State of California
Office of Administrative Law

In re:
Public Employees Retirement System

Regulatory Action:

Title 2, California Code of Regulations

Adopt sections: 570.5
Amend sections: 571(b)
Repeal sections:

NOTICE OF APPROVAL OF REGULATORY ACTION

Government Code Section 11349.3

OAL File No. 2011-0531-04 S

In this regulatory action, the California Public Employees' Retirement System adopts and amends regulations pertaining to "compensation earnable," as applied to the calculation of retirement benefits, pursuant to Government Code sections 20630, 20636, and 20636.1. Specifically, the regulations implement the requirements for compensation earnable that "payrate" and "special compensation" documents be public records available for public scrutiny. The "subject of regulations" is: "Publicly Available Pay Schedule and Written Labor Policy or Agreement."

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 8/10/2011.

Date: 7/11/2011

Bradley J. Norris
Senior Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/
Acting Director

Original: Anne Stausboll
Copy: Christina Nutley
Copy: James Croft

STATE OF CALIFORNIA EDMUND G. BROWN, Jr., Governor

OFFICE OF ADMINISTRATIVE LAW
0 Capitol Mall, Suite 1250
acramento, CA 95814
916) 323-6225 FAX (916) 323-6826

DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

MEMORANDUM

TO: Christina Nutley
FROM: OAL Front Desk
DATE: 7/19/2011
RE: Return of Approved Rulemaking Materials
OAL File No. 2011-0531-04S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2011-0531-04S regarding Publicly Available Pay Schedule and Written Labor Policy or Agreement).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "....no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2011-0125-08	2011-0531-04S	

For use by Office of Administrative Law (OAL) only

2011 MAY 31 PM 3:33

OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

2011 JUL 11 PM 2:28

DEBRA BOWEN
SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY
California Public Employees' Retirement System

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE
☐ Notice re Proposed Regulatory Action ☐ Other

4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional)

OAL USE ONLY — ACTION ON PROPOSED NOTICE
☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn

NOTICE REGISTER NUMBER: 2011 #5-Z

PUBLICATION DATE: 2-4-2011

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Publicly Available Pay Schedule and Written Labor Policy or Agreement

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: 570.5

AMEND: 571(b)

REPEAL:

TITLE(S): 2

3. TYPE OF FILING

☒ Regular Rulemaking (Gov. Code §11346)
☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
☐ Emergency (Gov. Code, §11346.1(b))
☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
☐ Emergency Readopt (Gov. Code, §11346.1(h))
☐ File & Print
☐ Other (Specify)
☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
☒ Effective 30th day after filing with Secretary of State
☐ Effective on filing with Secretary of State
☐ §100 Changes Without Regulatory Effect
☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
☐ Department of Finance (Form STD. 399) (SAM §6660)
☐ Fair Political Practices Commission
☐ State Fire Marshal
☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Christina Nutley, Acting Regulations Coordinator	(916)795-2397	(916)795-4607	christina_nutley@calpers.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE: Stephen W. Kessler

DATE: 5-20-11

TYPED NAME AND TITLE OF SIGNATORY
Stephen W. Kessler, DEO - Operations and Technology

For use by Office of Administrative Law (OAL) only

APPROVED

FINAL TEXT FOR PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT REGULATIONS

California Code of Regulations, title 2, §§ 570.5 and 571

Title 2. Administration
Division 1. Administrative Personnel
Chapter 2. Board of Administration of Public Employees' Retirement System
Subchapter 1. Employees' Retirement System Regulations
Article 4. Contracts

ADD 2 CCR § 570.5

§ 570.5. Requirement for a Publicly Available Pay Schedule.

(a) For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

(1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
(2) Identifies the position title for every employee position;
(3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
(4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
(5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
(6) Indicates an effective date and date of any revisions;
(7) Is retained by the employer and available for public inspection for not less than five years; and
(8) Does not reference another document in lieu of disclosing the payrate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

(1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
(2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
(3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

NOTE: Authority cited: Sections 20120 and 20121, Government Code. Reference:

Sections 20630, 20636 and 20636.1, Government Code.

AMEND §571(b)

§ 571. Definition of Special Compensation.

(a) – (No changes).

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:

(A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation;

(2) Available to all members in the group or class;
(3) Part of normally required duties;
(4) Performed during normal hours of employment;
(5) Paid periodically as earned;
(6) Historically consistent with prior payments for the job classification;
(7) Not paid exclusively in the final compensation period;
(8) Not final settlement pay; and
(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(c) – (No changes).

(d) – (No changes).

NOTE: Authority cited: Sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121, Government Code; Calif. Const. Art. XVI, Section 17. Reference: Sections 20630, 20636, 20636.1 and 20691, Government Code.

Research Note: - (No changes).

REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2011-0125-08	2011-0531-04S	

For use by Office of Administrative Law (OAL) only

2011 MAY 31 PM 3:38

OFFICE OF ADMINISTRATIVE LAW

2011 JUL 11 PM 2:28

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Public Employees' Retirement System

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE

TITLE(S)

FIRST SECTION AFFECTED

2. REQUESTED PUBLICATION DATE

3. NOTICE TYPE
☐ Notice re Proposed Regulatory Action ☐ Other

4. AGENCY CONTACT PERSON

TELEPHONE NUMBER

FAX NUMBER (Optional)

OAL USE ONLY

ACTION ON PROPOSED NOTICE
☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn

NOTICE REGISTER NUMBER: 2011, #5-Z

PUBLICATION DATE: 2-4-2011

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)
Publicly Available Pay Schedule and Written Labor Policy or Agreement

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT: 570.5

AMEND: 571(b)

REPEAL:

TITLE(S): 2

3. TYPE OF FILING

☒ Regular Rulemaking (Gov. Code §11346)
☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
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☐ Department of Finance (Form STD. 399) (SAM §6660)
☐ Fair Political Practices Commission
☐ State Fire Marshal
☐ Other (Specify)

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
Christina Nutley, Acting Regulations Coordinator	(916)795-2397	(916)795-4607	christina_nutley@calpers.ca.gov

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE: 5-20-11

TYPED NAME AND TITLE OF SIGNATORY
Stephen W. Kessler, DEO - Operations and Technology

For use by Office of Administrative Law (OAL) only

APPROVED

FINAL TEXT FOR PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT REGULATIONS

California Code of Regulations, title 2, §§ 570.5 and 571

Title 2. Administration
Division 1. Administrative Personnel
Chapter 2. Board of Administration of Public Employees' Retirement System
Subchapter 1. Employees' Retirement System Regulations
Article 4. Contracts

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(2) Identifies the position title for every employee position;
(3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
(4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
(5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
(6) Indicates an effective date and date of any revisions;
(7) Is retained by the employer and available for public inspection for not less than five years; and
(8) Does not reference another document in lieu of disclosing the payrate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

(1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
(2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
(3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

NOTE: Authority cited: Sections 20120 and 20121, Government Code. Reference:

Sections 20630, 20636 and 20636.1, Government Code.

AMEND §571(b)

§ 571. Definition of Special Compensation.

(a) – (No changes).

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:

(A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation;

(2) Available to all members in the group or class;
(3) Part of normally required duties;
(4) Performed during normal hours of employment;
(5) Paid periodically as earned;
(6) Historically consistent with prior payments for the job classification;
(7) Not paid exclusively in the final compensation period;
(8) Not final settlement pay; and
(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(c) – (No changes).

(d) – (No changes).

NOTE: Authority cited: Sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121, Government Code; Calif. Const. Art. XVI, Section 17. Reference: Sections 20630, 20636, 20636.1 and 20691, Government Code.

Research Note: - (No changes).

California Public Employees' Retirement System
Investment Office
P.O. Box 2749
Sacramento, CA 95812-2749
TTY: (916) 795-3240
(916) 795-3400 phone
www.calpers.ca.gov

Memorandum

July 8, 2011

To: BRAD NORRIS
Senior Staff Counsel
Office of Administrative Law

From: JAMES CROFT
Regulations Coordinator
California Public Employees' Retirement System

Subject: OAL FILE NUMBER 2011-0531-04S; "PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT" REGULATIONS

The Office of Administrative Law is authorized to make the following substitutions and corrections to the above-referenced regulations and rulemaking file:

(1) Substitute the enclosed revised Final Regulation Text, with non-substantial changes, behind each copy of the Form 400 for filing with the Secretary of State and in Tab H of the rulemaking file.

(2) Substitute the enclosed revised Table of Contents at the beginning of the rulemaking file, and substitute the revised and updated "Rulemaking Declaration Statement" that concludes the Table of Contents in Tab A of the rulemaking file.

(3) Substitute the enclosed corrected Standard Form 399 in Tab B of the rulemaking file.

(4) Substitute the enclosed Notice of Proposed Regulatory Action with Informative Digest in Tab C of the rulemaking file. This is corrected version of the Notice of Proposed Regulatory Action that was made available to the public.

(5) Substitute the enclosed revised Final Statement of Reasons in Tab J of the rulemaking file.

(6) Remove the blank pages (with no text) from the rulemaking file.

Please contact me at (916) 795-9528 if you have any questions or need additional information.

California Public Employees' Retirement System
Investment Office
P.O. Box 2749
Sacramento, CA 95812-2749
TTY: (916) 795-3240
(916) 795-3400 phone
www.calpers.ca.gov

2011 JUL -8 P 12:50

OFFICE OF
ADMINISTRATIVE LAW

Memorandum

July 8, 2011

To: BRAD NORRIS
Senior Staff Counsel
Office of Administrative Law

From: JAMES CROFT
Regulations Coordinator
California Public Employees' Retirement System

Subject: OAL FILE NUMBER 2011-0531-04S; "PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT" REGULATIONS

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(6) Remove the blank pages (with no text) from the rulemaking file.

Please contact me at (916) 795-9528 if you have any questions or need additional information.

RULEMAKING FILE

TITLE 2
CALIFORNIA CODE OF REGULATIONS

PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT
Adopt: Section 570.5
Amend: Section 571(b)

Notice Date: February 4, 2011
Notice File Number: Z-2011-0125-08

California Public Employees' Retirement System
Board of Administration

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PART A

RULEMAKING DECLARATION STATEMENT

RULEMAKING DECLARATION STATEMENT
(Government Code Section 11347.3)
(CCP 2015.5)

I, James Croft, Regulations Coordinator for the California Public Employees' Retirement System, do certify under penalty of perjury under the laws of the State of California, that I compiled the rulemaking file for the "Publicly Available Pay Schedule and Written Labor Policy or Agreement" regulation, the adoption of section 570.5 and amendment to section 571(b) of Title 2 of the California Code of Regulations, that the record was initially closed on May 17, 2011, and that the record was reopened on June 30, 2011, for corrections and reclosed on July 08, 2011, and that this rulemaking file is complete as submitted.

7-8-11
Date

James Croft
Signature

PART B

STANDARD FORM 400
STANDARD FORM 399

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
	Z-2011-0125-08		

For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

JAN 25 '11 FEB 04 '11

Office of Administrative Law

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: California Public Employees' Retirement System (CalPERS)

AGENCY FILE NUMBER (If any):

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Publicly Available Pay Schedule and Written Labor Policy or Agreement	2	570.5	February 4, 2011

3. NOTICE TYPE	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
[X] Notice re Proposed Regulatory Action [ ] Other	Veronica Mora	(916) 795-0713	(916) 795-4607

OAL USE ONLY	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE
	[ ] Approved as Submitted [ ] Approved as Modified [ ] Disapproved/ Withdrawn		

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)

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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT

AMEND

TITLE(S)

REPEAL

3. TYPE OF FILING

- [ ] Regular Rulemaking (Gov. Code §11346)
- [ ] Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- [ ] Emergency (Gov. Code, §11346.1(b))
- [ ] Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
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- [ ] Emergency Readopt (Gov. Code, §11346.1(h))
- [ ] File & Print
- [ ] Other (Specify) _____
- [ ] Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- [ ] Print Only

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- [ ] Effective 30th day after filing with Secretary of State
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- [ ] Department of Finance (Form STD. 399) (SAM §6660)
- [ ] Fair Political Practices Commission
- [ ] State Fire Marshal
- [ ] Other (Specify) _____

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE

TYPED NAME AND TITLE OF SIGNATORY

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT

GULATIONS AND ORDERS)

/99 (REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
CalPERS	James Croft	916-795-9528
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER
Publicly Available Pay Schedule and Written Labor Policy or Agreement		Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- ☐ a. Impacts businesses and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☑ h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) Requires that all pay schedules be publicly available for review during normal business hours.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

ter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ _____

a. Initial costs for a small business: $ _____ Annual ongoing costs: $ _____ Years: _____

b. Initial costs for a typical business: $ _____ Annual ongoing costs: $ _____ Years: _____

c. Initial costs for an individual: $ _____ Annual ongoing costs: $ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): $ _____

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? $ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: $ _____	Cost: $ _____
Alternative 1:	Benefit: $ _____	Cost: $ _____
Alternative 2:	Benefit: $ _____	Cost: $ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

Will the estimated costs of this regulation to California business enterprises exceed $10 million ? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 1:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 2:	$ _____	Cost-effectiveness ratio: $ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____

☐ 2. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____

court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;

☐ d. is issued only in response to a specific request from the _____

_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section

_____ of the _____ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

Savings of approximately $ _____ annually.

☑ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

☑ 5. No fiscal impact exists because this regulation does not affect any local entity or program.

☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year. It is anticipated that State agencies will:

☐ a. be able to absorb these additional costs within their existing budgets and resources.

☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.

☐ 2. Savings of approximately $ _____ in the current State Fiscal Year.

☑ 3. No fiscal impact exists because this regulation does not affect any State agency or program.

☐ 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year.

☐ 2. Savings of of approximately $ _____ in the current State Fiscal Year.

☑ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

☐ 4. Other.

FISCAL OFFICER SIGNATURE	James Cortés	DATE 7/6/11
AGENCY SECRETARY[1] APPROVAL/CONCURRENCE	Stephen W. Kessler	DATE 7-7-11
DEPARTMENT OF FINANCE[2] APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER	DATE

1. *The signature attests that the agency has completed the STD.399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

2. *Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD.399.*

STATE OF CALIFORNIA — DEPARTMENT OF FINANCE

ECONOMIC AND FISCAL IMPACT STATEMENT

(REGULATIONS AND ORDERS)

(REV. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME	CONTACT PERSON	TELEPHONE NUMBER
CalPERS	Veronica Mora	916-795-0713
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400		NOTICE FILE NUMBER
Publicly Available Pay Schedule and Written Labor Policy or Agreement		Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- ☐ a. Impacts businesses and/or employees
- ☐ b. Impacts small businesses
- ☐ c. Impacts jobs or occupations
- ☐ d. Impacts California competitiveness
- ☐ e. Imposes reporting requirements
- ☐ f. Imposes prescriptive instead of performance
- ☐ g. Impacts individuals
- ☑ h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)

h. (cont.) Requires that all pay schedules be publicly available for review during normal business hours.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits.): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (List areas.): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? $ _____

a. Initial costs for a small business: $ _____ Annual ongoing costs: $ _____ Years: _____

b. Initial costs for a typical business: $ _____ Annual ongoing costs: $ _____ Years: _____

c. Initial costs for an individual: $ _____ Annual ongoing costs: $ _____ Years: _____

Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): $ _____

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: _____ and the number of units: _____

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: $ _____

C. ESTIMATED BENEFITS (Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____

2. Are the benefits the result of : ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? $ _____

D. ALTERNATIVES TO THE REGULATION (Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation:	Benefit: $ _____	Cost: $ _____
Alternative 1:	Benefit: $ _____	Cost: $ _____
Alternative 2:	Benefit: $ _____	Cost: $ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No

Explain: _____

E. MAJOR REGULATIONS (Include calculations and assumptions in the rulemaking record.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed $10 million ? ☐ Yes ☐ No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 1:	$ _____	Cost-effectiveness ratio: $ _____
Alternative 2:	$ _____	Cost-effectiveness ratio: $ _____

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

☐ a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

☐ b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____

☐ 2. Additional expenditures of approximately $ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

☐ a. implements the Federal mandate contained in _____

☐ b. implements the court mandate set forth by the _____

court in the case of _____ vs. _____

☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;

☐ d. is issued only in response to a specific request from the _____

_____, which is/are the only local entity(s) affected;

☐ e. will be fully financed from the _____ (FEES, REVENUE, ETC.) authorized by Section

_____ of the _____ Code;

☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit;

☐ g. creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

☐ 3. Savings of approximately $ _____ annually.

☑ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

☐ No fiscal impact exists because this regulation does not affect any local entity or program.

☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year. It is anticipated that State agencies will:

☐ a. be able to absorb these additional costs within their existing budgets and resources.

☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.

☐ 2. Savings of approximately $ _____ in the current State Fiscal Year.

☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.

☑ 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

☐ 1. Additional expenditures of approximately $ _____ in the current State Fiscal Year.

☐ 2. Savings of of approximately $ _____ in the current State Fiscal Year.

☑ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

☐ 4. Other.

F. OFFICER SIGNATURE	James Cortes	DATE 1-21-11
AGENCY SECRETARY [1] APPROVAL/CONCURRENCE	Stephen W. Kessler	DATE 1-25-11
DEPARTMENT OF FINANCE [2] APPROVAL/CONCURRENCE	PROGRAM BUDGET MANAGER James Cortes	DATE 1-21-11

1. *The signature attests that the agency has completed the STD.399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or department not under an Agency Secretary must have the form signed by the highest ranking official in the organization.*

2. *Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD.399.*

PART C

NOTICE OF PROPOSED REGULATORY ACTION WITH INFORMATIVE DIGEST

Title 2. California Public Employees' Retirement System

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document. This proposed regulatory action clarifies and makes specific requirements for publicly available pay schedule and labor policy or agreement. As used in this regulation, labor policy or agreement means any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 pm on March 21, 2011. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; e-mail at: Veronica_Mora@calpers.ca.gov; or mailed to the following address:

Veronica Mora, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, California 94229-2707
Telephone: (916) 795-0713

III. PUBLIC HEARING

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

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

The CalPERS Board of Administration (Board) has general authority to take regulatory action under Government Code section 20121. The Board has specific authority to adopt proposed sections 570.5 and 571 under Government Code section 20636 and 20636.1.

This action would be declaratory of the existing law, and serve an informative function for workers and employers who are unfamiliar with these existing laws.

Authority cited for section 570.5 is sections 20120 and 20121 of the Government Code. Reference is sections 20630, 20636 and 20636.1 of the Government Code.

Authority cited for section 571 is sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121 of the Government Code. Reference is sections 20630, 20636, 20636.1 and 20691 of the Government Code.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensation be limited to items included in a labor policy or agreement, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as

well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to public employees working in positions qualified for membership in CalPERS.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action imposes a mandate on local agencies or school districts, related to the publication of pay schedules.

B. COST OR SAVINGS TO ANY STATE AGENCY: The proposed regulatory action does not impact costs or savings for any state agency.

C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500, et seq.

D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.

E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action does not impact any federal funding to the state.

F. ADVERSE ECONOMIC IMPACT: The proposed regulatory action has no significant statewide adverse economic impact directly affecting businesses, including the ability of business in California to compete with business in other states.

G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA: The proposed regulatory action 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.

I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no effect.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to 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 during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Tomi Jimenez
Employer Services Division
California Public Employees' Retirement System
P.O. Box 942709
Telephone: (916)795-0340

E-mail: tomi_jimenez@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Veronica Mora, CalPERS Regulations Coordinator, at the address shown above, or (916) 795-0713 (veronica_mora@calpers.ca.gov).

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Veronica Mora, Regulations Coordinator, at the address shown in Section II.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed regulations after the public comment period has closed. It may amend the proposed regulations as modified, if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments, who testified or submitted written comments at the public hearing, or asked to be kept informed as to the outcome of this regulatory action.

XIII. One can access the regulatory material regarding this action at CalPERS' website at www.calpers.ca.gov under About CalPERS > Legislation, Regulations & Statutes > Regulatory Actions > Current Regulatory Actions.

PART D

TEXT OF REGULATION ORIGINALLY NOTICED TO THE PUBLIC

PROPOSED CHANGES TO MEMBER CONTRIBUTIONS REGULATIONS

California Code of Regulations, title 2, §§ 570.5 and 571

Title 2. Administration
Division 1. Administrative Personnel
Chapter 2. Board of Administration of Public Employees' Retirement System
Subchapter 1. Employees' Retirement System Regulations
Article 5. Member Contributions

ADD 2 CCR § 570.5

§ 570.5. Requirement for a Publicly Available Pay Schedule.

(a) For purposes of determining the amount of compensation earnable, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

(1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

(2) Identifies the position title for every employee position;

(3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;

(4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly monthly, bi-monthly, or annually;

(5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(6) Indicates an effective date and date of any revisions;

(7) Is retained by the employer and available for public inspection for not less than five years; and

(8) Does not reference another document in lieu of disclosing the payrate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

(1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;

(2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;

(3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;

(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

Note: Authority cited: Sections 20120 and 20121, Government Code. Reference: Sections 20630, 20636, 20636.1, Government Code.

