916) 263-2140
E-Mail Address: Sarah.Wallace@dca.ca.gov

AUTHORITY AND REFERENCE

Government Code Section 8574.32(a)(1), 8574.32(b)(1), 8574.44(c) authorizes Cal OES to adopt these regulations. The proposed regulations implement, interpret, and make specific sections 8574.30(f), (h), 8574.32(a)(1), 8574.32(b)(4)(B), 8574.32(b)(1)-(5), 8574.32(c), 8574.32(f), 8574.40, 8574.44(e)(1)-(e)(7), 8574.44(g)(1)-(3), and 8574.44(h) Government Code.

INFORMATIVE DIGEST

The purpose of the Regional Railroad Accident Preparedness and Immediate Response Regulations is to

establish a schedule of fees to be paid for the 25 most hazardous material commodities that are transported by rail in California. The fees collected by the railroad will be utilized to build, develop, and enhance emergency response capabilities in the event of a hazardous material incident involving a railroad in California. The objective of this rulemaking is to address the gaps in California's ability to respond to, and mitigate the effects of, an incident involving a hazardous material commodity transported by rail in California, thereby reducing the exposure of the owners of such hazardous material commodities.

Protection of the health and safety of Californians and the environment is of the utmost importance. Given the volume and volatility of the hazardous material commodities transported by rail through California, there is an ever-present danger of the consequences that will emerge from a devastating incident involving the transport by rail of hazardous material commodities.

Creating and enhancing a robust statewide hazardous material spill response capability will directly benefit the owners of the commodities being transported, in that the destruction following an incident involving such a hazardous material commodity being transported by rail will be substantially reduced. Expenditures from the revenue generated from this rulemaking will directly address California's existing gaps in its ability to effectively respond to and recover from an incident involving a hazardous material commodity transported by rail in California. California's first responders will be better equipped and trained to effectively respond to a release of a hazardous material commodity transported by rail in California, thereby mitigating the effects of such an incident. This mitigation will reduce the exposure of the owners of hazardous material commodities being transported by rail in that it will save lives, property, and the environment.

Anticipated Benefits of the Proposed Regulations:

The objective of the regulations is to mitigate a release of hazardous material transported by rail in California by collecting fees from hazardous material commodity owners in order to build, develop, and enhance emergency response capabilities in the event of a hazardous material incident involving a railroad in California. Expenditures from the revenue generated from this rulemaking will address California's existing gaps in its ability to effectively respond to and recover from an incident involving a hazardous material commodity transported by rail in California. California's first responders will be better equipped and trained to effectively respond to a release of a hazardous material commodity transported by rail in California, thereby mitigating the effects of such an incident by saving lives, property, and the environment.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Regional Railroad Accident Preparedness and Immediate Response Program and Fund, to which this proposed rulemaking relates, were created through legislation in 2015. There are no existing regulations pertaining to this matter. Cal OES conducted a review for any regulations that would relate to or affect this area. This proposed rulemaking is not inconsistent or incompatible with any existing state regulations. Similarly, there are no federal regulations or statutes related to this matter. Cal OES concluded that these are the only regulations that concern fees imposed on the 25 most hazardous material commodities transported by rail in California and collected to mitigate the effects of an incident by saving lives, property, and the environment.

DISCLOSURES REGARDING THE
PROPOSED ACTION

Cal OES has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: The proposed regulations will result in additional costs to Cal OES and the Board of Equalization for administration of the Regional Railroad Accident Preparedness and Immediate Response Fund. However, Cal OES received appropriated funds, in the form of a loan, to cover the initial costs of this program. Once this loan has been reimbursed pursuant to Government Code section 8574.44, it is anticipated that a portion of the revenue generated from the funds created by this rulemaking will cover the administrative costs incurred by Cal OES and the Board of Equalization in administering this program. The proposed rulemaking will not result in costs to any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

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

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

Cost impacts on a representative private person or businesses: The fee established pursuant to the enabling regulations is \$45. The fee is to be imposed on the owners of the 25 most hazardous material commodities transported by rail in California as established in the regulations. The enabling statute authorizes the railroad to collect an amount not to exceed 5 percent of the fee collected to offset the administrative cost to collect the fee. Accordingly, \$47.25 is the maximum amount an

owner may incur per railcar that transports a hazardous material commodity by rail in California.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: Although the regulations will impact businesses, specifically railroads and owners of the hazardous material commodities identified on the list set forth in the regulations, Cal OES concludes that the economic impact will not be significant.

BNSF Railway Company and Union Pacific Railroad Company assert in pending litigation that the hazmat fee would discourage interstate commerce in hazardous materials that are vital to the Nation's industrial and agricultural economy. (BNSF Railway Company and Union Pacific Railroad Company v. California State Board of Equalization et al, Case 3:16-cv-04311, Complaint for Declaratory and Injunction Relief, ¶3.) It is further asserted by BNSF Railway Company and Union Pacific Railroad Company that it is anticipated that some shippers "will determine that certain shipments are simply uneconomical, or will engage in less commerce in hazardous material in California, thus using less of [BNSF Railway and Union Pacific Railroad Company's] transportation services. (Id. at ¶46.) However, to date, no judicial determination has been rendered regarding these assertions.