AMEND §571(b)

§ 571. Definition of Special Compensation (b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049 that:

(A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation

(2) Available to all members in the group or class;
(3) Part of normally required duties;
(4) Performed during normal hours of employment;
(5) Paid periodically as earned;
(6) Historically consistent with prior payments for the job classification;
(7) Not paid exclusively in the final compensation period;
(8) Not final settlement pay; and
(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

AUTHORITY: Note: Authority cited: Sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121, Government Code; Calif. Const. Art. XVI, Section 17. Reference: Sections 20630, 20636, 20636.1 and 20691, Government Code.

PART E

INITIAL STATEMENT OF REASONS

INITIAL STATEMENT OF REASONS

Adoption of new section 570.5 and revised 571(b) - Clarification and identification of specific requirements for publicly available pay schedule and labor policy or agreement.

Description of Public Problem, Administrative Requirement, or Other condition or Circumstance that the Regulation is Intended to Address:

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensation be limited to items included in a labor policy or agreement, as defined, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

Specific Purpose: The proposed regulations will clarify existing law and ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation.

Necessity: These regulations will help CalPERS enforce compliance with the compensation statutes, maintain a consistent practice of verifying payrates and special compensation for compensation reported by CalPERS employers, and encourage transparency and proper reporting of public employees' pay for retirement purposes.

CalPERS may achieve cost savings as a result of decreased litigation and administrative appeals related to these issues, as employers and members become more aware of the requirements for a publicly available pay schedule and/or labor policy or agreement.

Technical, Theoretical and/or Empirical Studies, Reports or Documents: Not applicable.

Alternatives to the Regulatory Action and CalPERS' Reasons for Rejecting Those Alternatives: CalPERS has considered alternatives to this proposal, and has determined that there is no more effective way to carry out its purpose that would be less burdensome. The alternative of adopting no regulation would be less effective and would not lead to the anticipated benefits expected from the proposed action.

Alternatives to the Regulatory Action that Would Lessen any Adverse Impact on Small Businesses: The proposed action has no cost impact on small businesses because it applies only to public agency employee retirement benefits.

PART F

STATEMENT OF MAILING & PUBLICATION OF NOTICE

PUBLISHED NOTICE OF PROPOSED AMENDED REGULATION

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

PROPOSED ADOPTION OF SECTION 570.5 and AMENDMENT OF SECTION 571(b)

STATEMENT OF MAILING NOTICE
(1 Cal. Code Reg. § 86)

The Board of Administration of the California Public Employees' Retirement System has complied with the provisions of Government Code section 11346.4, subdivisions (a)(1) through (4), regarding the mailing of the notice of proposed regulatory action. The notice was mailed on February 4, 2011, at least 45 days prior to the end of the written comment period.

Dated: May 17, 2011

Christina Nutley

CHRISTINA NUTLEY
Acting Regulations Coordinator

EDMUND G. BROWN, JR., GOVERNOR

OFFICE OF ADMINISTRATIVE LAW

California Regulatory Notice Register

REGISTER 2011, NO. 5–Z PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW FEBRUARY 4, 2011

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the "Commission"), under the authority vested in it under the Political Reform Act (the "Act")[1] 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 regulations at a public hearing on or after **March 10, 2011**, 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 **March 8, 2011**.

BACKGROUND/OVERVIEW

Section 90001 of the Act describes cases in which mandatory audits and investigations are to be performed by the Commission. Subdivision (i)(2) of Section 90001 provides that candidates for the Board of Administration ("CalPERS Board") of the Public Employees' Retirement System ("CalPERS") are subject to audit by a method of selection promulgated by the Commission. The Commission adopted Regulation 18997, which requires audits of CalPERS Board candidates when such candidates receive contributions aggregating $5,000 or more.

Effective January 1, 2011, the Act was amended to also regulate candidate elections to the Teacher's Retirement Board ("CalSTRS Board") of the California State Teacher's Retirement System. (See Senate Bill 1007, Ch. 633, Stats 2010.) This amendment did not make candidates for the CalSTRS Board subject to mandatory audits under Section 90001, as are candidates for the CalPERS Board. However, because both CalPERS and CalSTRS board members engage in similar activities and their campaigns for election draw similar support and opposition, the Commission thinks that these candidates' election committees should be audited based on the same criteria.

Section 81003 states that the Act should be liberally construed to accomplish its purposes and Section 83112 provides that the "Commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of this title, and to govern procedures of the Commission." Additionally, Section 90003 provides the Commission with power to conduct discretionary audits along with the Franchise Tax Board. Therefore, in accordance with these provisions, the Commission proposes to amend Regulation 18997 to make CalSTRS Board candidates subject to the same audit requirements as CalPERS Board candidates.

REGULATORY ACTION

Amend 2 Cal. Code Regs. Section 18997

Amend Regulation 18997 to include CalSTRS Board candidates, so that they are subject to the same audit procedures as CalPERS Board candidates. This amendment would provide that CalSTRS candidates will be subject to audit by the Commission when receiving contributions aggregating $5,000 or more for an election.

SCOPE

The Commission may adopt 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.

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

REFERENCE

The purpose of these regulations is to implement, interpret, and make specific Government Code Sections 81003, 83112, 90001, and 90003.

CONTACT

Any inquiries should be made to Sukhi K. Brar, Fair Political Practices Commission, 428 J Street, Suite 620, 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.php?id=247#2.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: North Coast Unified Air Quality Management District
Western Municipal Water District

A written comment period has been established commencing on **February 4, 2011**, and closing on **March 21, 2011**. Written comments should be directed to the Fair Political Practices Commission, Attention **Cynthia Fisher**, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized 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 code(s) will be submitted to the Commission for review.

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

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

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than **March 21, 2011**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code(s) and approve it as revised, or return the proposed code(s) 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 **Cynthia Fisher**, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT–OF–INTEREST CODES

Copies of the proposed conflict–of–interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to **Cynthia Fisher**, 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 (the "Commission"), under the authority vested in it under the Political Reform Act (the "Act")[1] 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 **March 10, 2011**, 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 **March 8, 2011**.

BACKGROUND/OVERVIEW

The Political Reform Act prohibits candidates and certain persons involved with candidates from personally benefitting from their campaigns. Section 89517 states that campaign funds may not be used to lease real property or to purchase, lease, or refurbish any appliance or equipment if the candidate, elected officer, campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds is the lessee or sublessor or holds title to the property. The purpose of this section of the Act is to prevent a candidate (or those close to him or her) from benefitting from his or her campaign. To close a loophole that allows a candidate's business entity from a similar benefit, staff proposes that the Commission adopts a regulation to address this point.

REGULATORY ACTION

Adopt 2 Cal. Code Regs. Section 18957.

The Commission will consider adopting new Regulation 18957 to address the issue of a candidate who benefits from his or her campaign when that campaign leases real property through a business entity in which a candidate, elected officer, campaign treasurer, or any individual or individuals with authority to approve the expenditure of campaign funds has an interest of 10% or more.

SCOPE

The Commission may adopt 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 this regulation is to implement, interpret, and make specific Government Code Sections 82036, 82036.5, 84203, 84203.3, and 84204.

CONTACT

Any inquiries should be made to Heather M. Rowan Fair Political Practices Commission, 428 J Street, Suite 620, 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.php?id=247#2.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the "Commission"), under the authority vested in it under the Political Reform Act

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

e "Act")[1] 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 **March 10, 2011**, 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 March 8, 2011**.

BACKGROUND/OVERVIEW

Section 87100 states that no public official "shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." Section 87103 specifies that an official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on the official, a member of his or her immediate family, or any economic interest set forth in Section 87103(a) through (f), which is "*distinguishable from its effect on the public generally*." (Emphasis added.) As interpreted in Commission regulations, the public generally exception of Section 87103 permits a public official, otherwise disqualified from making, participating in making, or influencing a governmental decision under Section 87100 to take part in the decision if the decision affects a "significant segment" of the public in "substantially the same manner." (See Regulations 18707–18707.9.)

Regulation 18707.9 provides a specialized form of the public generally rule applicable to public officials who own multiple residential rental units. As originally adopted, Regulation 18707.9 codified the Commission's *Ferraro* ((1978) 4 FPPC Ops.62) and *Overstreet* ((1981) 6 FPPC Ops. 12) opinions, which provided that owners of three or fewer residential rental units would be treated the same as other residential rental unit owners in determining whether a significant segment of residential rental units owners were affected in substantially the same manner.

Nonetheless, elements of Regulation 18707.9 have proved problematic since its first adoption. For instance, the regulatory language does not clearly apply only to economic interests resulting from the ownership of residential *rental* units and does not indicate whether subdivision (b) may be applied independently of subdivision (a). Attempting to implement the intended purposes of Regulation 18707.9, Commission staff has subsequently advised that (1) Regulation 18707.9 applies only to economic interests resulting from the ownership of residential rental units (See *Givner* Advice Letter, No. 1–08–117 and *Biggs* Advice Letter, No. A–02–102) and that (2) subdivision (b) is limited by subdivision (a) and therefore applies only if a public official owns three or fewer residential rental units (See *Jones* Advice Letter, No. A–10–051 and *Givner* Advice Letter, No. A–09–152).

REGULATORY ACTION

Amend 2 Cal. Code Regs. Section 18707.9 — The Commission will consider amending Regulation 18707.9 to clarify its application. Specific proposals the Commission may consider include, but are not limited to, the following:

- Clearly limiting the application of Regulation 18707.9 to economic interest resulting from the ownership of residential rental units.
- Specifying whether Regulation 18707.9(a) limits the application of Regulation 18707.9(b) to public officials who own three or fewer residential rental units.
- Further clarifying the significant segment of the public that must be affected by a governmental decision when applying Regulation 18707.9.

SCOPE

The Commission may adopt 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.

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

REFERENCE

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

CONTACT

Any inquiries should be made to Brian G. Lau, Fair Political Practices Commission, 428 J Street, Suite 620, 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.php?id=247#2.

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document. This proposed regulatory action clarifies and makes specific requirements for publicly available pay schedule and labor policy or agreement. As used in this regulation, labor policy or agreement means any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on March 21, 2011. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795–4607; e-mail at: Veronica_Mora@calpers.ca.gov; or mailed to the following address:

Veronica Mora, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, California 94229–2707
Telephone: (916) 795–0713

III. PUBLIC HEARING

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

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

The CalPERS Board of Administration (Board) has general authority to take regulatory action under Government Code section 20121. The Board has specific authority to adopt proposed sections 570.5 and 571 under Government Code section 20636 and 20636.1.

This action would be declaratory of the existing law, and serve an informative function for workers and employers who are unfamiliar with these existing laws.

Authority cited for section 570.5 is sections 20120 and 20121 of the Government Code. Reference is sections 20630, 20636 and 20636.1 of the Government Code.

Authority cited for section 571 is sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121 of the Government Code. Reference is sections 20630, 20636, 20636.1 and 20691 of the Government Code.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensa-

be limited to items included in a labor policy or agreement, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's Internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to public employees working in positions qualified for membership in CalPERS.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action imposes a mandate on local agencies or school districts, related to the publication of pay schedules.

B. COST OR SAVINGS TO ANY STATE AGENCY: The proposed regulatory action does not impact costs or savings for any state agency.

C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500, et seq.

D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose non-discretionary costs or savings on local agencies.

E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action does not impact any federal funding to the state.

F. ADVERSE ECONOMIC IMPACT: The proposed regulatory action has no significant statewide adverse economic impact directly affecting businesses, including the ability of business in California to compete with business in other states.

G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA: The proposed regulatory action 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.

I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no effect.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to 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 during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Tomi Jimenez
Employer Services Division
California Public Employees' Retirement System
P.O. Box 942709
Telephone: (916) 795–0340
E–mail: tomi_jimenez@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Veronica Mora, CalPERS Regulations Coordinator, at the address shown above, or (916) 795–0713 (veronica_mora@calpers.ca.gov).

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Veronica Mora, Regulations Coordinator, at the address shown in Section II.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed regulations after the public comment period has closed. It may amend the proposed regulations as modified, if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments, who testified or submitted written comments at the public hearing, or asked to be kept informed as to the outcome of this regulatory action.

XIII.

One can access the regulatory material regarding this action at CalPERS' website at www.calpers.ca.gov under About CalPERS > Legislation, Regulations & Statutes > Regulatory Actions > Current Regulatory Actions.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Notice of Proposed Rulemaking

45 — Day Notice

The Department of Food and Agriculture amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid Interior Quarantine as an emergency action which was effective on December 30, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than June 28, 2011.

This notice is being provided to be in compliance with Government Code Section 11346.4.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on March 21, 2011. The Department will consider only comments received at the Department offices by that time. Submit comments to:

,tephen Brown
Department of Food and Agriculture
Plant Health and Pest Prevention Services
1220 N Street
Sacramento, CA 95814
sbrown@cdfa.ca.gov
916.654.1017
916.654.1018 (FAX)

Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 321).

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

There is no existing, comparable federal regulation or statute regulating the intrastate movement.

AMENDED TEXT

This emergency action expanded the quarantine area for ACP by approximately 3,625 square miles; including approximately 312 square miles of Santa Barbara County; approximately 1,834 square miles of Ventura County; approximately 700 square miles of San Bernardino County; and, approximately 1,779 square miles of Riverside County. The entire counties of Imperial, Los Angeles and Orange; and, portions of Riverside, San Bernardino and San Diego are already under quarantine for ACP. The total proposed quarantine area would then become approximately 20,562 square miles. The effect of the amendment of this regulation is to provide authority for the State to perform quarantine activities against ACP within this additional area and existing regulated areas.

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 sections 17500 through 17630: None and no nondiscretionary costs or savings to local agencies or school districts.

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.

Cost impacts on a representative private person or business: A representative person or business could incur costs of approximately $1,160 to $3,320 per year in reasonable compliance with the proposed action.

Amendment of these regulations will not:

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

Significant effect on housing costs: None.

Small Business Determination

The Department has determined that the proposed regulations may affect small business.

ALTERNATIVES CONSIDERED

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

AUTHORITY

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

REFERENCE

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

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, (916) 654–1017, FAX (916) 654–1018, E–mail: sbrown@cdfa.ca.gov. In his absence, you may contact Susan McCarthy at (916) 654–1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Web site (www.cdfaca.gov/phpps/Regulations.html).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

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

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

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF PROPOSED REGULATIONS

Title 15, Crime Prevention and Corrections

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, in order to implement, interpret and make specific PC Section 5054, proposes to amend Sections 3025, 3291, 3296, 3300, 3301, 3383 and 3397, and repeal Section 3302, in the California Code of Regulations (CCR), Title 15 concerning the Office of Correctional Safety.

PUBLIC HEARING

Date and Time:	April 1, 2011 — 10:00 a.m. to 11:00 a.m.
Place:	Department of Corrections and Rehabilitation Kern Room 1515 S Street — North Building Sacramento, CA 95811
Purpose:	To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close April 1, 2011, at 5:00 p.m. Any person may submit public comments in writing (by mail, by fax, or by e–mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283–0001; by fax at (916) 324–6075; or by e–mail at *RPMB@cdcr.ca.gov* before the close of the comment period.

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
Telephone (916) 445–2269

In the event the contact person is unavailable, inquiries should be directed to the following back–up person:

Josh Jugum, AGPA
Regulation and Policy Management Branch
Telephone (916) 445–2228

Questions regarding the substance of the proposed regulatory action should be directed to:

Richard Calderon, Correctional Captain
Telephone (916) 324–8994

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, nor a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 through 17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS 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.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website http://www.cdcr.ca.gov.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations 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. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC 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 CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

This action provides the following:

- Updates regulations regarding the Office of Correctional Safety (OCS) to remain consistent with governing statutes, the major reorganization of the CDCR in 2005, and subsequent changes to duties and responsibilities within the Department.
- Updates the regulations to remove or replace outdated position titles and office designations.
- Updates the regulations to add or amend Authority and Reference citations where necessary.
- Repeals Title 15, Division 3, Section 3302, Emergency Preparedness Plan. The updated version of this plan contains confidential operational and tactical information which could jeopardize the safety and security of the institution if it were made public. Such information is protected from public disclosure by Government Code Section 6254.

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology (hereinafter referred to as "The Board") 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 following date, time and location:

March 21, 2011

10:00 a.m.

Board of Barbering and Cosmetology
Sequoia Room
2420 Del Paso Road
Sacramento, California 95834

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under the contact person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on March 21, 2011 or must be received by the Board at the hearing. The Board, 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 7312 of the Business and Professions Code, and to implement, interpret or make specific Sections 7403 and 7404 of said Code, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 972 of the California Code of Regulations

Business and Professions Code Sections 7312 authorizes the Board to discipline persons who violate the provisions of the Barbering and Cosmetology Act, while Sections 7303 and 7404 define the circumstances under which a license may be denied, revoked and suspended and the grounds for disciplinary action in general.

The proposed regulations update the Board's existing "Disciplinary Guidelines" manual (Revised October 2010), which is incorporated by reference in Section 972. These guidelines are used to assess penalties

ainst licensees, prospective licensees and other persons who violate the Barbering and Cosmetology Act and other pertinent California laws. The guidelines help insure disciplinary cases are handled in a fair and equitable manner.

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

None.

Nondiscretionary Costs/Savings to Local Agencies:

None.

Local Mandate:

None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement:

None.

Business Impact:

The Board 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.

Impact on Jobs/New Businesses:

The Board 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 Impact on Representative Private Person or Business:

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.

Effect on Housing Costs:

None.

EFFECT ON SMALL BUSINESS

This proposal would have no effect on a small business establishment licensed by the Board unless that establishment was subject to disciplinary action.

CONSIDERATION OF ALTERNATIVES

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

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the 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 the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Barbering and Cosmetology at 2420 Del Paso Rd., Suite 100, Sacramento, CA 95834.

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.

CONTACT PERSON

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

Contact Person:

Name:	Kevin Flanagan
Address:	2420 Del Paso Rd., Suite 100 Sacramento, CA 95834
Telephone:	(916) 575–7100
Fax:	(916) 575–7281
Email Address:	Kevin.Flanagan@dca.ca.gov

Backup Contact Person:

Name:	Kari Frank
Address:	2420 Del Paso Rd., Suite 100 Sacramento, CA 95834
Telephone:	(916) 575–7100
Fax:	(916) 575–7281
Email Address:	Kari.Frank@dca.ca.gov

Web Site Access

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

TITLE 16. BOARD OF BARBERING AND COSMETOLOGY

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Board of Barbering and Cosmetology (hereinafter referred to as "The Board") is proposing to take the action described in the Informative Digest after considering all comments, objections and recommendations.

The Board has not scheduled a hearing on this proposed action. However, the Board will hold a hearing if it 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.

Written comments, including those sent by mail, facsimile, or e–mail to the addresses listed under the contact person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on March 21, 2011. The Board, 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 Section 7312 of the Business and Professions Code and Section 1719 of the Civil Code; and to implement, interpret or make specific Section 6157 of the Government Code, the Board is considering changes to Division 9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 999

Section 7312 of the Business and Professions Code; Section 1719 of the Civil Code; and Section 6157 of the Government Code authorize the Board to charge a dishonored check fee of up to $25 for a personal check that is returned without payment, provided the fee is reasonable and doesn't exceed the actual cost of processing the check. This proposed regulation would change the current $10 fee charged by the Board to the fee amount set by the California Department of Consumer Affairs, which currently stands at $25.

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

None

Nondiscretionary Costs/Savings to Local Agencies

None

Local Mandate

None

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement

None

Business Impact

The board 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.

Impact on Jobs/New Businesses

The Board 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 Impact on Representative Private Person or Business

The cost impact that a representative private person or business would incur because of the proposed action depends upon their compliance with the Board's regulation, but is not expected to be significant.

Effect on Housing Costs

None

EFFECT ON SMALL BUSINESS

This proposal would have no effect on a small business establishment licensed by the Board unless that establishment wrote a check to the Board with insufficient funds to cover that check.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in

rrying 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.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of the 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 the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Barbering and Cosmetology at 2420 Del Paso Rd., Suite 100, Sacramento, CA 95834.

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.

CONTACT PERSON

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

Contact Person:

Name:	Kevin Flanagan
Address:	2420 Del Paso Rd., Suite 100 Sacramento, CA 95834
Telephone:	(916) 575–7100
Fax:	(916) 575–7281
Email Address:	Kevin.Flanagan@dca.ca.gov

Backup Contact Person:

Name:	Kari Frank
Address:	2420 Del Paso Rd., Suite 100 Sacramento, CA 95834
Telephone:	(916) 575–7100
Fax:	(916) 575–7281
Email Address:	Kari.Frank@dca.ca.gov

Web Site Access

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

TITLE 16. DENTAL HYGIENE COMMITTEE OF CALIFORNIA

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE IS HEREBY GIVEN that the Dental Hygiene Committee of California 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:

Department of Consumer Affairs
1st Floor Hearing Room
2005 Evergreen Street
Sacramento, California on

March 21, 2011

10:00 a.m.

Written comments, including those sent by mail, facsimile, or e–mail to the addresses listed under Contact in this Notice, must be received by the Dental Hygiene Committee of California (hereinafter "Committee") at its office not later than 5:00 p.m. on March 21, 2011, or must be received by the Committee at the hearing. The Committee, 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 Section 1906 of the Business and Professions Code, and to implement, interpret or make specific Sections 11400.20 of the Government Code, the Committee is considering changes to Division 11 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Adopt proposed Title 16 of the California Code of Regulations Sections 1139, 1140, 1141, 1142, 1143, and 1144

The existing citation and fine guidelines in the Dental Practice Act are the model for the proposed citation and fine guidelines in the proposed regulations by the Den-

tal Hygiene Committee of California. The specific proposed sections are to establish citation and fine criteria and procedural practices that the Dental Hygiene Committee of California will use for the issuance of citations, fines, and orders of abatement as well as the procedures for appeal.

The proposed regulations will assist the Dental Hygiene Committee of California's Enforcement Staff in pursuing citations and fine actions against dental hygiene licensees who are in violation of the law to better protect consumers.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Requires Reimbursement: None

Business Impact: The Committee 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.

AND

The following studies/relevant data were relied upon in making the above determination:

These regulations will provide direction to administrative law judges who determined penalties for dental hygienists, dental hygienists in alternative practice and dental hygienists with extended functions who have violated provisions of statutory law or regulations.

Impact on Jobs/New Businesses: The Committee has determined that this regulatory proposal will not have a significant 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 Impact on Representative Private Person or Business:

The Committee 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

EFFECT ON SMALL BUSINESS

The Committee has determined that the proposed regulations would not have a significant economic impact on small businesses unless those small businesses were owned by dental hygienists in alternative practice who have violated the statues or regulations contained within the California Business and Professions Codes and Regulations.

CONSIDERATION OF ALTERNATIVES

The Committee must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either 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 proposal 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 Committee has prepared an initial statement of the 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 the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Dental Hygiene Committee of California at 2005 Evergreen Street, Suite 1050, Sacramento, California 95815.

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: Traci Napper, Legislative Analyst
Address: 2005 Evergreen Street, Suite 1050
Sacramento, CA 95815
Telephone No.: (916) 263–2572
Fax No.: (916) 263–2688
E–Mail Address: Traci_Napper@dca.ca.gov

The backup contact person is:

Name: Lori Hubble, Executive Officer
Address: 2005 Evergreen Street, Suite 1050
Sacramento, CA 95815
Telephone No.: (916) 263–1978
Fax No.: (916) 263–2688
E–Mail Address: Lori_Hubble@dca.ca.gov

Website Access: Materials regarding this proposal can be found at the Committee's website: www.dhcc.ca.gov.

TITLE 22. DEPARTMENT OF HEALTH CARE SERVICES

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations

SUBJECT: Upkeep & Repair Deduction for Persons in Long Term Care, DHCS–09–012

PUBLIC PROCEEDINGS

Notice is hereby given that the Department of Health Care Services (Department) will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Title XIX of the Social Security Act is a federal/state entitlement program that pays for medical assistance for certain individuals and families with low incomes and resources. This program, known as Medicaid, became law in 1965 as a cooperative venture jointly funded by the federal and state governments to assist states in furnishing medical assistance to eligible needy persons. Medi–Cal is California's Medicaid program. It provides vital health and long–term care coverage to low–income children, their parents, elderly and disabled Californians. Medi–Cal is administered by the Department of Health Care Services (Department).

A Medi–Cal eligibility determination is made based on program rules, as to whether an individual qualifies for benefits under the program. An individual must not exceed the established property/asset limits in order to become Medi–Cal eligible. Income deductions are applied to an individual's gross income. The remainder, after deductions are subtracted, is the net nonexempt income. The deduction for home upkeep and repair is one of the deductions for long–term care patients. The appropriate maintenance need level is then subtracted from the net nonexempt income to determine whether an individual has a share of cost or not. The maintenance need level is the amount of monthly income, based upon federal law, that a person or family is deemed to need for food, clothing, housing, etc.

Title 42, Code of Federal Regulations (CFR) Section 435.725(d), sets forth an allowance for home maintenance (the individual can retain more countable income) if the amount is deducted for six months or less and a physician has certified the individual is likely to return home within this period.

This proposed regulatory action amends Title 22, California Code of Regulations Section 50605 that pertains to upkeep and repair needs for persons in long–term care, specifically the allowance for home maintenance under Subsections (b) and (c). Non–substantial grammatical changes are also proposed through this action.

AUTHORITY

Section 20, Health and Safety Code; and Sections 10725, 14005.13 and 14124.5, Welfare and Institutions Code.

REFERENCE

Title 42, Code of Federal Regulations, Section 435.725(d); and Sections 14005.7, 14005.12 and 14005.13, Welfare and Institutions Code.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m., on March 25, 2011, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1–800–735–2929, if you have a TDD; or 1–800–735–2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand–delivered to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899–7413; or
2. By fax transmission: (916) 440–5748; or
3. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS–09–012" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Craig Yagi of the Medi–Cal Eligibility Division, at (916) 445–4062.

All other inquiries concerning the action described in this notice may be directed to Lori Manieri of the Office of Regulations, at (916) 650–6825, or to the designated backup contact person, Lynette Cordell, at (916) 440–7695.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS–09–012.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the Decisions Pending and Opportunity for Public Participation link (from the left menu), then selecting the Proposed Regulations link.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440–7695 (or California Relay at 711/1–800–735–2929), or email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

A. Fiscal Effect on Local Government: None.
B. Fiscal Effect on State Government: Indeterminate.
C. Fiscal Effect on Federal Funding of State Programs: Indeterminate.
D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

   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.
E. Other nondiscretionary costs or savings including revenue changes imposed on State or Local Government: None.

DETERMINATIONS

The Department has determined that the proposed regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

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

The Department has determined that the proposed regulations would not significantly affect the following:

(1) The creation or elimination of jobs within the State of California.

(2) The creation of new businesses or the elimination of existing businesses within the State of California.

(3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the proposed regulations would not affect small business. This proposed regulatory action aligns Title 22, CCR Section 50605(b) and (c) with federal regulations regarding the allowance for upkeep of a home for individuals on Medi–Cal in a long–term care facility. These proposed regulations do not impose any additional reporting, recordkeeping, or other compliance requirements on small businesses.

The Department has determined that the proposed regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

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

No public hearing has been scheduled; however, any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

For individuals with disabilities, the Department will provide assistive services such as sign–language interpretation, real–time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Susan Pierson, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899–7413; voice (916) 440–7695; and/or California Relay 711/1–800–735–2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

TITLE 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Title 22, California Code of Regulations Sections 1256–9 and 1256–10

COMPELLING FAMILY REASONS

Notice of Proposed Rulemaking

The Employment Development Department (hereinafter "the Department") proposes to amend the California Code of Regulations (CCR), Title 22, Sections 1256–9 and 1256–10, by providing that individuals who voluntarily leave their employment to care for an ill or disabled family member shall have good cause for doing so, including instances when reasonable, alternative care is available. This action is taken in order for the Department to comply with Federal law in administration of the unemployment compensation (UC) program.

The Department will adopt these regulations after considering all comments, objections, or recommendations regarding the proposed regulatory action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The UC program was established as part of the Social Security Act of 1935. Based on Federal and State law, the UC program is administered by the States, and financed by UC tax contributions from employers. The UC program is designed to stimulate local economies by providing temporary, partial wage replacement benefits to individuals who are unemployed through no fault of their own and who meet certain eligibility requirements. Eligibility partly involves the reason or reasons as to why an individual left his or her most recent employer prior to the filing of the UC claim. The Department determines eligibility for UC benefits based upon Federal and State laws.

Article 1, Eligibility and Disqualifications (commencing with Section 1256) of Chapter 5 of Part 1 of the California Unemployment Insurance Code (hereinafter, the Code) states, "An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work."

Sections 1256–9 and 1256–10 of the CCR, Title 22, currently provides that an individual who voluntarily

leaves his or her employment due to a compelling need to attend to the health, care, or welfare of the individual's family member, left work with good cause, provided reasonable steps were taken to preserve his or her employment, and *no reasonable, alternative care is available.*

The Assistance for Unemployed Workers and Struggling Families Act, Title II of Division B of *The American Recovery and Reinvestment Act (ARRA)*, Public Law (Pub. L.) No. 111–5, Section 2003(a), was enacted February 17, 2009. A new subsection (f) was added to Section 903 of the Social Security Act (42 U.S.C. 1103) providing modernization incentive payments to a State's Unemployment Trust Fund account when the State revises eligibility requirements governing UC benefits.

Seven billion in ARRA incentive funds will be available to qualifying States. Allocation is based on the State's proportionate share of the Federal Unemployment Tax Act taxes paid annually by employers within each State. It is anticipated that California may receive approximately $839 million in total incentive funds. The funds may be used to pay for UC benefits or to improve services for UC claimants and employers. States must apply for ARRA incentive funds on or before August 22, 2011.

Under ARRA, Section 2003(f)(1)(C), a State may qualify for one–third of its proportionate share if the State's UC law contains an Alternate Base Period (ABP) option. In order to qualify for this amount, California recently passed legislation establishing an ABP consistent with ARRA requirements. Due to this legislation, it is estimated that California's share of the one–third in incentive payments will approximate $280 million.

California UC law must adopt two of four options as specified by ARRA in order to meet eligibility requirements for the remaining proportionate amount of incentive payments. California met the first requirement by the current law declaring part–time workers (who are available for, and who seek part–time work) eligible for UC benefits if their claims are based upon part–time work.

The second ARRA option elected for implementation is the provision that an individual is not disqualified from receiving UC if they leave work due to certain compelling family reasons. Currently California allows UC benefits for an individual who leaves work due to compelling family circumstances on the condition that reasonable steps were taken to preserve the employment relationship and the individual had *no other reasonable alternative* short of leaving work. However, in order to comply with ARRA and to qualify for the remaining incentive payments, California amended existing law regarding individuals who may leave work due to domestic violence abuse. California must amend its regulations relating to UC eligibility for individuals who leave work to care for an ill or disabled family member. By implementing these changes, California will earn eligibility for the remaining amount of incentive payments, estimated at $559 million.

In September 2010, California amended Section 1256 of the Code, relating to an individual's voluntary quit of employment for domestic violence reasons. The amendment concerned an individual and/or his or her family in situations where continued employment would jeopardize the safety of the individual or a member of the individual's family. Previously, California law only covered the individual and/or his or her children.

The proposed regulatory amendments are the final requirements for California to qualify for ARRA incentive payments. Currently, Sections 1256–9 and 1256–10 set forth that an individual may show compelling reasons for quitting work due to the health, care, or welfare of a family member, provided reasonable steps are taken to preserve the employment relationship, and *no reasonable alternative existed* at the time the individual left work to care for an ill or disabled family member. In order to qualify for ARRA, California must eliminate the portion of 1256–9 and 1256–10 regarding "*no reasonable alternative care available.*" Individuals who leave work to care for an ill or disabled family member will be required to show the necessity to leave work due to care of an ill or disabled family member and that reasonable steps were taken to preserve their employment, such as requesting a leave of absence, etc. However, individuals will no longer be disqualified *if reasonable, alternative care* was available. As a result, California must amend Sections 1256–9 and 1256–10.

The amendments are necessary to ensure receipt of available ARRA funds for the continued administration of California's UC program. The changes proposed by the Department are minor in nature. Section 1253(c) of the Code requires that claimants must be able and available to accept immediate work. Therefore, claimants who are found eligible under Section 1256 of the Code will be disqualified under Section 1253(c) of the Code if they are not available to accept immediate employment.

In 2009, the Department conducted 2 million UC eligibility determination interview appointments. Approximately 24,000 (or one percent of the total determinations) involved claimants who voluntarily left work due to domestic circumstances. Leaving employment due to domestic reasons may involve a variety of situations; such as domestic violence abuse, to care for an ill or disabled family member, to follow or join a spouse or domestic partner to a new location, or to attend to childcare concerns.

Although the Department cannot estimate the precise number of individuals subject to eligibility as a result of the proposed amendment, only minimal UC costs are anticipated as a result. Furthermore, those potentially eligible claimants may be disqualified pursuant to Section 1253(c) due to the "able and available" requirement.

Without implementation of the proposed regulatory amendments, the Department and the State of California will lose an estimated $559 million in ARRA funding. For this reason, the Department must revise Sections 1256–9 and 1256–10 to secure eligibility for ARRA funding. The incentive payments provided through ARRA will greatly assist in California's modernization efforts. In addition, the incentive payments can be used to pay UC benefits, which would mitigate the need to borrow from the federal government given the insolvency of California's Unemployment Trust fund.

Authority and Reference:

Authority: Sections 305 and 306, Unemployment Insurance Code. Reference: Section 1256, Unemployment Insurance Code.

Fiscal Impact:

Anticipated costs or savings in federal funding to the State: None. While the Department cannot estimate the increase in the number of eligible individuals pursuant to the proposed regulatory action, a historically low percentage of claims involve separations due to compelling family reasons and an even smaller number leave to care for an ill or disabled family member. Even so, it is likely that individuals found eligible may later be determined ineligible for UC benefits under Section 1253(c) of the Code.

Anticipated costs or savings to any State Agency: None.

Anticipated costs or savings to any local agency or school district: None.

Significant statewide adverse economic impact: The Department does not anticipate that this regulatory action will result in significant costs to local county governments, or to private individuals, or to businesses and small businesses. Thus, no costs were shown on the Economic and Fiscal Impact Statement.

The Department has made an initial determination that the proposed amendments will not have an adverse economic impact that will affect businesses statewide, including the ability of California businesses to compete with businesses in other States because the amendments involve only a negligible increase in UC benefit eligibility.

The Department has determined that the proposed amendments will not affect the creation 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, or the expansion of businesses currently doing business within the State of California.

The cost impact on representative persons 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.

Anticipated impact on housing costs: These proposed amendments will have no effect on housing costs.

Anticipated non–discretionary costs or savings imposed upon local agencies: None.

Small Business Impact:

These proposed amendments will have no effect on small businesses because it does not impose any new mandates on small businesses. It does not require that small businesses take any action or refrain from taking any action in regards to conducting business.

Local Mandate Determination:

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

Consideration of Alternatives:

In accordance with Section 11346.5(a)(13) of the Government Code, the Department must determine that no reasonable alternative 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 regulatory action.

Written Comment Period:

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to Estela Gallawa via U.S. mail, e–mail, or fax (see U.S. mail and e–mail addresses and fax number indicated below). **E–mail comments should include true name and mailing address of the commentor. Written comments submitted via U.S. mail, e–mail, or fax, must be received by the Department no later than March 21, 2011 at 5 p.m.** Please submit any written comments before that time. The Department cannot accept written comments after the close of the public comment period.

CONTACT PERSONS

Inquiries or comments should be directed to:

(Mailing address) Estela Gallawa, Staff Counsel
Employment Development Department
P. O. Box 826880
Legal Office, MIC 53
Sacramento, CA 94280–0001

(Hand delivery) Estela Gallawa, Staff Counsel
Employment Development Department
800 Capitol Mall, Room 5020
Legal Office, MIC 53
Sacramento, CA 95814

Telephone No.: (916) 654–8410
Fax No.: (916) 654–9069
E–Mail Address: eddlegal@edd.ca.gov

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

Name: Debbie Kunitake, Legal Assistant
Telephone No.: (916) 654–8410

Questions regarding the substance of the proposed regulatory action should be directed at this time to:

Name: Estela Gallawa, Staff Counsel
Telephone No.: (916) 654–8410

INTERNET WEBSITE ACCESS

The Department has posted on its Internet website http://www.edd.ca.gov materials regarding the proposed regulatory action. Select "Proposed Regulations."

Public Hearing:

No public hearing has been scheduled on the proposed action. However, if any person desires to submit oral comments, the Department will schedule a public hearing upon that person's written request. **Such request must be received no later than 15 days prior to the close of the written comment period which is 5 p.m. on March 21, 2011.** A request for hearing can be made by contacting the persons noted above.

Modification of Proposed Action:

If the Department makes any additional changes based on public testimony, those changes (other than nonsubstantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted. Copies of any additional changes regarding the proposed regulatory action will be mailed to all persons who testified or submitted written comments at the public hearing (if one is scheduled); whose comments were received by the agency during the public comment period; and who requested notification from the agency of the availability of such changes.

Final Statement of Reasons:

After the close of the 45–day public comment period, the Department will summarize and respond to all public comments in a written final statement of reasons. To obtain a copy of the final statement of reasons, contact the persons noted above, or access the Department's Internet website at http://www.edd.ca.gov.

Further Information:

The Department has prepared and has available for review, upon request, the text of the proposed regulations discussed in this notice, written in plain English; a statement of reasons setting forth the purpose of the proposed regulations; and the information upon which the Department relied in proposing the regulations. (If you received this notice by mail, a copy of the text of the proposed regulations and the statement of reasons were enclosed.) To obtain a copy, contact the persons noted above, or access the Department's Internet website at http://www.edd.ca.gov.

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review. For inquiries regarding the rulemaking file or the regulations' process, contact the persons noted above.

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

ry Recycling
.0 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

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting and Business Meeting:

PUBLIC MEETING: On **March 17, 2011**, at 10:00 a.m.
in the Auditorium of the State Office Building,
6150 Van Nuys Boulevard, Van Nuys, California 91401.

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

BUSINESS MEETING: On **March 17, 2011**, following the Public Meeting,
in the Auditorium of the State Office Building,
6150 Van Nuys Boulevard, Van Nuys, California 91401.

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

DISABILITY ACCOMMODATION NOTICE

Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274–5721 or the state–wide Disability Accommodation Coordinator at 1–866–326–1616 (toll free). The state–wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1–800–735–2929 (TTY) or 1–800–855–3000 (TTY–Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer–Aided Transcription System or Communication Access Realtime Translation (CART), a sign–language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

OAL REGULATORY DETERMINATIONS

OFFICE OF ADMINISTRATIVE LAW

DETERMINATION OF ALLEGED UNDERGROUND REGULATIONS (Summary Disposition)

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

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.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: January 19, 2011
To: Keith Lewis Sr.
From: Chapter Two Compliance Unit
Subject: **2011 OAL DETERMINATION NO. 1(S) (CTU2010–1129–04)**
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation Condemned Inmate Allowable Property, OP 608 Attachment B, San Quentin

On November 29, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether OP 608 Attachment B, dated September 2010 constitutes an underground regulation. The challenged rule is in. Specifically, you challenge the pages titled "Condemned Inmate Allowable Property." The pages titled "Condemned Inmate Allowable Property" were issued by the warden at San Quentin and are attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,[1] which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).[2] Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

> (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. . . .

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

> The Donovan inter–institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.
>
> . . .
>
> The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the challenged rule "Condemned Inmate Allowable Property" (Exhibit A) was issued by San Quentin and applies solely to the inmates of San Quentin. Therefore, the rule is a "local rule" and is exempt

[1] "Regulation" means 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.

[2] Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

> "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.

in compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.[3]

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

/s/
Elizabeth A. Heidig
Staff Counsel

Copy: Matthew Cate
Tim Lockwood
Gary Hines (CTU2010–1209–01)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: January 20, 2011
To: James Dailey
From: Chapter Two Compliance Unit
Subject: **2011 OAL DETERMINATION NO. 2 (S) (CTU2010–1229–01)**
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition Challenging as an Underground Regulation Language Issued by Mule Creek State Prison in Department Operations Manual Supplement Section 54030 Prohibiting Used Books

On December 29, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether language in Department Operations Manual (DOM) Supplement section 54030 prohibiting used books constitutes an underground regulation. The copy of the challenged rule that you included with your petition did not have identifying information, but you assert that this section is in the DOM Supplement used at Mule Creek State Prison in Ione, California. The section does not appear in the statewide DOM; therefore, we base this determination on your assertion that the challenged rule is found in the DOM Supplement issued by Mule Creek State Prison. A DOM Supplement is adopted by an individual prison to supplement the general, statewide rules found in the statewide DOM. The challenged rule is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,[1] which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).[2] Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

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

[3] The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

> (f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.
> (2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:
> (A) The challenged rule has been superseded.
> (B) The challenged rule is contained in a California statute.
> (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
> (D) The challenged rule has expired by its own terms.
> **(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.** [Emphasis added.]

[1] "Regulation" means 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.

[2] Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

> "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.

> (1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

> The Donovan inter–institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.
>
> . . .
>
> The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition appears to have been issued by Mule Creek State Prison and applies solely to the inmates of Mule Creek State Prison. Therefore, the rule is a "local rule" and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.[3]

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

[3] The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

> (f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.
>
> (2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:
>
> (A) The challenged rule has been superseded.
>
> (B) The challenged rule is contained in a California statute.
>
> (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
>
> (D) The challenged rule has expired by its own terms.
>
> **(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.** [Emphasis added.]