The California Taxpayers Association, et al. (collectively "Petitioners"), Case No. 34-2016-80002357, brought a facial challenge to the constitutionality of certain portions of the enabling statute (SB84). Through the facial challenge, "[p]etitioners argued that the public will be harmed because hazmat owners will switch to using trucks rather than rail to transport their product in order to avoid the fee. According to Petitioners, railroads are statistically safer than trucks, and switching to trucks to transport hazardous materials will thus increase the risks to public safety." (California Taxpayers Association v. California Governor's Office of Emergency Services, et al., Sacramento County Superior Court Case No. 34-2016-80002357, Order Denying Preliminary Injunction, Pg. 13.) The Court concluded that Petitioners "fail[ed] to demonstrate that hazmat owners will actually switch to using trucks in order to avoid the fee. Instead, they proffer[ed] declarations from several hazardous materials owners who state[d] that they 'will *consider* switching to truck to avoid the new charge. [citations omitted.]'" (Id.) The Court further concluded "[t]hat some owners may *consider* switching to truck in order to avoid the fee does not demonstrate that they will actually do so once the fee goes into effect, much less that not granting a preliminary injunction will lead to increase to public safety." (Id.)

Based on the foregoing, Cal OES concludes that although there will be an economic impact it will not be significant so to adversely impact businesses directly, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: None.

Determination of Effect on Small Business: The regulations will not affect small business because the railroads and owners of hazardous material commodities, who transport those commodities by rail in California, do not fall within the definition of small business set forth in Government Code section 11342.610.

Results of the Economic Impact Analysis/Assessment, Including Benefits:

There is no indication that the regulations will: (1) create or eliminate jobs within the state; (2) create new or eliminate existing businesses within the state; and, (3) expand businesses currently doing business within the state. Finally, the benefits of the regulations to the health and welfare of California residents, worker safety, and the state's environment are incidental but important relative to the direct benefit to the owners as set forth in the enabling statute. The incidental benefits include enabling Cal OES to address the above-discussed gaps to build out a comprehensive and reliable hazardous material capability that can effectively respond to the cascading impacts of an incident or derailment resulting in a catastrophic release of hazardous materials in order to mitigate damages, respond to and contain any catastrophic release of hazardous materials.

CONSIDERATION OF ALTERNATIVES TO THE REGULATIONS

In accordance with Government Code section 11346.5, subdivision (a)(13), Cal OES must determine that no reasonable alternative it considered 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 or would be more cost-effective to affected private person and equally effective in implementing the statutory policy or other provision of law.

Cal OES has determined there are no reasonable alternatives to the regulations as the enabling statute required Cal OES to promulgate regulations in order to establish a schedule of fees. Additionally, Government Code section 11346.2(b)(4)(C) does not require an agency to artificially construct alternatives or describe unreasonable alternatives.

However, Cal OES invites interested persons to provide comments, alternatives, or arguments by way of

written comment, or at a public hearing if requested, with respect to the proposed regulations during the comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Jennifer L. Plescia, Senior Counsel
Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, CA 95655
Telephone: (916) 845-8815

The backup contact person for these inquiries is:

Emily Holland, Policy Analyst
Office of Executive Programs & Policy Analysis
Governor's Office of Emergency Services
3650 Schriever Avenue
Mather, CA 95655
Telephone: (916) 845-8828

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Ms. Plescia at the above address or at HMBR.Regis@CalOES.ca.gov.

**AVAILABILITY OF STATEMENT OF REASONS,
TEXT OF PROPOSED REGULATIONS, AND
RULEMAKING FILE**

Cal OES will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of the emergency rulemaking packet, including comments received during the emergency rulemaking period, this notice, the proposed regulatory text, and the initial statement of reasons. Copies may be obtained by contacting Ms. Plescia at the address, email, or phone number listed above.

**AVAILABILITY OF CHANGED OR
MODIFIED TEXT**

After all timely and relevant comments are received by Cal OES, Cal OES may adopt the proposed regulations substantially as described in this notice. If Cal OES makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to

the public for at least 15 days before Cal OES adopted the regulations as revised.

Please send requests for copies of any modified regulations to the attention of Ms. Plescia at the address or email indicated above. Cal OES 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 Ms. Plescia at the above address or email.

**AVAILABILITY OF DOCUMENTS ON
THE INTERNET**

Copies of the Emergency Rulemaking File, Notice of the Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed at www.caloes.ca.gov.

**TITLE 22/MPP. DEPARTMENT OF
SOCIAL SERVICES**

ORD #0116-01

ITEM # 1: Foster Care Services: Cultural Competency

The CDSS hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held September 28, 2016, as follows:

Office Building # 9
744 P Street Room 204
Sacramento, California

The public hearing will convene at 10:00 a.m. and will remain open only as long as attendees are presenting testimony. The purpose of the hearing is to receive public testimony, not to engage in debate or discussion. The Department will adjourn the hearing immediately following the completion of testimony presentations. The above-referenced facility is accessible to persons with disabilities. If you are in need of a language interpreter at the hearing (including sign language), please notify the Department at least two weeks prior to the hearing.

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on September 28, 2016.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or