/s/
Kathleen Eddy
Senior Counsel

Copy: Matthew Cate
Tim Lockwood

ACCEPTANCE OF PETITION TO REVIEW ALLEGED UNDERGROUND REGULATIONS

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

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

Elizabeth Heidig, Staff Counsel
Office of Administrative Law
300 Capitol Mall, Ste. 1250
Sacramento, California 95814

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

Petitioner:

Jayson Gottman
9440 Butterfield Way
Sacramento, California 95827

Agency contact:

Suzanne Ambrose, Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, California 95814

Please note the following timelines:

Publication of Petition in Notice Register: February 04, 2011
Deadline for Public Comment: March 07, 2011
Deadline for Agency Response: March 21, 2011
Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response
Deadline for OAL Decision: June 06, 2011

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.

son F. Gottman
-40 Butterfield Way
Sacramento, CA 95827
916–698–3442

Office of Administrative Law

In the matter of,

Jayson F. Gottman

Alleged Underground Regulation by
State Personnel Board

Facts:

In July of 2009 Jayson F. Gottman ("Gottman") applied online at www.spb.ca.gov to take the exam for Staff Services Analyst General. Gottman was denied the opportunity to take the exam because of language supplied on the bottom portion of the State Personnel Board's ("SPB") testing website page which states that state service:

> "does not include student assistant, seasonal, or legislative experience."

A copy of this proposed underground regulation regarding the use of seasonal employment is available at https://exams.spb.ca.gov/ssaonline and is repeated in part, in SPB's memorandum dated September 23, 2010 page 3, section number 8 (Exhibit A).

Because the minimum qualifications on the codified Specifications sheet for the position of SSA (Exhibit B) allows state service to be used in lieu of education under pattern II and does not mention exclusion of seasonal employment, Gottman promptly sent an appeal to SPB regarding the exclusion of seasonal and temp employment (Exhibit C).

Upon receiving the memorandum dated September 23, 2010; Gottman then filed a public records act request ("PRA") for any and all public records which refer, reflect, or otherwise relate to the use or exclusion of seasonal employment to meet minimum qualifications for the state civil service classification of Staff Services Analyst (Exhibit D).

SPB's response to this PRA dated October 26, 2010 (Exhibit E) denies the existence of any public records, available or withheld, which refers to the exclusion of seasonal employment, not to mention their own admission on their website which is in question here.

Issue:

Does SPB's claim that State Service "Does not include student assistant, seasonal, or legislative experience" qualify as an Underground Regulation?

Rule:

There is a three step process to determine whether the policy or procedure must be adopted as a regulation pursuant to the requirements and procedures of the APA if the regulation is not set out in an applicable statute or duly adopted regulation:

1. The policy must be either
   a. A rule or standard of general application, or
   b. A modification or supplement to such a rule

The rules set forth by the specifications sheet to meet the minimum qualifications are clear. An applicant may use state service in lieu of the education requirements in Pattern I. State service is defined in government code section 20069: "State service means service rendered as an employee or officer. . .of the state. . ." State service may be earned by seasonal employment. There is no mention in the government code of the exclusion of state service earned from seasonal employment to qualify for any position; therefore the policy of excluding seasonal employment by SPB is a rule of general application and modification to the government code by redefining "state service".

2. Has the policy or procedure been adopted by the agency to either:
   a. Implement, interpret, or make specific the law enforced or administered by the agency's procedure?

As discussed supra, this policy interprets the language of the specifications regarding state service and is administered by the agency's procedure as evinced by their decision to terminate my employment as an SSA.

If the policy or procedure satisfies steps one and two above, then it is a "regulation" as defined in the APA and must be adopted pursuant to the APA unless it falls within an express statutory exemption from the requirements of the APA. Steps one and two are duly satisfied therefore only a statutory exemption shall relieve SPB of adopting this policy through the APA.

3. Has the policy or procedure been expressly exempted by statute from the requirement that it be adopted as a "regulation" pursuant to the APA?

I cannot find, nor do I believe there exits such a statute. Furthermore the PRA request I submitted to SPB did not produce any such document or refer to any such statute.

Dated: November 23, 2010

/s/
Jayson F. Gottman

Answer to Writ of Mandate

DEBRA CORNEZ, Assistant Chief Counsel/
Acting Director, Coordinating Attorney,
Litigation and Appeals
State Bar No. 107846
OFFICE OF ADMINISTRATIVE LAW
KATHLEEN EDDY, Senior Counsel
State Bar No. 88630
ELIZABETH HEIDIG, Staff Counsel
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Office of Administrative Law, In Pro Per

Exempt From Filing Fees Pursuant to Government Code section 6103

SUPERIOR COURT OF THE STATE
OF CALIFORNIA
COUNTY OF LOS ANGELES

INSURANCE COMMISSIONER STEVE POIZNER,

Petitioner

v.

OFFICE OF ADMINISTRATIVE LAW,

Respondent,

AMERICAN COUNCIL OF LIFE INSURERS; AMERICA INSURANCE ASSOCIATION; ASSOCIATION OF CALIFORNIA INSURANCE COMPANIES; ASSOCIATION OF CALIFORNIA LIFE AND HEALTH INSURANCE COMPANIES and PERSONAL INSURANCE FEDERATION OF CALIFORNIA,

Real Parties in Interest.

Case No. BS129209

ANSWER TO PETITION FOR WRIT OF MANDATE

Department 86

Hon. Ann Jones

Respondent, Office of Administrative Law, answers the Petition for Writ of Mandate as follows:

1. Respondent lacks sufficient information or belief to answer the allegations of paragraphs 1, 2, and 3, and basing its denial on that ground, denies said allegations.

2. Respondent denies the allegations in paragraph 4.

3. Respondent lacks sufficient information or belief to answer the allegations of paragraphs 5 and 6, and basing its denial on that ground, denies said allegations.

4. Respondent admits the allegations in paragraph 7.

5. Respondent denies the allegations in paragraph 8.

6. Respondent admits the allegations in paragraph 9, 10 and 11.

7. Respondent lacks sufficient information or belief to answer the allegations of paragraphs 12, 13, 14, 15 and 16, and basing its denial on that ground, denies said allegations.

8. Respondent lacks sufficient information or belief to answer the allegations of paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29, and basing its denial on that ground, denies said allegations.

9. Respondent admits the allegations in paragraphs 30, 31, 32.

10. Respondent denies the allegations in paragraph 33, but admits OAL received the insurers' Reply on August 10, 2010.

11. Respondent lacks sufficient information or belief to answer the allegations of paragraph 34, and basing its denial on that ground, denies said allegation.

12. Respondent admits the allegations in paragraphs 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44.

13. Respondent denies the allegations in paragraphs 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55.

14. Respondent admits the allegations in paragraph 56.

15. Respondent denies the allegations in paragraphs 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 73.

16. Respondent generally denies all other allegations not specifically addressed in this answer.

AS A FIRST SEPARATE AND AFFIRMATIVE DEFENSE, respondent alleges that the Petition fails to state facts sufficient to constitute a cause of action.

AS A SECOND SEPARATE AND AFFIRMATIVE DEFENSE, respondent alleges that petitions have an adequate remedy available to them, other than mandamus.

PRAYER FOR RELIEF

WHEREFORE, Respondent, the Office of Administrative Law, prays that this Court deny the issuance of the preemptory writ of mandate, and, further:

1. That Respondent recover its costs in this matter and Petitioner take nothing; and,

That such other and further relief be granted as the Court deems just and proper.

Dated:

DEBRA M. CORNEZ

/s/
Assistant Chief Counsel/Acting Director,
Coordinating Attorney, Litigation and Appeals
OFFICE OF ADMINISTRATIVE LAW

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# 2010–1213–02
AIR RESOURCES BOARD
EWIR and GHG Passenger Vehicle 2010

On September 27, 2010, the Air Resources Board (ARB) submitted to the Office of Administrative Law (OAL) a regulatory action which proposed to amend sections 1956.8, 1958, 1961, 1976, 1978, 2111, 2122, 2136 and 2141 and repeal sections 2166 through 2175 of title 13 of the California Code of Regulations to remove the Emission Warranty Information Reporting (EWIR) program. Section 1961 of title 13 was revised by that regulatory action to amend the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light–Duty Trucks and Medium–Duty Vehicles" as last amended March 29, 2010. On November 8, 2010, OAL approved this regulatory action. The title page for the document amended and incorporated by reference by section 1961 and filed with the Secretary of State with that regulatory action inadvertently removed March 29, 2010 from the list of previous revisions. On December 13, 2010, ARB submitted to OAL a filing without regulatory effect reinserting March 29, 2010 in the list of previous revisions on the title page of the incorporated "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light–Duty Trucks and Medium–Duty Vehicles."

Title 13
California Code of Regulations
AMEND: 1961
Filed 01/19/2011
Agency Contact: Amy Whiting (916) 322–6533

File# 2010–1209–01
AIR RESOURCES BOARD
Portable Diesel Engines & Diesel Engines In/Off Road — Part 2

This rulemaking action amends regulations in titles 13 and 17 of the California Code of Regulations concerning the Portable Engine Registration Program and Air Toxic Control Measures. Among other things, this rulemaking further specifies and amends record–keeping responsibilities of engine operators, adds notification requirements to equipment rental businesses, and changes the formula for determining particulate matter emission rates for certain engines.

Title 13, 17
California Code of Regulations
AMEND: Title 13: 2451, 2452, 2453, 2456, 2457, 2458, 2459 and Title 17: 93116.1, 93116.2, 93116.3
Filed 01/20/2011
Effective 02/19/2011
Agency Contact: Amy Whiting (916) 322–6533

File# 2011–0111–01
CALIFORNIA STUDENT AID COMMISSION
Implement Cal Grant Alternative Delivery System Pilot Program

This is an emergency readopt of OAL file 2010–0728–01E that adopted 23 new sections and amends 9 sections in Title 5 to implement AB 187 that establishes a pilot program for an alternative Cal Grant delivery system under which a qualifying institution, if it elects to participate and meets specified requirements, would be authorized to voluntarily administer award grants under the Cal Grant A and B Entitlement Programs and the California Community College Transfer Cal Grant Entitlement Program. This rulemaking also prescribes requirements for the selection of qualifying institutions within the University of California, California State University, and California Community Colleges for participation in the pilot program.

Title 5
California Code of Regulations
ADOPT: 30010, 30011, 30012, 30013, 30014, 30015, 30016, 30017, 30018, 30019, 30034, 30035, 30036, 30037, 30038, 30039, 30040, 30041, 30042, 30043, 30044, 30045, 30046 AMEND: 30000, 30001, 30002, 30005, 30020, 30021, 30022, 30023, 30030, 30032, 30033
Filed 01/20/2011
Effective 01/20/2011
Agency Contact: Kathy Spencer (916) 464–3021

File# 2010–1210–01
DEPARTMENT OF FOOD AND AGRICULTURE
Biodiesel Standards and Biodiesel and E85 Labeling

This rulemaking adopts some sections, amends some sections and repeals some sections in Title 4 of the California Code of Regulations. This rulemaking adopts the ASTM International fuel quality specification D 7467 for biodiesel blends for use in compression ignition engines thereby allowing fueling stations to sell diesel blended with biodiesel. This rulemaking also places the regulations into compliance with the labeling requirements for alternative fuels, E85 Fuel Ethanol, M85 Fuel Methanol, biodiesel, bio blends, biomass diesel, and biomass diesel blends with the Federal Trade Commission as required under the National Energy Independence and Security Act of 2007. The Department is obliged by B&P Code sections 13440 and 13450 to incorporate by reference the latest versions of standards of a recognized consensus organization such as ASTM or SAE.

Title 4
California Code of Regulations
ADOPT: 4140, 4141, 4142, 4143, 4144, 4145, 4146, 4147, 4148, 4149, 4200, 4201, 4202, 4203, 4204, 4205
Filed 01/24/2011
Effective 02/23/2011
Agency Contact: David Lazier (916) 229–3044

File# 2010–1217–02
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
Federal Homelessness Prevention and Rapid Re–Housing Program

In this regulatory action, the Department of Housing and Community Development (Department) adopts regulations to establish policies and procedures for the administration of state contracts (standard agreements) previously entered into between the Department and awardees of federal "Homelessness Prevention and Rapid Re–Housing Program" funds. The regulations implement administrative requirements under federal Public Law 111–5 (the American Recovery and Reinvestment Act of 2009), Division A, Title 12, and under a notice issued by the U.S. Department of Housing and Urban Development pursuant to that federal law.

Title 25
California Code of Regulations
ADOPT: 7980, 7980.1, 7980.2, 7980.3
Filed 01/26/2011
Effective 02/25/2011
Agency Contact: Lenora Frazier (916) 323–4475

File# 2011–0112–01
DEPARTMENT OF INSURANCE
Loss Ratio Regulation for Individual Health Insurance Policies

The Department of Insurance submitted this emergency rulemaking action to amend section 2222.12 of title 10 of the California Code of Regulations. This amendment was prompted by the enactment of the federal Affordable Care Act, a series of health market reforms, and the Interim Final Rule, 45 Code of Federal Regulations Part 158, which describes the factors, scope, and method used in the calculation of loss ratios. The federal rules provide, among other things, that beginning January 1, 2011, health insurers offering coverage in the individual market must achieve at least an 80% loss ratio. Those insurers that do not meet this standard will be required to provide a refund the following calendar year.

As a result of this amendment, insurers in California will have to demonstrate both (1) compliance with the existing 70% lifetime anticipated loss ratio standard prescribed by section 2222.12, so that consumers are assured of receiving reasonable benefit value for their premium dollars on a policy–form basis, as well as (2) compliance with the 80% federal standard on a market–segment basis at the time of DOI's rate review, so that consumers can have the benefit of the federal medical loss ratio from the outset of the rate, rather than having to wait from eight to twenty months for a premium refund.

Title 10
California Code of Regulations
AMEND: 2222.12
Filed 01/24/2011
Effective 01/24/2011
Agency Contact: Bruce Hinze (415) 538–4392

File# 2010–1217–04
DEPARTMENT OF TRANSPORTATION
Mass Transportation

This rulemaking action amends title 21 of the California Code of Regulations Section 6680 to remove the San Diego Metropolitan Transit Development Board (SDMTDB) from among those agencies which can designate consolidated transportation service agencies, because the SDMTDB is no longer the Transportation Planning Agency for San Diego. The rulemaking also corrects an erroneous cross–reference to the California Corporations Code.

Title 21
California Code of Regulations
AMEND: 6680
Filed 01/25/2011
Effective 02/24/2011
Agency Contact: Gordon Arruda (916) 654–9396

File# 2010–1208–03
OCCUPATIONAL SAFETY AND HEALTH (CAL–OSHA) DIVISION
Amusement Ride Fees

The Division of Occupational Safety and Health (Cal–OSHA) submitted this rulemaking action to increase the fees charged for inspections, reinspections, and investigations that OSHD performs on permanent amusement rides (rides installed in a fixed location) and portable amusement rides (rides assembled and disassembled at different sites as part of a traveling attraction). The hourly rate for an OSHD inspector's time will increase from $125.00/hour to $195/hour, and ride operators will be assessed a graduated annual flat fee for each ride depending on whether the ride is classified as small, medium, large, or extra–large, as specified, to cover administrative costs. The amended regulations are sections 344.6, 344.16, and 344.18 of title 8 of the California Code of Regulations, which will be effective upon filing.

Title 8
California Code of Regulations
AMEND: 344.6, 344.16, 344.18
Filed 01/20/2011
Effective 01/20/2011
Agency Contact:
Christopher P. Grossgart (415) 703–5080

File# 2010–1214–06
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
Proposition 65 NSRL for 2, 4, 6–Trinitrotoluene

The Office of Environmental Health Hazard Assessment submitted this rulemaking action to amend title 27, California Code of Regulations, section 25705, which provides specific regulatory levels that pose no significant risk level of cancer under Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986). The amendment adds 2,4,6–Trinitrotoluene (TNT) to the list of chemicals under section 25705(b)(1), provided exposure to TNT does not exceed 8.2 micrograms per day.

Title 27
California Code of Regulations
AMEND: 25705
Filed 01/26/2011
Effective 02/25/2011
Agency Contact: Monet Vela (916) 323–2517

File# 2010–1214–07
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
Proposition 65 NSRL for Glycidol (Carcinogen)

The Office of Environmental Health Hazard Assessment submitted this rulemaking action to amend title 27, California Code of Regulations, section 25705, which provides specific regulatory levels that pose no significant risk level of cancer under Proposition 65 (Safe Drinking Water and Toxic Enforcement Act of 1986). The amendment adds Glycidol to the list of chemicals under section 25705(b)(1), provided exposure to Glycidol does not exceed 0.54 micrograms per day.

Title 27
California Code of Regulations
AMEND: 25705
Filed 01/26/2011
Effective 02/25/2011
Agency Contact: Monet Vela (916) 323–2517

File# 2010–1217–05
STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998; HPI Grant Regulations

This regulatory action revises some of the requirements for earning points in order for a school district to be eligible to receive a High Performance Incentive grant for new construction and modernization projects. The purpose of these grants is to encourage the use of energy efficient designs and materials.

Title 2
California Code of Regulations
AMEND: 1859.2, 1859.71.6, 1859.77.4, 1859.81.1, 1859.104
Filed 01/25/2011
Effective 01/25/2011
Agency Contact: Robert Young (916) 375–5939

File# 2010–1216–02
STATE PERSONNEL BOARD
Table of Contents of Title 2, California Code of Regulations

This action adds a new heading for subchapter 1.3 in chapter 1, division 1, title 2. It also adds new headings for articles 1 through 4 to that subchapter and amends the heading for article 25.

Title 2
California Code of Regulations
ADOPT: Headings for Subchapter 1.3, Article 1, Article 2, Article 3, Article 4 AMEND: Heading for Subchapter 1.3 — Article 25
Filed 01/26/2011
Agency Contact: John D. Smith (916) 651–1041

File# 2010–1207–02
STATE WATER RESOURCES CONTROL BOARD
Amendments to California Code of Regulations Implementing CEQA

This regulatory action amends existing regulations implementing the California Environmental Quality Act of 1970 (CEQA). The purpose of the amendments is to ensure consistency with statutory revisions to CEQA and various court decisions that have further interpreted CEQA with respect to certified regulatory programs.

Title 23
California Code of Regulations
ADOPT: 3775.5, 3776, 3779.5 AMEND: 3720, 3721, 3722, 3723, 3730, 3733, 3740, 3741, 3742, 3750, 3751, 3762, 3763, 3775, 3777, 3778, 3779, 3780, 3781 (Appendices A and C) REPEAL: 3760, 3761, 3764, 3776, 3782
Filed 01/19/2011
Effective 02/18/2011
Agency Contact: Sarah Olinger (916) 322–4142

CCR CHANGES FILED WITH THE SECRETARY OF STATE WITHIN August 25, 2010 TO January 26, 2011

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

Title 2

01/26/11	ADOPT: Headings for Subchapter 1.3, Article 1, Article 2, Article 3, Article 4 AMEND: Heading for Subchapter 1.3 — Article 25
01/25/11	AMEND: 1859.2, 1859.71.6, 1859.77.4, 1859.81.1, 1859.104
01/13/11	AMEND: 1859.2, 1859.302, 1866, Form SAB 50–02, 50–03, 50–04, 50–06, 50–07, 50–08, 50–09, 50–10, 61–04, 40–20, 40–21, 40–24
01/12/11	ADOPT: 172.9, 172.10 AMEND: 172.6, 172.7, 172.8, 172.10 (renumbered to 172.11), 172.11 (renumbered to 172.12) REPEAL: 172.9
01/12/11	AMEND: 59.3 Appendix A
01/06/11	ADOPT: 649.17.1, 649.19, 649.20 AMEND: 647.4, 649.14, 649.15, 649.16, 649.17, 649.26, 649.28, 649.31, 649.32, 649.33, 649.48, 649.50, 649.51, 649.57, 649.62
01/06/11	AMEND: 67.3
12/28/10	AMEND: Div. 8, Ch. 114, Sec. 59590
12/21/10	AMEND: 561, 561.1, 561.2, 561.3, 561.4, 561.5, 561.8, 561.9, 561.11 (renumbered to 561.10), 561.12 (renumbered to 561.11), 561.13 (renumbered to 561.12) REPEAL: 561.10, 561.14
12/20/10	AMEND: 18723
12/20/10	ADOPT: 18215.2 AMEND: 18215, 18225, 18450.1, 18450.4, 18450.5
12/16/10	ADOPT: 1859.90.1 AMEND: renumber 1859.90.1 as 1859.90.2 (not shown), 1859.129, 1859.197
11/30/10	AMEND: 67.8 (Appendix A)
11/23/10	ADOPT: 1190, 1190.01, 1190.02, 1190.03, 1190.04, 1190.05
11/22/10	AMEND: 1859.2, 1859.83
11/16/10	AMEND: 7286.1
11/15/10	AMEND: 18545, 18703.4, 18730, 18940.2, 18943
11/15/10	AMEND: 18225
10/29/10	ADOPT: 1859.90.2 AMEND: Renumber 1859.90.2 to 1859.90.3, 1859.129, 1859.197
10/28/10	AMEND: 59.1
10/27/10	ADOPT: 1185.21, 1189 AMEND: 1181, 1181.1, 1181.2, 1181.4, 1183, 1183.01, 1183.02, 1183.03, 1183.06, 1183.07, 1183.08, 1183.081, 1183.09, 1183.11, 1183.12, 1183.131, 1183.14, 1183.2, 1183.21, 1183.30, 1183.31, 1183.32, 1185, 1185.2, 1185.3, 1185.4, 1185.5, 1185.6, 1186, 1187, 1187.2, 1187.3, 1187.9, 1188, 1188.1, 1188.2, 1188.3, 1188.31, 1189.1, 1189.3 REPEAL: 1181.3, 1189.4, 1189.5
10/26/10	ADOPT: 2297.1
10/21/10	ADOPT: 58.8 AMEND: 59.3
10/11/10	ADOPT: 599.937.4
10/07/10	AMEND: 51.1
10/07/10	AMEND: 51.2(u)
10/07/10	AMEND: div. 8, ch. 46, sec. 53500
10/05/10	AMEND: div. 8, ch. 79, sec. 56800
10/05/10	ADOPT: 1859.172 AMEND: 1859.162.3, 1859.171
10/04/10	AMEND: 1859.2, 1859.81
10/04/10	ADOPT: 642, 643, 644, 645 AMEND: 640, 641
09/27/10	AMEND: 18942, 18944.1

09/07/10 AMEND: Renaming of headings only, as follows: Article 4 of Chapter 1 to new Subchapter 1.2; Subarticles 1–10 of nes Subchapter 1.2 to new Articles 1–10; and Chapters 1–5 of new Article 6 to new Subarticles 1–5.
09/02/10 ADOPT: 60804.1, 60815.1, 60820.1, 60855, 60856, 60857, 60858, 60859, 60860, 60861, 60862, 60863 AMEND: 60841, 60846, 60853 REPEAL: 60855
09/01/10 AMEND: 234, 548.70
09/01/10 AMEND: 234, 548.70

Title 3

01/13/11 AMEND: 3425(b), (c)
01/13/11 AMEND: 3591.20(a)
01/13/11 AMEND: 3591.15(a), (b)
01/11/11 AMEND: 1430.142
01/11/11 AMEND: 3591.20(a)
12/30/10 AMEND: 3435(b)
12/29/10 AMEND: 3434(b) and (c)
12/20/10 ADOPT: 6446, 6446.1 AMEND: 6400, 6452.4, 6624
12/14/10 AMEND: 3434(b) and (c)
12/14/10 AMEND: 850
12/09/10 AMEND: 6860
12/06/10 AMEND: 3906
11/30/10 AMEND: 3406
11/24/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7, 3701.8 AMEND: 3407
11/24/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7, 3701.8 AMEND: 3407
11/22/10 AMEND: 3435(c)
11/18/10 AMEND: 105, 108
11/17/10 AMEND: 3434(b)
11/17/10 AMEND: 3434(b)
11/17/10 AMEND: 3437
11/15/10 REPEAL: 3000, 3001, 3002, 3003, 3004
11/09/10 AMEND: 3437
10/27/10 AMEND: 6447, 6447.2, 6784
10/21/10 AMEND: 3591.5(a)
10/18/10 AMEND: 3437(b)
10/11/10 AMEND: 3558(a)
10/11/10 AMEND: 3855
10/06/10 ADOPT: 1391, 1391.1, 1391.2, 1391.3, 1391.4 AMEND: 1391 (renumbered to 1391.5), 1391.1 (renumbered to 1391.6)
10/01/10 AMEND: 3434(b)
09/27/10 AMEND: 3
09/27/10 AMEND: 3437
09/22/10 AMEND: 3591.20(a)
09/14/10 AMEND: 3434(b)
09/13/10 ADOPT: 3437
09/09/10 AMEND: 3434(b)
09/02/10 AMEND: 3425(b)
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08/26/10 AMEND: 3406(b)
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11/04/10 AMEND: 8034, 8035, 8042, 8043
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10/18/10 ADOPT: 1216.1

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10/13/10 AMEND: 212.5

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11/04/10 AMEND: 2689.8(c)
10/21/10 AMEND: 2498.6
10/18/10 ADOPT: 3575, 3576, 3577 AMEND: 3500, 3522, 3523, 3524, 3526, 3527, 3528, 3529, 3530, 3582, 3681, 3702, 3703, 3721, 3724, 3726, 3728, 3731, 3741
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11/09/10 AMEND: 551.15, 551.17, 556, 558, 561, 586
11/08/10 AMEND: 1956.8, 1958, 1961, 1976, 1978, 2111, 2122, 2136, 2141 REPEAL: 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
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01/05/11 AMEND: 4970.00, 4970.01, 4970.05, 4970.08, 4970.09, 4970.13
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12/20/10 ADOPT: 39, 40, 41, 42, 43, 44, 45, 46, 48, 48.1, 48.2, 48.3, 48.5, 48.6
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12/15/10 AMEND: 3943
12/07/10 ADOPT: 3909 AMEND: 3900
11/18/10 AMEND: 2200, 2200.3, 2200.4, 2200.6
11/17/10 AMEND: 1062, 1064, 1066, 3833.1
11/4/20 ADOPT: 3929.5
09/27/10 ADOPT: 2922
09/22/10 ADOPT: 2921
09/15/10 ADOPT: 3929.4

Title 25

01/26/11 ADOPT: 7980, 7980.1, 7980.2, 7980.3

Title 27

01/26/11 AMEND: 25705
01/26/11 AMEND: 25705
12/16/10 AMEND: 25805
11/18/10 AMEND: 25805

Title MPP

12/22/10 AMEND: 42–302, 42–712, 42–713
09/03/10 ADOPT: 31–021 AMEND: 31–003, 31–410, 31–501
08/26/10 AMEND: 40–188
08/26/10 AMEND: 44–211
08/26/10 ADOPT: 91–101, 91–110, 91–120, 91–130, 91–140

PART G

WRITTEN COMMENTS SUBMITTED DURING THE 45-DAY COMMENT PERIOD

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM PROPOSED ADOPTION OF SECTION 570.5 AND AMENDING OF SECTION 571

SUMMARY OF WRITTEN COMMENTS SUBMITTED DURING THE 45-DAY COMMENT PERIOD

Written comments submitted during the public comment period are included under PART G and addressed in the Final Statement of Reason under PART J.

Anna Gonzalez

Tisuela, Lourdes

om: Canning, Cherise
Sent: Monday, February 14, 2011 1:17 PM
To: Gonzalez, Anna
Cc: Jimenez, Tomi; Rodgers, Terrance
Subject: RE: Follow Up Questions - Proposed Regulatory Action

Anna,

Thank you for your recent inquiry regarding newly proposed California Code of Regulation (CCR) 570.5 and the amended CCR 571.

Special compensation is a benefit(s) paid to employees in addition to regular pay rate and earnings. An exclusive list of identified and defined special compensation items for members employed by contracting agencies and school employers can be located under CCR 571(a). If they are contained in a written labor policy or agreement, these items must be reported to CalPERS for the purpose of calculating retirement benefits.

You may view the list of approved special compensation items in the CalPERS Public Agency & Schools Procedures Manual. Below is the link to the manual (Please note that special compensation items and information begin on page 70 of the manual):

http://www.calpers.ca.gov/eip-docs/employer/er-forms-pubs/pubs/manuals/pa-ret-manual/procedures-manual.pdf

With regard to your question about the portions of health premiums covered by executive management and the employer, this information would not be required for disclosure on publicly available pay schedules. The purpose and intent of these regulations are to clarify "compensation earnable"; compensation for the purpose of calculating retirement benefits. With that said, health premium costs and/or money provided to cover health premiums do not qualify as compensation earnable and cannot be used for retirement benefit calculations.

We hope that this email clarifies your questions. Should you have any additional questions or require further clarification, please feel free to contact me directly at 916/795.1463. Also, I have provided links to our website with additional information which may be helpful. Again, thank you for your inquiry and interest.

http://www.calpers.ca.gov/eip-docs/about/board-cal-agenda/agendas/bpac/201012/item5b-0.pdf

http://www.calpers.ca.gov/eip-docs/about/board-cal-agenda/agendas/bpac/201012/item5b-1.pdf

Cherise Canning
Compensation Review Analyst
(916) 795-1463

From: Anna Gonzalez [mailto:ANNAG@nlacrc.org]
Sent: Tuesday, February 08, 2011 5:11 PM
To: Jimenez, Tomi
c: Anna Whitlock; Michele Marra; Stacey Antoniuk
Subject: Follow Up Questions - Proposed Regulatory Action

Hello Tomi,

Thank you for taking the time to speak with me today.

I have a few follow up questions regarding our agency #1012:

1. What is considered special compensation? Can you provide example?

2. If our Executive upper management staff get 100 % of Health Premium picked up in full for member and family, and the ER share (3.5 %) of the Retirement Contribution (Total 7 % Contribution to CalPERS) is also picked up in full, is this something that needs to be disclosed on the public pay schedule?

3. If needed can we schedule a conference call with you, our HR Director and CFO for clarification on anything for the proposed regulatory action? Or do you prefer that all our questions be submitted to you in writing via email?

Again thank you for your assistance.

nna Gonzalez
Human Resources

North Los Angeles County Regional Center
15400 Sherman Way, #170
Van Nuys, CA 91406

Main: 818-778-1900
Fax: 818-756-6440

http://www.nlacrc.org/about_employ.html
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Herbert Pike

Tisuela, Lourdes

From: Rodgers, Terrance
Sent: Thursday, February 24, 2011 11:33 AM
To: Tisuela, Lourdes
Subject: FW: Notice of Proposed Regulatory Action
Attachments: Herbert Pike.vcf

From: Jimenez, Tomi
Sent: Tuesday, February 08, 2011 12:52 PM
To: Rodgers, Terrance; Canning, Cherise
Subject: FW: Notice of Proposed Regulatory Action

Another question for the log

From: Herbert Pike [mailto:HerbertP@abag.ca.gov]
Sent: Tuesday, February 08, 2011 12:32 PM
To: Jimenez, Tomi
Subject: Notice of Proposed Regulatory Action

Tomi-

Regarding the proposal re Sections 570.5 and 571, we do prepare a salary schedule, and routinely respond to public information requests re employee salaries and benefits. However, our salary schedule does not currently include upper management (about 10 employees) who serve at will, are not covered by a labor MOU, and whose salaries are set by the Executive Director. Does your proposal expect us to issue a formal list of top management and their salaries? How often must it be updated?

This will enable us to review and assign responsibility within our organization for its dissemination.

Thanks,

Herbert L. Pike, CPFO
Director of Finance
Association of Bay Area Governments
101 Eighth Street
Oakland, CA 94607-4756

Nutley, Christina

m: Rodgers, Terrance
ent: Monday, February 14, 2011 11:19 AM
To: Herbert Pike
Cc: Jimenez, Tomi; Canning, Cherise
Subject: RE: Proposed CCR 570.5 and Proposed Amendment to CCR 571

Mr. Pike,

Thank you for your recent inquiry regarding newly proposed California Code of Regulations (CCR) 570.5 and amended California Code of Regulations (CCR) 571. Currently, Government Code 20636(b)(1) and (d) require CalPERS employers to report compensation earnable pursuant to publicly available pay schedules and the schedules, ordinances, or similar documents shall be public records available for public scrutiny. The intent of the proposed and amended legislation is to clarify existing law, ensure consistency amongst employers, and enhance disclosure and transparency of compensation provided to public employees.

With regard to your first question pertaining the proposal's expectation of issuing a formal list of top management and their salaries, current law requires publicly available pay schedules, ordinances or similar documents. However, CCR 570.5(a) provides a specific criterion in order for the payrate to be considered as compensation earnable and reportable for use in calculating members' retirement benefits. CCR 570.5(a)(2) and (3) require the position title for every employee position and the payrate for the respective position identified, not the names of the individuals. With regard to your second inquiry and the frequency of updates quired to your publicly available pay schedule, in order for payrate to be considered as reportable for irement calculation purposes, the information should be updated according to the procedure identified in CCR 570.5 and as appropriate. In plain terms, if there are changes in payrate which exceed the monetary parameters identified on the pay schedule, the pay schedule should be updated as often as changes occur in order to be considered for use in calculating the member's benefit. Again, it is important to point out the pay schedules would not necessarily need to be updated because an employee's payrate changes. However, if the employee's payrate exceeds the amount identified on the pay schedule, an update would be required in order to be considered in the calculation of members' benefits.

Should you have any additional questions or require further clarification, please feel free to contact me directly at 916/795.9523. Also, I have provided a link to our website with additional information which may be helpful. Again, thank you for your inquiry and interest.

Regards,
Terrance Rodgers
Compensation and Employer Review Unit
Terrance_rodgers@calpers.ca.gov
916.795.9523

m: Herbert Pike [mailto:HerbertP@abag.ca.gov]
ent: Wednesday, February 09, 2011 3:16 PM
To: Rodgers, Terrance
Subject: Re: Proposed CCR 570.5 and Proposed Amendment to CCR 571

Terrance-

office number is (510) 464-7902 and my cell phone is (925) 207-8956. However, between various meetings, e-mail is often the most reliable way to contact me.

Herbert L. Pike, CPFO
Director of Finance
Association of Bay Area Governments
101 Eighth Street
Oakland, CA 94607-4756

>>> "Rodgers, Terrance" <Terrance_Rodgers@CalPERS.ca.gov> 2/9/2011 3:09 PM >>>
Good Afternoon Mr. Pike,
I have been instructed to follow up with you regarding your inquiries pertaining to the aforementioned California Code of Regulations. My name is Terrance Rodgers and I am a manager in the Compensation Review Unit at CalPERS. I have a meeting scheduled with my manager to review your specific inquiries and follow up with information. Do you have a direct number in which you may be reached? Thank you for your patience and, if you are able to provide your contact number, I will be following up via telephone in the very near future.
Best regards,

Terrance Rodgers
Compensation Review
916/795.9523

Bonnie Rasband

Tisuela, Lourdes

From: Canning, Cherise
Sent: Friday, February 25, 2011 2:43 PM
To: Tisuela, Lourdes
Subject: FW: Regulations for Publicly Available Pay Schedules

Lourdes,
This email came back as undeliverable to Bonnie. The correct address is --- brasband@marin.k12.ca.us

I forwarded the below email to her correct address.

From: Canning, Cherise
Sent: Friday, February 25, 2011 2:32 PM
To: 'brasband@marinK12.ca.us'
Cc: Jimenez, Tomi; Rodgers, Terrance; Tisuela, Lourdes
Subject: Regulations for Publicly Available Pay Schedules

Dear Bonnie,

We are uncertain as to the situation you describe and what you mean by "a professional expert and/or sub that doesn't have salary schedule". Therefore, we are unable to provide a definitive answer to your question. In general, however, if your governing body has approved an employee position at a particular rate of pay or within a pay range, then the position and the pay or pay range, as well as the manner in which it is paid, must be included on the publicly available pay schedule. If the "professional expert and/or sub" to which you refer is performing service for your agency in a capacity other than as a common law employee (i.e. as an independent contractor), then the pay need not be included on the pay schedule since it would not be reportable to CalPERS.

If you would like a more precise answer, please feel free to contact us with a more detailed description of the employment situation about which you have inquired. We will promptly respond to any further questions you may have.

Sincerely,

Cherise Canning
Compensation and Employer Review Unit , RPS II
California Public Employees' Retirement System
www.calpers.ca.gov
916.795.1463
Lincoln Plaza North- 400 Q Street, Sacramento, CA 95811

From: Bonnie Rasband
To: Jimenez, Tomi
Sent: Wed Feb 16 10:29:57 2011
Subject: Regulations for Publicly Available Pay Schedules

Tomi,
If we have a professional expert and or sub that doesn't have salary schedule. Also, it can have a salary that varies according to experience. How do we handle this regulation according to our situation?

Thanks,
Bonnie

Bonnie Rasband
Business Services Manager
Marin County Office of Education
1111 Las Gallinas Avenue
San Rafael, CA 94903
Tel: (415) 491-6678
Fax: (415) 491-6620

Richard G. Battles

Tisuela, Lourdes

om: Montez, Marion
Sent: Thursday, March 17, 2011 9:35 AM
To: Ray, Angelina T.
Subject: FW: Goleta Sanitary District

Here is a question I received.

From: Montez, Marion
Sent: Thursday, February 24, 2011 8:14 AM
To: 'R Battles'
Cc: kazoury@goletasanitary.org
Subject: RE: Goleta Sanitary District

Good morning. Yes, the proposed regulations would require that the general manager's salary be included on the publicly available pay schedule.

Marion

From: R Battles [mailto:rbattles@hmglaw.com]
Sent: Wednesday, February 23, 2011 3:06 PM
To: Montez, Marion
: kazoury@goletasanitary.org
bject: Goleta Sanitary District

Hi Marion-

It's been almost a year since we last discussed the Goleta Sanitary District (GSD) and the requirement for GSD to have a publicly available pay scale for its General Manager. I am attaching for your reference a copy of your letter dated March 5, 2010 which addresses this issue. Your letter concludes that the General Manager's Employment Agreement with GSD qualifies as a "publicly available salary schedule" for the purposes of CalPERS law and that it is not necessary to include the General Manager's compensation on GSD's existing salary schedule.

GSD recently received a notice that CalPERS is proposing to add Section 570.5 and to amend Section 571(b) of its regulations. The purpose of this email is to determine whether these proposed regulations, if adopted, will change the conclusions set forth in your March 5, 2010 letter. In other words, will the General Manager's Employment Agreement with GSD qualify as the schedule or document required under the proposed regulations?

If you would like to discuss, please do not hesitate to contact me or GSD's General Manager, Kamil Azoury.

Thank you,
Rick

Richard G. Battles | **Howell Moore & Gough LLP**
12 Presidio Avenue | **Santa Barbara, CA 93101**
ne: (805) 962-0524 Ext. 11 | **Fax: (805) 962-0534**
ail: RBattles@HMGLaw.com | **Website: www.HMGLaw.com**

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From: Montez, Marion [mailto:Marion_Montez@CalPERS.ca.gov]
Sent: Monday, March 08, 2010 12:55 PM
To: R Battles
Cc: kazoury@goletasanitary.org
Subject: RE: Goleta Sanitary District

Good morning. I did receive your voice mail. I signed the letter late last week so I expect you will receive it by this Friday. We are furloughed on Fridays and that may impact our mail system.

Marion

From: R Battles [mailto:rbattles@hmglaw.com]
Sent: Monday, February 22, 2010 10:07 AM
To: Montez, Marion
Cc: kazoury@goletasanitary.org
Subject: RE: Goleta Sanitary District

Hi Marion,

Mr. Azoury asked me to send you the attached draft summary I prepared of our telephone conference on January 19. If you have any corrections or additions to this summary, please let me know. The attached summary may be of assistance to you in preparing the letter that we understand you will be sending to Mr. Azoury, in care of my office.

Thank you,
Rick

Tisuela, Lourdes

om: Rodgers, Terrance
Sent: Thursday, March 10, 2011 9:49 AM
To: Legislative Intern; marykimbellsmith@yourcsd.com
Cc: Ray, Angelina T.; Jimenez, Tomi
Subject: RE: Proposed Regulatory Action Question

Dear Ms. Kimbell-Smith:

We have reviewed your email and we understand your concern to be with a bulleted item on page 3 of the Notice of Proposed Regulations (i.e. the summary description in the notice of proposed regulations, not the actual regulation language). We presume that you are not questioning the new Regulation 570.5 which describes payrate and publicly available pay schedule requirements. Rather, we read your email as questioning whether the additional descriptive language added to Regulation 571, subdivision (b) would require that for each labor document, each item of special compensation be calculated to show the dollar increase attributable to that item of special compensation at each step of salary range for each position. The answer to that question is no.

As to reporting special compensation, existing Regulation 571, subdivision (a) contains the exclusive list of special compensation items for contracting agency and school employers. That part of the regulation is not being amended. Existing Regulation 571, subdivision (b) requires, among other things, that items of special compensation be contained in a written labor policy or agreement, which requirement also is not being changed. (Government Code section 20049 defines a labor policy or agreement to be "any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.")

The proposed amendment to Regulation 571, subdivision (b) clarifies what information must be contained in a written labor policy or agreement, and how the employer is to maintain that information.
That is, the **written labor policy or agreement** must
(A) have been duly approved and adopted by the employer's governing body;
(B) indicate the conditions for payment of the item of special compensation, including, but not limited to eligibility for and amount of the special compensation,;
(C) be posted at the office of the employer of immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
(D) indicate an effective date and date of any revisions;
(E) be retained by the employer and available for public inspection for not less than five years; and
(F) not reference another document (such as an employment contract) in lieu of disclosing the item of special compensation.

That the written labor policy or agreement must describe the conditions for payment of the item of special compensation (eligibility and amount), does not mean that the employer must post "for each labor document, each item of special compensation calculated to show the dollar increase attributable to that item of special compensation at each step of salary range for each position." Rather, the labor policy or agreement must identify the special compensation item and describe who is eligible to receive it and under what circumstances.

We trust the above is responsive to your inquiry. If you have additional questions or comments regarding the proposed amendments to regulations, please feel free to contact us. Thank you.
Sincerely,
Terrance Rodgers
CalPERS, Compensation Review Unit
916/795.9523

om: Legislative Intern [mailto:legintern@csda.net]
Sent: Monday, March 07, 2011 3:44 PM

To: Rodgers, Terrance
Subject: RE: Proposed Regulatory Action Question

rrance,
nank you very much for all your work on this issue.

Best,

Noel Nicklay
Legislative Intern
California Special Districts Association
1112 I Street, Suite 200
Sacramento, CA 95814
t: 916.442.7887
f: 916.442.7889

From: Rodgers, Terrance [mailto:Terrance_Rodgers@CalPERS.ca.gov]
Sent: Monday, March 07, 2011 2:43 PM
To: Legislative Intern
Cc: Ray, Angelina T.
Subject: RE: Proposed Regulatory Action Question

Good Afternoon Noel,
I wanted to follow up and let you know we awaiting our legal review of the proposed response and will send it to you and Mary Kimbell-Smith immediately upon receipt. Thank you in advance for your patience and please let me know if you have any questions or concerns in the interim.
est regards,
rrance Rodgers

From: Legislative Intern [mailto:legintern@csda.net]
Sent: Thursday, March 03, 2011 8:42 AM
To: Rodgers, Terrance
Subject: FW: Proposed Regulatory Action Question

Best,

Noel Nicklay
Legislative Intern
California Special Districts Association
1112 I Street, Suite 200
Sacramento, CA 95814
t: 916.442.7887
f: 916.442.7889

From: Iris Herrera
Sent: Wednesday, February 16, 2011 4:09 PM
To: Legislative Intern
bject: FW: Proposed Regulatory Action Question

See below for the email correspondence on the CalPERS question.

Iris Herrera

Legislative Advocate
CSDA
877.924.CSDA (2732)

oud California Special Districts Alliance Partner.
ornia Special Districts Association
ecial District Risk Management Authority
CSDA Finance Corporation

From: Mary Kimbell-Smith [mailto:MaryKimbellSmith@yourcsd.com]
Sent: Monday, February 07, 2011 4:21 PM
To: Iris Herrera
Subject: RE: Proposed Regulatory Action Question

Here it is. The first part reads like we'd be ok with publishing what we already do – but one of the bullets on page 3 could be interpreted otherwise (unless I'm just being a scaredy cat).

Mary Kimbell-Smith, Human Resources Manager
Cosumnes Community Services District
8820 Elk Grove Blvd. Ste 1, Elk Grove, CA 95624
Phone: (916) 405-7172 Fax: (916) 686-2474
MaryKimbellSmith@yourcsd.com
www.yourcsd.com
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From: Iris Herrera [mailto:iris@csda.net]
Sent: Monday, February 07, 2011 3:39 PM
To: Mary Kimbell-Smith
Subject: RE: Proposed Regulatory Action Question

Yes, please send to me. I haven't seen it yet.

Iris Herrera
Legislative Advocate
CSDA
877.924.CSDA (2732)

A Proud California Special Districts Alliance Partner.
California Special Districts Association
Special District Risk Management Authority
CSDA Finance Corporation

From: Mary Kimbell-Smith [mailto:MaryKimbellSmith@yourcsd.com]
Sent: Monday, February 07, 2011 3:28 PM
To: Iris Herrera
Subject: Proposed Regulatory Action Question

got a notice today from CalPERS that they are proposing to amend the disclosure requirements for compensation to uire payrates or items of special compensation be listed on a schedule of document and made public (in any of a variety of ways). They are accepting comments until March 21st.

If it means that we can publish our salary schedule and the labor agreements and we are good, then I'm fine with it. But it reads like we would have to take all the special pays in each labor document and calculate what they would add at each step of a salary range for each position and publish that. THAT would be a ton of work.

Have you seen that notice? If not, would you like me to scan and send it to you?

Mary Kimbell-Smith, Human Resources Manager
Cosumnes Community Services District
8820 Elk Grove Blvd. Ste 1, Elk Grove, CA 95624
Phone: (916) 405-7172 Fax: (916) 686-2474
MaryKimbellSmith@yourcsd.com
www.yourcsd.com
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PART H

FINAL TEXT OF REGULATION

FINAL TEXT FOR PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT REGULATIONS

California Code of Regulations, title 2, §§ 570.5 and 571

Title 2. Administration
Division 1. Administrative Personnel
Chapter 2. Board of Administration of Public Employees' Retirement System
Subchapter 1. Employees' Retirement System Regulations
Article 4. Contracts

ADD 2 CCR § 570.5

§ 570.5. Requirement for a Publicly Available Pay Schedule.

(a) For purposes of determining the amount of "compensation earnable" pursuant to Government Code Sections 20630, 20636, and 20636.1, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

(1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
(2) Identifies the position title for every employee position;
(3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
(4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly, monthly, bi-monthly, or annually;
(5) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
(6) Indicates an effective date and date of any revisions;
(7) Is retained by the employer and available for public inspection for not less than five years; and
(8) Does not reference another document in lieu of disclosing the payrate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the Board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

(1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
(2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
(3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;
(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

NOTE: Authority cited: Sections 20120 and 20121, Government Code. Reference:

Sections 20630, 20636 and 20636.1, Government Code.

AMEND §571(b)

§ 571. Definition of Special Compensation.

(a) – (No changes).

(b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049, provided that the document:

(A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;

(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;

(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;

(D) Indicates an effective date and date of any revisions;

(E) Is retained by the employer and available for public inspection for not less than five years; and

(F) Does not reference another document in lieu of disclosing the item of special compensation;

(2) Available to all members in the group or class;
(3) Part of normally required duties;
(4) Performed during normal hours of employment;
(5) Paid periodically as earned;
(6) Historically consistent with prior payments for the job classification;
(7) Not paid exclusively in the final compensation period;
(8) Not final settlement pay; and
(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

(c) – (No changes).

(d) – (No changes).

NOTE: Authority cited: Sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121, Government Code; Calif. Const. Art. XVI, Section 17. Reference: Sections 20630, 20636, 20636.1 and 20691, Government Code.

Research Note: - (No changes).

PART I

UPDATED INFORMATIVE DIGEST

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
400 Q Street
P.O. Box 942709
Sacramento, CA 94229-2709

April 14, 2011

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

PART J

FINAL STATEMENT OF REASONS

FINAL STATEMENT OF REASONS

Update of Initial Statement of Reasons

The information set forth in the Initial Statement of Reasons continues to apply.

During the review of the regulations by the Office of Administrative Law, nonsubstantial changes were made to the final regulation text. These changes included minor wording additions and corrections for clarity and accuracy, punctuation and capitalization revisions, correction of the underlining of new text, the addition of notes clarifying the subsections of section 571 which are not being changed, and other minor editing. None of these changes materially alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the originally proposed and noticed regulation text.

Local Mandate Determination

The proposed regulation does not impose any mandate on local agencies or school districts.

Summary and Response to Comments Received During the Public Notice Period of February 4, 2011 through March 21, 2011

CalPERS received five written comments, which were questions clarifying the scope and requirements of the regulations. In addition to the written comments, CalPERS received two comments via phone. One was requesting a copy of the proposed regulations and the other was a question about requirements for compliance. None of the comments requested or required changes be made to the regulations as written. There was no request for public hearing on or before 15 days prior to the closing of the comment period.

1. Anna Gonzalez of North Los Angeles County Regional Center asked for clarification on what is considered as special compensation. CalPERS provided the definition of special compensation as a benefit(s) paid to employees in addition to regular payrate and earnings. CalPERS also provided the link to the list of approved special compensation items in the CalPERS Public Agency & School Procedures Manual. Gonzalez also asked about disclosure of the portions of health premiums covered by executive management and the employer. CalPERS stated that this information would not be required for disclosure on publicly available pay schedules. It also stated that the purpose and intent of these regulations are to clarify "compensation earnable", compensation for the purpose of calculating retirement benefits and that health premium costs and/or money provided to cover health premiums do not qualify as compensation earnable and cannot be used for retirement benefit calculations.

2. Herbert Pike of Association of Bay Area Governments asked if the proposed regulation will expect them to issue a formal list of top management and their salaries and also asked about the frequency of updates on this information. CalPERS clarified that CCR 570.5 (a) provides a specific criterion in order for the payrate to be considered as compensation earnable and reportable for use in calculating members' retirement benefits. CCR 570.5(a) (2) and (3) require the position title for every employee position and the payrate for the respective position identified, not the names of the individuals. In response to question on frequency of updates, CalPERS stated that in order for payrate to be considered as reportable for retirement calculation purposes, the information should be updated according to the procedure identified in CCR 570.5 and as appropriate. In plain terms, if there are changes in payrate which exceed the monetary parameters as identified on the pay schedule, an update is necessary as often as changes occur in order to be considered for use in calculating the member's benefit. CalPERS pointed out that the pay schedules would not necessarily need to be updated because an employee's payrate changes. However, if the employee's payrate exceeds the amount identified on the pay schedule, an update would be required in order to be considered in the calculation of members' benefits.

3. Bonnie Rasband of Marin County Office of Education asked how they can handle situations such as having a professional expert and/ or sub that doesn't have salary schedule and having a salary that varies according to experience. CalPERS was unable to provide a definitive answer on the situation. However, CalPERS provided scenarios such as:

    - If their governing body has approved an employee position at a particular rate of pay or within a pay range, then the position and the pay or pay range, as well as the manner in which it is paid, must be included on the publicly available pay schedule.

    - If the "professional expert and/or sub" is performing service for their agency in a capacity other than as a common law employee (i.e. as an independent contractor), then the pay need not be included on the pay schedule since it would not be reportable to CalPERS.

4. Richard Battles of Howell, Moore and Gough, LLP on behalf of Goleta Sanitary District (GSD) asked if General Manager's Employment Agreement with GSD qualifies as the schedule or document required under the proposed regulations. CalPERS confirmed that the General Manager's salary will be included on the publicly available pay schedule.

5. Mary Kimbell-Smith of Consumnes Community Services District via Noel Nicklay of California Special District Association was concerned about the load of work for taking all the special pays in each labor document , calculating what they would add at each step of a salary range for each position, and publishing them. CalPERS stated that this question applies to existing Regulation 571, subdivision (a) which contains the exclusive list of special compensation items for contracting agency and school employers. This part of the regulation is not being amended. CalPERS explained that the proposed amendment to Regulation 571, subdivision (b) clarifies what information must be contained in a written labor policy or agreement, and how the employer is to maintain that information.

6. Julie Carter of City of Dublin requested via phone a copy of the newly proposed CCR 570.5 and proposed amendment to CCR 571. CalPERS provided her an electronic copy of the language for the proposed regulations via email.

7. Kate of Woodside Fire Protection District asked via phone how CalPERS will enforce agencies to comply with these new regulations within 30 days after they are effective. CalPERS requested the commenter to return call to discuss response but the call was never returned.

Tab G of the rulemaking file includes CalPERS' full emailed responses to the persons who submitted written public comments, and those responses are incorporated by reference in this Final Statement of Reasons.

Alternatives Determination

CalPERS has determined that no reasonable alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

PART K

APA COMPLIANCE STATEMENT

APA COMPLIANCE STATEMENT
(CAL. Const., art. XVI, sec. 17)

I, Christina Nutley, Acting Regulations Coordinator for the California Public Employees' Retirement System (CalPERS), hereby establish that the CalPERS Board of Administration (Board) has resolved to comply with the Administrative Procedure Act in regulatory actions unless doing so would compromise its fiduciary duty and plenary authority under article XVI, section 17 of the California Constitution (as amended November 1992). A copy of this Resolution on APA Compliance (as adopted April 1996) is attached as Exhibit 5 and made part of this Rulemaking File for the Publicly Available pay Schedule and Written Labor Policy or Agreement Adoption and Amendment pursuant to Government Code Section 20200, Title 2, Section 570.5 and Section 571(b), California Code of Regulations.

Christina Nutley
CalPERS Acting Regulations Coordinator

EXHIBIT 1

AGENDA ITEM 5b
BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

DECEMBER 14, 2010

SUBJECT: PROPOSED REGULATIONS FOR PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT

Actuarial & Employer Services Branch
P.O. Box 942709
Sacramento, CA 94229-2709
TTY for the Speech and Hearing Impaired - (916) 795-3240
(888) CalPERS (225-7377) FAX (916) 795-3005

December 14, 2010

AGENDA ITEM 5b

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. SUBJECT: Proposed Regulations for Publicly Available Pay Schedule and Written Labor Policy or Agreement

II. PROGRAM: Actuarial & Employer Services Branch

III. RECOMMENDATION: Staff recommends that the Committee recommend that the Board approve for publication the proposed amendments to clarify and make specific the requirements for publicly available pay schedule and labor policy or agreement.

IV. ANALYSIS:

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensation be limited to items included in a labor policy or agreement, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

The adoption of these proposed regulations will benefit the public, CalPERS employers, members and staff by reducing the uncertainty around whether or not a member's payrate and/or special compensation was publicly available and properly approved by the employing agency. These regulations will also help CalPERS enforce compliance with the compensation statutes, maintain a consistent practice of verifying payrates and special compensation for compensation reported by CalPERS employers, and encourage transparency and proper reporting of public employees' pay for retirement purposes. If employers fail to conform to the pay schedule requirements, these regulations also provide a means for the Board to determine an amount, thereby ensuring that the payrates used to calculate compensation earnable remain fair, equitable, and properly authorized under the law.

The proposed new section 570.5 and the amended section 571, subdivision (b) are included as Attachment A for the Committee's approval. If Board approval to proceed with the proposed changes to the regulations is received, CalPERS staff will initiate the publication of the Notice of Proposed Regulatory Action in the California Regulatory Notice Register. A minimum 45 day written comment period will be followed by a public hearing, if requested, which would be scheduled for a future BPAC meeting. After Board adoption, the regulations will be transmitted to the Office of Administrative Law for review, approval and filing with the Secretary of State and publication in the California Code of Regulations. The proposed changes to the regulations will become effective 30 days after filing with the Secretary of State.

V. STRATEGIC PLAN:

Implementation of these regulations is not a specific product of the Strategic or Annual plans but is part of the regular and ongoing workload of the Actuarial & Employer Services Branch and other affected branches.

VI. RESULTS/COSTS:

CalPERS may achieve cost savings as a result of decreased litigation and administrative appeals related to these issues, as employers and members become more aware of the requirements for a publicly available pay schedule and/or labor policy or agreement.

LORI MCGARTLAND, Chief
Employer Services Division

ALAN MILLIGAN
Chief Actuary

Attachment

EXHIBIT 2

BOARD OF ADMINISTRATION MEETING MINUTES

DECEMBER 14, 2010

AGENDA ITEM 5b – BENEFITS AND PROGRAM COMMITTEE (PAGE 3)

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BOARD OF ADMINISTRATION
BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE
MEETING MINUTES

December 14, 2010

A meeting of the Benefits and Program Administration Committee (BPAC) was held on Tuesday, December 14, 2010, in the Lincoln Plaza North Auditorium, 400 Q Street, Sacramento, California.

The meeting was called to order at 8:03 a.m. and the roll was called. The following members were present:

Rob Feckner, Interim Chair
George Diehr, Vice Chair
Terry McGuire for John Chiang
Patricia Clarey
Greg Beatty for Debbie Endsley
Henry Jones
Priya Mathur
Louis Moret
Tony Oliveira

Other Board Member(s):

Grant Boyken for Bill Lockyer
JJ Jelincic

AGENDA ITEM 3a – STATE LEGISLATIVE PROPOSAL: COMBINE BENEFIT LEVELS IN THE 1959 SURVIVOR PROGRAM FOR PUBLIC AGENCIES

Danny Brown, Chief, Office of Governmental Affairs, presented the State Legislative Proposal: Combine Benefit Levels in the 1959 Survivor Program for Public Agencies as an action item.

On **MOTION** by Mr. Diehr, **SECONDED** by Ms. Mathur and **CARRIED**, the Committee recommended the Board sponsor legislation to combine levels 1, 2, and 3 of the 1959 Survivor Program for Public Agencies into a new pool paying current level 3 survivor benefit and suspend the $2 monthly employee premium if the Board determines the combined pool is running a surplus in excess of 200 percent of the total liabilities of the pool.

AGENDA ITEM 3b - STATE LEGISLATIVE PROPOSAL: MINOR POLICY AND TECHNICAL AMENDMENTS TO THE PUBLIC EMPLOYEES RETIREMENT LAW (PERL)

Mr. Brown presented the State Legislative Proposal: Minor Policy and Technical Amendments to the Public Employees Retirement Law (PERL) as an action item.

On **MOTION** by Mr. Diehr, **SECONDED** by Ms. Mathur and **CARRIED**, the Committee recommended the Board sponsor legislation to make minor policy and technical amendments as outlined in the agenda item.

AGENDA ITEM 3c – STATE LEGISLATIVE PROPOSAL: POLICY AND PLAN DESIGN CHANGES

Ann Boynton, Deputy Executive Officer, Benefits Administration, requested the State Legislative Proposal: Policy and Plan Development item be withdrawn. The Committee had no objections.

AGENDA ITEM 4a – 2010 PUBLIC AGENCY, STATE, AND SCHOOLS ELECTIONS SUMMARY

Kim Malm, Chief, Operations Support Services, presented the 2010 Public Agency, State, and Schools Elections Summary as an information item. The election for the School Board Member held by Rob Feckner, and the Public Agency Board Member position held by Priya Mathur, were not conducted as both incumbents were unopposed. The State Board Member election was decided by majority vote, George Diehr was the elected candidate.

AGENDA ITEM 5a – STATE EMPLOYER CONTRIBUTION RATES

Alan Milligan, Chief Actuary, presented the State Employer Contribution Rates as an action item.

On **MOTION** by Mr. Beatty, **SECONDED** by Ms. Mathur and **CARRIED**, the Committee recommended the Board adopt the following new employer contribution rates for the State plans effective January 1, 2011.

State Plan	Employer Contribution Rate for Pay Periods Between January 1, 2011 and June 30, 2011
State Miscellaneous Tier 1	17.528%
State Miscellaneous Tier 2	16.442%
State Industrial	14.683%
State Safety	15.702%
State Peace Officers & Firefighters	28.556%
California Highway Patrol	29.956%

AGENDA ITEM 5b – PROPOSED REGULATION FOR PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT

Marion Montez, Assistant Chief, Employer Services Division, presented the Proposed Regulation for the Publicly Available Pay Schedule and Written Labor Policy or Agreement as an action item.

On **MOTION** by Ms. Mathur, **SECONDED** by Mr. Diehr and **CARRIED**, the Committee recommended the Board approve for publication the proposed amendments to clarify and make specific the requirements for publicly available pay schedules and labor policy or agreements.

AGENDA ITEM 5c – EFI'S PARALLEL VALUATION AND CERTIFICATION OF THE STATE AND SCHOOLS AS OF JUNE 30, 2009

Dave Clement, Senior Pension Actuary, presented the EFI's Parallel Valuation and Certification of the State and Schools as of June 30, 2009 as an action item.

On **MOTION** by Mr. Diehr, **SECONDED** by Ms. Mathur and **CARRIED**, the Committee recommended the Board accept EFI's report on the June 30, 2009 parallel valuation and certification of the actual valuation of the State and Schools plans in completion of Task 2 of Contract 2009-5377.

AGENDA ITEM 5d – RESULTS OF THE JUNE 30, 2009 ACTUARIAL VALUATIONS FOR PUBLIC AGENCIES

Nancy Campbell, Supervising Pension Actuary, presented the Results of the June 30, 2009 Actuarial Valuations for Public Agencies as information item.

AGENDA ITEM 5e – CALIFORNIA EMPLOYERS' RETIREE BENEFIT TRUST (CERBT) FUND UPDATE

Rand Anderson, Chief, Constituent Relations Office, presented the California Employers' Retiree Benefit Trust (CERBT) Fund Update as an information item.

AGENDA ITEM 5f – PUBLIC EMPLOYEE COMPENSATION UPDATE

Lori McGartland, Chief, Employer Services Division, presented the Public Employee Compensation Update as an information item.

AGENDA ITEM 5g – CHIEF ACTUARY REPORT

Mr. Milligan presented the Chief Actuary Report as an information item.

AGENDA ITEM 6a – ASSISTANT EXECUTIVE OFFICER REPORT

Donna Lum, Assistant Executive Officer, Member and Benefit Services Branch, presented the AEO Report as an information item.

AGENDA ITEM 6b – DRAFT AGENDA FOR FEBRUARY 15, 2011 BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE MEETING

The Committee approved the draft agenda as presented.

The next meeting of the Benefits and Program Administration Committee is scheduled for February 15, 2011, in Sacramento, California.

EXHIBIT 3

AGENDA ITEM 6a
BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

APRIL 12, 2011

SUBJECT: ADOPTION OF REGULATION: PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT

California Public Employees' Retirement System
Customer Account Services Division
P.O. Box 942709
Sacramento, CA 94229-2709
TTY: (916) 795-3240
(888) 225-7377 phone · (916) 795-2330 fax
www.calpers.ca.gov

Agenda Item 6a

April 12, 2011

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. SUBJECT: Adoption of Regulation: Publicly Available Pay Schedule and Written Labor Policy or Agreement

II. PROGRAM: Retirement

III. RECOMMENDATION: Staff recommends that the Committee recommend that the Board adopt the proposed regulation and regulatory amendments to clarify and make specific the requirements for publicly available pay schedule and labor policy or agreement.

IV. BACKGROUND

At the December 14, 2010 Benefits and Program Administration Committee meeting, the Board approved, for publication and public comment, proposed regulations to amend Title 2, California Code of Regulations (CCR), Section 571, subdivision (b) and add proposed Section 570.5, to ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;

- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;

- For special compensation, indicates the conditions for payment.

Public Comment Period
The 45-day written comment period for the proposed regulatory action began on February 4, 2011 and closed on March 21, 2011. See Attachment A for the Notice of Proposed Regulatory Action, the Proposed Changes to Member Contributions Regulations, and the Initial Statement of Reasons, as published by the Office of Administrative Law (OAL).

During the comment period CalPERS received five written comments, which were questions clarifying the scope and requirements of the regulations. In addition to the written comments, CalPERS received two comments via phone. One was a request for a copy of the proposed regulations and the other asked questions about requirements for compliance. None of the written comments requested or required changes be made to the regulations as written. Attachment B provides a summary of all written comments and questions received by CalPERS and responses to those items.

A request for a public hearing must have been received 15 days prior to the close of the comment period. No requests were received.

Next Steps
Should the Board adopt the proposed regulations, CalPERS will forward the final rulemaking file to OAL for review and approval. If OAL approves the proposed regulations, they will be forwarded to the Secretary of State for filing and publication in the CCR. The regulations will become effective 30 calendar days after filing with the Secretary of State.

V. STRATEGIC PLAN:

Implementation of these regulations is not a specific product of the Strategic or Annual plans but is part of the regular and ongoing workload of the Customer Account Services Division and other affected areas.

VI. RESULTS/COSTS:

CalPERS may achieve cost savings as a result of decreased litigation and administrative appeals related to these issues, as employers and members become more aware of the requirements for a publicly available pay schedule and/or labor policy or agreement.

MARION MONTEZ
Assistant Division Chief
Customer Account Services Division

LORI MCGARTLAND, Chief
Customer Service and Outreach Division

DONNA RAMEL LUM
Deputy Executive Officer
Customer Services and Support

BPAC AGENDA ITEM 6a

ADOPTION OF REGULATION: PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT

ATTACHMENT A

Notice of Proposed Regulatory Action, Proposed Changes to Member Contributions, and Initial Statement of Reasons

Attachment A

EDMUND G. BROWN, JR., GOVERNOR

OFFICE OF ADMINISTRATIVE LAW

California Regulatory Notice Register

REGISTER 2011, NO. 5-Z PUBLISHED WEEKLY BY THE OFFICE OF ADMINISTRATIVE LAW FEBRUARY 4, 2011

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

CALIFORNIA REGULATORY NOTICE REGISTER (USPS 002–931), (ISSN 1041-2654) is published weekly by the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339. The Register is printed by Barclays, a subsidiary of West, a Thomson Reuters Business, and is offered by subscription for $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.**

REFERENCE

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

CONTACT

Any inquiries should be made to Brian G. Lau, Fair Political Practices Commission, 428 J Street, Suite 620, 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.php?id=247#2.

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

NOTICE OF PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below in the Informative Digest after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

In this filing, the proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document. This proposed regulatory action clarifies and makes specific requirements for publicly available pay schedule and labor policy or agreement. As used in this regulation, labor policy or agreement means any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.

II. WRITTEN COMMENT PERIOD

Any person interested may submit written comments relevant to the proposed regulatory action. The written comment period closes at 5:00 p.m. on March 21, 2011. The Regulations Coordinator must receive all written comments by the close of the comment period. Comments may be submitted via fax at (916) 795-4607; e-mail at: Veronica_Mora@calpers.ca.gov; or mailed to the following address:

Veronica Mora, Regulations Coordinator
California Public Employees' Retirement System
P.O. Box 942707
Sacramento, California 94229-2707
Telephone: (916) 795-0713

III. PUBLIC HEARING

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

IV. ACCESS TO HEARING ROOM

The hearing room will be accessible to persons with mobility impairments, and can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

V. AUTHORITY AND REFERENCE

The CalPERS Board of Administration (Board) has general authority to take regulatory action under Government Code section 20121. The Board has specific authority to adopt proposed sections 570.5 and 571 under Government Code section 20636 and 20636.1.

This action would be declaratory of the existing law, and serve an informative function for workers and employers who are unfamiliar with these existing laws.

Authority cited for section 570.5 is sections 20120 and 20121 of the Government Code. Reference is sections 20630, 20636 and 20636.1 of the Government Code.

Authority cited for section 571 is sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121 of the Government Code. Reference is sections 20630, 20636, 20636.1 and 20691 of the Government Code.

VI. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensa-

tion be limited to items included in a labor policy or agreement, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's Internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

VII. EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because it applies only to public employees working in positions qualified for membership in CalPERS.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS: The proposed regulatory action imposes a mandate on local agencies or school districts, related to the publication of pay schedules.

B. COST OR SAVINGS TO ANY STATE AGENCY: The proposed regulatory action does not impact costs or savings for any state agency.

C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT: The proposed regulatory action does not impact costs or savings for any local agency or school district, such that costs would qualify for reimbursement under Government Code section 17500, et seq.

D. NONDISCRETIONARY COSTS OR SAVINGS IMPOSED ON LOCAL AGENCIES: The proposed regulatory action does not impose non–discretionary costs or savings on local agencies.

E. COSTS OR SAVINGS IN FEDERAL FUNDING TO THE STATE: The proposed regulatory action does not impact any federal funding to the state.

F. ADVERSE ECONOMIC IMPACT: The proposed regulatory action has no significant statewide adverse economic impact directly affecting businesses, including the ability of business in California to compete with business in other states.

G. COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES: The CalPERS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA: The proposed regulatory action 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.

I. EFFECT ON HOUSING COSTS: The proposed regulatory action has no effect.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed, or would be as effective as and less burdensome to 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 during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Tomi Jimenez
Employer Services Division
California Public Employees' Retirement System
P.O. Box 942709
Telephone: (916) 795–0340
E-mail: tomi_jimenez@calpers.ca.gov

Please direct requests concerning processing of this regulatory action to Veronica Mora, CalPERS Regulations Coordinator, at the address shown above, or (916) 795–0713 (veronica_mora@calpers.ca.gov).

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator at the address shown above. To date the file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge upon telephone or written request to the Regulations Coordinator.

The Final Statement of Reasons can be obtained, once it has been prepared, by written request to Veronica Mora, Regulations Coordinator, at the address shown in Section II.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED AMENDMENT

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed regulations after the public comment period has closed. It may amend the proposed regulations as modified, if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments, who testified or submitted written comments at the public hearing, or asked to be kept informed as to the outcome of this regulatory action.

XIII.

One can access the regulatory material regarding this action at CalPERS' website at www.calpers.ca.gov under About CalPERS > Legislation, Regulations & Statutes > Regulatory Actions > Current Regulatory Actions.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

Notice of Proposed Rulemaking

45 — Day Notice

The Department of Food and Agriculture amended subsection 3435(b) of the regulations in Title 3 of the California Code of Regulations pertaining to Asian Citrus Psyllid Interior Quarantine as an emergency action which was effective on December 30, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than June 28, 2011.

This notice is being provided to be in compliance with Government Code Section 11346.4.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative may submit written comments relevant to the proposed amendment to the Department. Comments may be submitted by mail, facsimile (FAX) at 916.654.1018 or by email to sbrown@cdfa.ca.gov. The written comment period closes at 5:00 p.m. on March 21, 2011. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Attachment A

PROPOSED CHANGES TO MEMBER CONTRIBUTIONS REGULATIONS

California Code of Regulations, title 2, §§ 570.5 and 571

Title 2. Administration
Division 1. Administrative Personnel
Chapter 2. Board of Administration of Public Employees' Retirement System
Subchapter 1. Employees' Retirement System Regulations
Article 5. Member Contributions

ADD 2 CCR § 570.5

§ 570.5. Requirement for a Publicly Available Pay Schedule.
(a) For purposes of determining the amount of compensation earnable, payrate shall be limited to the amount listed on a pay schedule that meets all of the following requirements:

(1) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
(2) Identifies the position title for every employee position;
(3) Shows the payrate for each identified position, which may be stated as a single amount or as multiple amounts within a range;
(4) Indicates the time base, including, but not limited to, whether the time base is hourly, daily, bi-weekly monthly, bi-monthly, or annually;
(5) Is posted at the office of the employer or immediate., accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
(6) Indicates an effective date and date of any revisions;
(7) Is retained by the employer and available for public inspection for not less than five years; and
(8) Does not reference another document in lieu of disclosing the payrate.

(b) Whenever an employer fails to meet the requirements of subdivision (a) above, the board, in its sole discretion, may determine an amount that will be considered to be payrate, taking into consideration all information it deems relevant including, but not limited to, the following:

(1) Documents approved by the employer's governing body in accordance with requirements of public meetings laws and maintained by the employer;
(2) Last payrate listed on a pay schedule that conforms to the requirements of subdivision (a) with the same employer for the position at issue;
(3) Last payrate for the member that is listed on a pay schedule that conforms with the requirements of subdivision (a) with the same employer for a different position;

(4) Last payrate for the member in a position that was held by the member and that is listed on a pay schedule that conforms with the requirements of subdivision (a) of a former CalPERS employer.

Note: Authority cited: Sections 20120 and 20121, Government Code. Reference: Sections 20630, 20636, 20636.1, Government Code.

AMEND §571(b)

§ 571. Definition of Special Compensation
(b) The Board has determined that all items of special compensation listed in subsection (a) are:

(1) Contained in a written labor policy or agreement as defined at Government Code section 20049 that:

(A) Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meetings laws;
(B) Indicates the conditions for payment of the item of special compensation, including, but not limited to, eligibility for, and amount of, the special compensation;
(C) Is posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
(D) Indicates an effective date and date of any revisions;
(E) Is retained by the employer and available for public inspection for not less than five years; and
(F) Does not reference another document in lieu of disclosing the item of special compensation

(2) Available to all members in the group or class;
(3) Part of normally required duties;
(4) Performed during normal hours of employment;
(5) Paid periodically as earned;
(6) Historically consistent with prior payments for the job classification;
(7) Not paid exclusively in the final compensation period;
(8) Not final settlement pay; and
(9) Not creating an unfunded liability over and above PERS' actuarial assumptions.

AUTHORITY:

Note: Authority cited: Sections 20636(c)(6), 20636.1(c)(6), 20120 and 20121, Government Code; Calif. Const. Art. XVI, Section 17. Reference: Sections 20630, 20636, 20636.1 and 20691, Government Code.

Attachment A

INITIAL STATEMENT OF REASONS

Adoption of new section 570.5 and revised 571(b) - Clarification and identification of specific requirements for publicly available pay schedule and labor policy or agreement.

Description of Public Problem, Administrative Requirement, or Other condition or Circumstance that the Regulation is Intended to Address:

Only "compensation earnable" (defined under Government code sections 20636 and 20636.1 and corresponding regulations to include "payrate" and "special compensation") can be reported to CalPERS and considered in calculating retirement benefits. Generally the law requires that a member's payrate be shown on a publicly available pay schedule, that special compensation be limited to items included in a labor policy or agreement, as defined, and that all records establishing and documenting payrate and special compensation be available for public scrutiny. Employers have not uniformly adhered to these requirements.

Failure to adhere to these laws has sometimes resulted in audit findings, reversals of payroll, adjustments to retirement benefit calculations and increased workload for both CalPERS staff and employers. It is anticipated that these proposed changes to the regulations will provide CalPERS employers the details necessary to comply with the statutory provisions.

The proposed addition of section 570.5 and amendment to section 571, subdivision (b) will ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation by requiring that the payrate or item of special compensation be listed on a schedule or in a document that:

- Has been duly approved and adopted by the employer's governing body in accordance with requirements of applicable public meeting laws;
- Has been posted at the office of the employer or immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
- Indicates the effective date and date of any revisions;
- Is retained by the employer and available for public inspection for not less than five years;
- Does not reference another document in lieu of disclosing the payrate or item of special compensation;
- For payrate, identifies the position title for every employee position, shows the payrate for each position, and identifies the time base;
- For special compensation, indicates the conditions for payment.

Specific Purpose: The proposed regulations will clarify existing law and ensure consistency between CalPERS employers as well as enhance disclosure and transparency of public employee compensation.

Necessity: These regulations will help CalPERS enforce compliance with the compensation statutes, maintain a consistent practice of verifying payrates and special compensation for compensation reported by CalPERS employers, and encourage transparency and proper reporting of public employees' pay for retirement purposes.

CalPERS may achieve cost savings as a result of decreased litigation and administrative appeals related to these issues, as employers and members become more aware of the requirements for a publicly available pay schedule and/or labor policy or agreement.

Technical, Theoretical and/or Empirical Studies, Reports or Documents: Not applicable.

Alternatives to the Regulatory Action and CalPERS' Reasons for Rejecting Those Alternatives: CalPERS has considered alternatives to this proposal, and has determined that there is no more effective way to carry out its purpose that would be less burdensome. The alternative of adopting no regulation would be less effective and would not lead to the anticipated benefits expected from the proposed action.

Alternatives to the Regulatory Action that Would Lessen any Adverse Impact on Small Businesses: The proposed action has no cost impact on small businesses because it applies only to public agency employee retirement benefits.

BPAC AGENDA ITEM 6a

ADOPTION OF REGULATION: PUBLICLY AVAILABLE PAY SCHEDULE AND WRITTEN LABOR POLICY OR AGREEMENT

ATTACHMENT B

Summary of Written Comments and CalPERS Responses

ATTACHMENT B

SUMMARY OF WRITTEN COMMENTS AND RESPONSES

From: Anna Gonzalez, North Los Angeles County Regional Center on February 8, 2011, via email

Question(s):

1. What is considered special compensation? Can you provide example?

2. If our Executive upper management staff get 100 % of Health Premium picked up in full for member and family, and the ER share (3.5 %) of the Retirement Contribution (Total 7 % Contribution to CalPERS) is also picked up in full, is this something that needs to be disclosed on the public pay schedule?

3. If needed can we schedule a conference call with you, our HR Director and CFO for clarification on anything for the proposed regulatory action? Or do you prefer that all our questions be submitted to you in writing via email?

CalPERS Staff Response(s):

Thank you for your recent inquiry regarding newly proposed California Code of Regulation (CCR) 570.5 and the amended CCR 571.

Special compensation is a benefit(s) paid to employees in addition to regular pay rate and earnings. An exclusive list of identified and defined special compensation items for members employed by contracting agencies and school employers can be located under CCR 571(a). If they are contained in a written labor policy or agreement, these items must be reported to CalPERS for the purpose of calculating retirement benefits.

You may view the list of approved special compensation items in the CalPERS Public Agency & Schools Procedures Manual. Below is the link to the manual (Please note that special compensation items and information begin on page 70 of the manual):

http://www.calpers.ca.gov/eip-docs/employer/er-forms-pubs/pubs/manuals/pa-ret-manual/procedures-manual.pdf

With regard to your question about the portions of health premiums covered by executive management and the employer, this information would not be required for disclosure on publicly available pay schedules. The purpose and intent of

these regulations are to clarify "compensation earnable"; compensation for the purpose of calculating retirement benefits. With that said, health premium costs and/or money provided to cover health premiums do not qualify as compensation earnable and cannot be used for retirement benefit calculations.

We hope that this email clarifies your questions. Should you have any additional questions or require further clarification, please feel free to contact me directly at 916/795.1463. Also, I have provided links to our website with additional information which may be helpful. Again, thank you for your inquiry and interest.

http://www.calpers.ca.gov/eip-docs/about/board-cal-agenda/agendas/bpac/201012/item5b-0.pdf

http://www.calpers.ca.gov/eip-docs/about/board-cal-agenda/agendas/bpac/201012/item5b-1.pdf

From: Herbert Pike, Association of Bay Area Governments on February 9, 2011, via email

Question(s):

Regarding the proposal re Sections 570.5 and 571, we do prepare a salary schedule, and routinely respond to public information requests re employee salaries and benefits. However, our salary schedule does not currently include upper management (about 10 employees) who serve at will, are not covered by a labor MOU, and whose salaries are set by the Executive Director. Does your proposal expect us to issue a formal list of top management and their salaries? How often must it be updated?

CalPERS Staff Response(s):

Mr. Pike,

Thank you for your recent inquiry regarding newly proposed California Code of Regulations (CCR) 570.5 and amended California Code of Regulations (CCR) 571. Currently, Government Code 20636(b)(1) and (d) require CalPERS employers to report compensation earnable pursuant to publicly available pay schedules and the schedules, ordinances, or similar documents shall be public records available for public scrutiny. The intent of the proposed and amended legislation is to clarify existing law, ensure consistency amongst employers, and enhance disclosure and transparency of compensation provided to public employees.

With regard to your first question pertaining the proposal's expectation of issuing a formal list of top management and their salaries, current law requires publicly available pay schedules, ordinances or similar documents. However, CCR 570.5(a) provides a specific criterion in order for the payrate to be considered as compensation earnable and reportable for use in calculating members' retirement benefits. CCR 570.5(a)(2) and (3) require the position title for every employee position and the payrate for the respective position identified, not the names of the individuals. With regard to your second inquiry and the frequency of updates required to your publicly available pay schedule, in order for payrate to be considered as reportable for retirement calculation purposes, the information should be updated according to the procedure identified in CCR 570.5 and as appropriate. In plain terms, if there are changes in payrate which exceed the monetary parameters identified on the pay schedule, the pay schedule should be updated as often as changes occur in order to be considered for use in calculating the member's benefit. Again, it is important to point out the pay schedules would not necessarily need to be updated because an employee's payrate changes. However, if the employee's payrate exceeds the amount identified on the pay schedule, an update would be required in order to be considered in the calculation of members' benefits.

Should you have any additional questions or require further clarification, please feel free to contact me directly at 916/795.9523. Also, I have provided a link to our website with additional information which may be helpful. Again, thank you for your inquiry and interest.

From: Bonnie Rasband, Marin County Office of Education on February 16, 2011, via email

Question(s):

If we have a professional expert and or sub that doesn't have salary schedule. Also, it can have a salary that varies according to experience. How do we handle this regulation according to our situation?

CalPERS Staff Response(s):

Dear Bonnie,

We are uncertain as to the situation you describe and what you mean by "a professional expert and/or sub that doesn't have salary schedule". Therefore, we are unable to provide a definitive answer to your question. In general, however, if your governing body has approved an employee position at a particular rate of pay or within a pay range, then the position and the pay or pay range, as well as the manner in which it is paid, must be included on the publicly available pay schedule. If the "professional expert and/or sub" to which you refer is performing

service for your agency in a capacity other than as a common law employee (i.e. as an independent contractor), then the pay need not be included on the pay schedule since it would not be reportable to CalPERS.

If you would like a more precise answer, please feel free to contact us with a more detailed description of the employment situation about which you have inquired. We will promptly respond to any further questions you may have.

From: Richard G. Battles, Howell, Moore and Gough, LLP on behalf of Goleta Sanitary District on February 23, 2011, via email

Question(s):

It's been almost a year since we last discussed the Goleta Sanitary District (GSD) and the requirement for GSD to have a publicly available pay scale for its General Manager. I am attaching for your reference a copy of your letter dated March 5, 2010 which addresses this issue. Your letter concludes that the General Manager's Employment Agreement with GSD qualifies as a "publicly available salary schedule" for the purposes of CalPERS law and that it is not necessary to include the General Manager's compensation on GSD's existing salary schedule.

GSD recently received a notice that CalPERS is proposing to add Section 570.5 and to amend Section 571(b) of its regulations. The purpose of this email is to determine whether these proposed regulations, if adopted, will change the conclusions set forth in your March 5, 2010 letter. In other words, will the General Manager's Employment Agreement with GSD qualify as the schedule or document required under the proposed regulations?

If you would like to discuss, please do not hesitate to contact me or GSD's General Manager, Kamil Azoury.

CalPERS Staff Response(s):

Good morning. Yes, the proposed regulations would require that the general manager's salary be included on the publicly available pay schedule.

From: Mary Kimbell-Smith, Consumes Community Services District via Noel Nicklay, California Special Districts Association on March 3, 2011, via email

Question(s):

We got a notice today from CalPERS that they are proposing to amend the disclosure requirements for compensation to require payrates or items of special

compensation be listed on a schedule of document and made public (in any of a variety of ways). They are accepting comments until March 21st.

If it means that we can publish our salary schedule and the labor agreements and we are good, then I'm fine with it. But it reads like we would have to take all the special pays in each labor document and calculate what they would add at each step of a salary range for each position and publish that. THAT would be a ton of work.

CalPERS Staff Response(s):

Dear Ms. Kimbell-Smith:

We have reviewed your email and we understand your concern to be with a bulleted item on page 3 of the Notice of Proposed Regulations (i.e. the summary description in the notice of proposed regulations, not the actual regulation language). We presume that you are not questioning the new Regulation 570.5 which describes payrate and publicly available pay schedule requirements. Rather, we read your email as questioning whether the additional descriptive language added to Regulation 571, subdivision (b) would require that for each labor document, each item of special compensation be calculated to show the dollar increase attributable to that item of special compensation at each step of salary range for each position. The answer to that question is no.

As to reporting special compensation, existing Regulation 571, subdivision (a) contains the exclusive list of special compensation items for contracting agency and school employers. That part of the regulation is not being amended. Existing Regulation 571, subdivision (b) requires, among other things, that items of special compensation be contained in a written labor policy or agreement, which requirement also is not being changed. (Government Code section 20049 defines a labor policy or agreement to be "any written policy, agreement, memorandum of understanding, legislative action of the elected or appointed body governing the employer, or any other document used by the employer to specify the payrate, special compensation, and benefits of represented and unrepresented employees.")

The proposed amendment to Regulation 571, subdivision (b) clarifies what information must be contained in a written labor policy or agreement, and how the employer is to maintain that information.
That is, the **written labor policy or agreement** must
(A) have been duly approved and adopted by the employer's governing body;
(B) indicate the conditions for payment of the item of special compensation, including, but not limited to eligibility for and amount of the special compensation;

(C) be posted at the office of the employer of immediately accessible and available for public review from the employer during normal business hours or posted on the employer's internet website;
(D) indicate an effective date and date of any revisions;
(E) be retained by the employer and available for public inspection for not less than five years; and
(F) not reference another document (such as an employment contract) in lieu of disclosing the item of special compensation.

That the written labor policy or agreement must describe the conditions for payment of the item of special compensation (eligibility and amount), does not mean that the employer must post "for each labor document, each item of special compensation calculated to show the dollar increase attributable to that item of special compensation at each step of salary range for each position." Rather, the labor policy or agreement must identify the special compensation item and describe who is eligible to receive it and under what circumstances.

We trust the above is responsive to your inquiry. If you have additional questions or comments regarding the proposed amendments to regulations, please feel free to contact us. Thank you.

EXHIBIT 4

BOARD OF ADMINISTRATION MEETING MINUTES

APRIL 13, 2011

AGENDA ITEM 6a – BENEFITS AND PROGRAM COMMITTEE (PAGE 4)

CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
BOARD OF ADMINISTRATION

MINUTES OF MEETING

Wednesday, April 13, 2011

The Board of Administration met on Wednesday, April 13, 2011 in the Lincoln Plaza North Building, Auditorium, 400 Q Street, Sacramento, California.

The meeting was called to order at approximately 9:22 a.m. and the following members were present:

Rob Feckner, President
George Diehr, Vice President
Terry McGuire for John Chiang
Richard Costigan
JJ Jelincic
Henry Jones
Grant Boyken for Bill Lockyer
Priya Mathur
Louis F. Moret
Howard Schwartz for Ronald Yank

Board of Administration Members excused: Dan Dunmoyer and Tony Oliveira.

AGENDA ITEM 3 – APPROVAL OF MARCH 2011 MEETING MINUTES

On **MOTION** by George Diehr, **SECONDED** by Henry Jones, and **CARRIED** that the March 16, 2011 Open Session minutes be approved as presented.

AGENDA ITEM 4 – PRESIDENT'S REPORT

President Feckner re-stated CalPERS commitment to strengthening its reputation as a leader in governance. A project is underway to improve the effectiveness of the CalPERS Board by improving oversight, accountability and decision-making functions.

AGENDA ITEM 5 – CHIEF EXECUTIVE OFFICER'S REPORT

Anne Stausboll reported on the following items:

- The recently developed Business Plan for 2011-2012 contains objectives and initiatives that are focused on three priority areas:

- Customer Focus – transforming customer service to meet the changing needs of CalPERS members and employers
- Leadership and Soundness – delivering strong investment results and robust financial reporting, and exercising leadership in pension, health and financial market policy discussions
- Building Internal Strength – aligning CalPERS culture with its diversity and inclusion efforts, integrating risk management into the organization and reducing reliance on consultants

A one-page summary of the business plan was made available to Board members and attendees.

- Staff Activities:
  - On April 4 the first stage of the organizational restructure went live, launching the new Financial and Policy offices.
  - CalPERS recently conducted a town hall for its managers and supervisors, as well as four all-staff information sessions to provide updates on changes and respond to staff questions.
  - CalPERS this month launched an enhanced financial information section on its website.
  - Staff this month completed end-to-end testing for the my|CalPERS project. This accomplishment allows Customer Acceptance Testing (CAT) and the final stages of the project to move forward.
  - CalPERS staff this month completed meetings with all members of the Senate Public Employment and Retirement and Assembly Public Employees, Retirement and Social Security committees, and continue to provide technical expertise on pension issues.
  - Staff submitted a proposed national legislative platform on retirement security to the Benefits and Program Administration Committee (BPAC).
  - Thanks to the hard work of Colliers staff and Steve Kessler, Kim Malm and Sharon Garrett, a new retail tenant, Freshii, had its grand opening this week.
- Ms. Stausboll recognized the staff members of the Health Benefits Branch who developed a pilot program to integrate the systems of Blue Shield of California, Catholic Healthcare West and Hill Physicians Medical Group. The goal was to improve health care quality and reduce costs. The combined efforts have led to definitive outcome improvements, including a 13 percent reduction in hospital stays and a 22 percent reduction in readmissions.

AGENDA ITEM 6 – CHIEF INVESTMENT OFFICER'S REPORT

Joe Dear, Chief Investment Officer (CIO), presented the CIO report to the Board. Items included:

- As of February 28, 2011 the Total Fund was approximately $231.4 billion.
- For the one year period ended February 28, 2011, the net rate of return was approximately 16.19%.
- For the fiscal year-to-date period ended February 28, 2011, the net rate of return was 17.15%.

AGENDA ITEM 7 – INVESTMENT COMMITTEE

George Diehr, Chair, Investment Committee, presented the Committee Summary report to the Board. The Committee met on Monday, April 11, 2011.

Additional information may be found in the April 11, 2011 Agenda materials and transcripts of the Committee meeting.

The next meeting of the Investment Committee is scheduled for May 16, 2011 in Sacramento, California.

AGENDA ITEM 8 – AD HOC RISK MANAGEMENT COMMITTEE

Priya Mathur, Vice-Chair, Ad Hoc Risk Management Committee, presented the Committee Summary report to the Board. The Committee met on Monday, April 11, 2011.
Tony Oliveira was elected Chair and Priya Mathur was elected Vice-Chair of the Ad Hoc Risk Management Committee.

Additional information may be found in the April 11, 2011 Agenda materials and transcripts of the Committee meeting.

The next meeting of the Ad Hoc Risk Management Committee is scheduled for June 13, 2011 in Sacramento, California.

AGENDA ITEM 9 – BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

George Diehr, Chair, presented the Benefits and Program Administration Committee Summary report to the Board. The Committee met on Tuesday, April 12, 2011.

Additional information may be found in the April 12, 2011 Agenda materials and transcripts of the Committee meeting.

On **MOTION** by Committee and **CARRIED**, the Board approved the following:

- Support for AB 344 (Furutani).
- Support for SB 27 (Simitian) with suggested amendments to conform SB 27 with current policies and procedures.
- Neutral on SB 503 (Vargas).
- Adoption of the federal legislative and regulatory policy guidelines for retirement security (Attachment A to Committee agenda) that reflects the amendment requested by the Committee, and directing staff to monitor federal proposals based on these priorities, and seek opportunities to advance the identified goals.
- Approval of the elected Board member percentages of time to be spent on Board-related duties for Fiscal Year 2011-12 as follows:
    - George Diehr: 98.84%
    - Rob Feckner: 80%
    - JJ Jelincic: 100%
    - Priya Mathur: 60%

On **MOTION** by Committee and **CARRIED** with nay votes by Mr. Boyken and Mr. Jelincic, the Board approved the following:

- Standardizing the language in Resolution Numbers 92-04B-1 and 92-04B-2 so all contracts have a permitted maximum duration of five years.

On **MOTION** by Committee and **CARRIED**, the Board approved the following:

- Approval of the June 30, 2010 Judges' Retirement System Actuarial Valuation Report along with changes to the methods and assumptions outlined in the report and continuing to encourage the California Legislature and Governor to adopt an employer contribution schedule that includes advanced funding of the Judges' Retirement System.
- Adoption of the proposed regulation and regulatory amendments to clarify and make specific the requirements for publicly available pay schedule and labor policy or agreement (Attachment C to Committee agenda).

The next meeting of the Benefits and Program Administration Committee is scheduled for May 17, 2011 in Sacramento, California.

AGENDA ITEM 10 – HEALTH BENEFITS COMMITTEE

Priya Mathur, Chair, Health Benefits Committee, presented the Committee Summary report to the Board. The Committee met on Tuesday, April 12, 2011.

Additional information may be found in the April 12, 2011 Agenda materials and transcripts of the Committee meeting.

On **MOTION** by the Committee and **CARRIED**, the Board approved the following:

- Approval of the Long-Term Care Request for Proposal scoring point allocation to reflect forty percent to technical evaluation and on-site visits; thirty percent to financial evaluation; and the remaining thirty percent to the Health Benefits Committee interviews.

The next meeting of the Health Benefits Committee is scheduled for May 17, 2011 in Sacramento, California.

AGENDA ITEM 11 – FINANCE COMMITTEE

Henry Jones, Chair, Finance Committee, presented the Committee Summary report to the Board. The Committee met on Tuesday, April 12, 2011.

Additional information may be found in the April 12, 2011 Agenda materials and transcripts of the Committee meeting.

On **MOTION** by Committee and **CARRIED**, the Board approved the following:

- Approval of the following:

    1. Accept the proposed California Public Employees' Retirement System (CalPERS) FY 2011-12 Administrative Budget of $334,196,000 and 2,366 positions, and recommend the Board of Administration (Board) approve the budget as a second reading.

    2. Accept the proposed CalPERS FY 2011-12 Enterprise Projects Budget of $43,011,000, and recommend the Board approve the budget as a second reading.

    3. Accept the proposed FY 2011-12 CalPERS Headquarters Building Account (Building Account) Budget of $42,611,000, and recommend the Board approve the budget as a second reading.

    4. Approve the transmittal of this agenda item to the Joint Legislative Budget Committee, fiscal committees of the Legislature, State Controller, and Department of Finance, in accordance with the Budget Act of 2010, and to the Legislative Analyst's Office, State and Consumer Services Agency, and the Office of the Legislative Counsel.

The next meeting of the Finance Committee is scheduled for June 14, 2011 in Sacramento, California.

AGENDA ITEM 12 – AD HOC BOARD GOVERNANCE COMMITTEE

The Committee did not meet in April.

AGENDA ITEM 13 – PERFORMANCE AND COMPENSATION COMMITTEE

The Committee did not meet in April.

AGENDA ITEM 14 – BOARD MEETING CALENDAR

No changes were made to the Calendar.

AGENDA ITEM 15 – PENSION SYSTEM RESUMPTION (PSR) PROJECT UPDATE

Karen Ruiz, PSR Project Manager, presented status reports on the PSR and Enterprise Transition Management (ETM) Projects.

- A major milestone, end-to-end testing, was achieved last week. Customer acceptance testing (CAT) began on April 7.
- The early test group for business partner testing began on March 21, and the financial system integration project acceptance testing began on March 28.
- On the development side, four interface test partners remain behind schedule to close out interface testing.
- The status of data conversion has improved and is now cautionary.
- Project simulation began in March.
- The project team's transition coaches hosted a my|CalPERS experience room last week as part of the all-staff forums, where staff could come through and look at various aspects of the system.
- Constituent meetings for retirement organizations and health organizations were held in the past month.
- The Enterprise Transition Management (ETM) project continued efforts around staff readiness. Managers completed process change discussions with their staff, and training schedules have been finalized.
- The public employers readiness team kicked off training for the staff who will be training business partners.

John Nichols, Project Manager, Accenture, thanked the Accenture and CalPERS team members for all their hard work through the many challenges they faced.

Chris Jasper, KPMG, Project Oversight, extended his congratulations to the Project team for completing the end-to-end test phase in April and commented on the significant improvements achieved in the last year to the PSR application and blended project team. Mr. Jasper cautioned that the schedule is still in the red, and requiring further corrective action to make up for lead activities and to avoid further delays. The Project Oversight team continues to evaluate the pace of the data conversion efforts.

Steve Kessler, Deputy Executive Officer, introduced two CalPERS employees, Angelina Ray and Chris Vega who performed a song entitled "my|CalPERS A New Opportunity," for the Board.

President Feckner extended his congratulations and appreciation to the entire project team for their efforts and positive report. Ms. Mathur commended the team as well.

AGENDA ITEM 16 – EXTERNAL AFFAIRS UPDATE

Patricia Macht, Director, External Affairs, provided an update on External Affairs and reported on the following:

- Ms. Macht presented the local elected officials' toolkit that was developed as part of a project in the business plan. Its purpose is to provide elected officials with everything about PERS that they'd want to know, including some questions they should ask as they consider benefit changes. Ms. Macht and Chief Actuary Alan Milligan were the executive sponsors, and Ken Nitschke of the Program and Policy Unit did much of the work.

  These toolkits have been sent to local government administrators as well as to statewide organizations that represent public employees. A similar toolkit for federal elected officials has been distributed by the Office of Governmental Affairs (GOVA) and CalPERS federal liaison Tom Lussier.

- CalPERS Legal Office and External Affairs have been working together to improve Public Records Act administration. In 2010, CalPERS received over 195 Public Records Act requests. A new web tool has been added to the CalPERS website to facilitate processing of some types of requests. By next year, all Public Records Act requests received will be available online. Ms. Macht introduced Laura Enderton and Anne Marie Trout who will be administering this project.

AGENDA ITEM 17 – BOARD'S STATE LEGISLATIVE PROGRAM/BOARD'S POSITION ON STATE LEGISLATION

Danny Brown, Chief, Governmental Affairs, provided an update on State Legislation and CalPERS sponsored bills and reported on the following.

- All four of CalPERS sponsored bills have made it out of the first policy committee, three of which received a 6-0 vote.

- GOVA staff continue to monitor pension reform and health care related bills.

AGENDA ITEM 18 – BOARD'S FEDERAL LEGISLATIVE PROGRAM/BOARD'S POSITION ON FEDERAL LEGISLATION

Tom Lussier, CalPERS Federal Liaison provided updates on federal legislation and reported on the following:

- In late March, Mr. Lussier began conducting a series of meetings with every member of the California Congressional delegation with the purpose of educating relevant staff about the issues surrounding the calculation of actuarial liability.

- The Little Hoover Commission report continues to generate questions, as does the Stanford study. The resources developed by CalPERS staff to respond to those questions have proven useful in educating legislators.

- Staff continues to monitor attempts to roll back reforms that were part of either the Affordable Care Act or the Dodd-Frank legislation. Mr. Lussier and Anne Simpson, Corporate Governance, have just completed a round of meetings with officials in the Treasury, Senate Banking, House Financial Services and a couple of key California members who sit on committees of jurisdiction.

- The House Oversight Government Reform Committee has a hearing scheduled on the state of municipal and state debt.

- Secretary of Health and Human Services Sebelius has announced the Administration's Partnership for Patients which is a major initiative to improve care and lower costs for all Americans. The release cited the work of 3 or 4 organizations around the country, one of which was CalPERS. They highlighted the progress of CalPERS integrated health care pilot program.

AGENDA ITEM 19 – PUBLIC AFFAIRS UPDATE

Brad Pacheco, Division Chief, Public Affairs, provided an update on Public Affairs and reported on the following:

- A few weeks ago, the financial magazine Pensions and Investments published an editorial about CalPERS Special Review, praising its handling of the issues and for conducting the review and making it public. The Sacramento Bee conducted an on-line poll of that editorial asking the question, "does CalPERS deserve praise?" 68 respondents said "yes".

- CalPERS has recently received positive headlines about its investments, its health care pilot with California Healthcare West and also its contributions to the California economy.

AGENDA ITEM 20 – COMMITTEE DELEGATION OF AUTHORITY

On **MOTION** by Priya Mathur, **SECONDED** by Grant Boyken and **CARRIED**, the Board approved adopting delegation resolutions to make the Ad Hoc Management Committee and the Ad Hoc Board Governance Committee standing committees.

AGENDA ITEM 21 – BOARD TRAVEL APPROVALS

On **MOTION** by Lou Moret, **SECONDED** by Richard Costigan and **CARRIED**, the Board approved the Board travel.

AGENDA ITEM 22 – DRAFT AGENDA FOR May 18, 2011 MEETING

No comments.

AGENDA ITEM 23 – GENERAL COUNSEL'S REPORT

Peter Mixon, General Counsel, reported on the monthly new case report and assignment matrix.

AGENDA ITEM 24 – PROPOSED DECISIONS OF ADMINISTRATIVE LAW JUDGES

Peter Mixon, General Counsel, reported on proposed decisions of Administrative Law Judges, cases 24A through 24F.

On **MOTION** by George Diehr, **SECONDED** by Lou Moret and **CARRIED**, the Board approved adopting staff's argument on the proposed decisions of Administrative Law Judges for 24A through 24F.

AGENDA ITEM 25 – PUBLIC COMMENT

No public comment.

There being nothing further to come before the Board of Administration, the meeting adjourned at 10:59 a.m.

The next Board of Administration meeting is scheduled for May 18, 2011 in Sacramento, California.

ANNE STAUSBOLL
Chief Executive Officer

EXHIBIT 5

RESOLUTION OF THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

STATE OF CALIFORNIA
BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

RESOLUTION

Subject: California Constitution, Article XVI Section 17 – Administrative Procedure Act

No: 96-201

WHEREAS, On November 3, 1992, the people of the State of California passed Proposition 162, which amended the California Constitution, article XVI, section 17, to expressly provide that the retirement board of a public pension system has plenary authority and fiduciary responsibility for investment of moneys and administration of the system.

WHEREAS, The California Constitution, article XVI, section 17, provides that the CalPERS Board must exercise its plenary authority and fiduciary responsibility subject to its responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to participants and their beneficiaries.

WHEREAS, The California Constitution, article XVI, section 17, requires the CalPERS Board to exercise its responsibility for administration of the system subject to its continuing fiduciary duties, including the primary duty of loyalty to participants and their beneficiaries.

WHEREAS, The California Constitution, article XVI, section 17, requires CalPERS Board members to discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

WHEREAS, The provisions of Proposition 162 became effective immediately upon certification by the Secretary of State on December 14, 1992.

WHEREAS, The rulemaking provisions of the Administrative Procedure Act, California Government Code sections 11340-11356, require that state agencies that enact regulations follow a specified process that provides for public notice and input, as well as review of the proposed regulations by the Office of Administrative Law.

WHEREAS, Since the effective date of Proposition 162, the CalPERS Board has continued to abide by the rulemaking provisions of the Administrative Procedure Act, California Government Code sections 11340-11356.

NOW THEREFORE BE IT RESOLVED

(A) That in exercising its responsibilities pursuant to the California Constitution, article XVI, section 17, the CalPERS Board of Administration shall continue to abide by the rulemaking provisions of the Administrative Procedure Act, California Government Code sections 11340-11356, while reserving its right to proceed pursuant to its plenary constitutional authority in the event that the facts of the situation make it necessary for the Board to do so in order to fulfill its constitutionally mandated duties.

(B) That in furtherance of this resolution, the Board delegates to the Chief Executive Officer responsibility to take actions reasonably related to implementation of the resolution.

(C) That this resolution shall be effective immediately upon adoption, and is cumulative to all other delegations to the Chief Executive Officer.

* * * * * * * * * *

I hereby certify that on the 17th day of April, 1996, the Board of Administration of the California Public Employees' Retirement System, made and adopted the foregoing Resolution.

WILLIAM DALE CRAIL, PRESIDENT
BOARD OF ADMINISTRATION, PUBLIC
EMPLOYEES' RETIREMENT SYSTEM

I understand and accept this delegation.

JAMES E. BURTON, CHIEF EXECUTIVE OFFICER
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

PETER H. MIXON, GENERAL COUNSEL
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Attorneys for Petitioner California
Public Employees' Retirement System

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Statement of Issues Against: PIER'ANGELA SPACCIA, Respondent, and CITY OF BELL, Respondent.	CASE NO. 2011-0789 OAH NO. 2012020198 DECLARATION OF ALLYSON CROOKS

The undersigned declares:

1. I am a duly authorized custodian of the records of the California Public Employees' Retirement System (CalPERS), including the attached records.

2. I am familiar with the preparation and maintenance of the office records of CalPERS and have the authority to certify those records. If called, I could and would competently testify as follows:

3. Attachment 1, is a true and correct copy of the official Rule Making file pertaining to the promulgation of tile 2, California Code of Regulation, Section 570.5 and section 571(b), Notice File No. Z-2011-0125-08 (OAL No. 2011-0531-04-S).

4. Attachment 2, is a true and correct copy of CalPERS Circular Letter No. 200-056-11, distributed to CalPERS contracting agencies, including the City of Bell,

pertaining to the promulgation of item number 1.

12. The attached records are true copies of the records contained in the file of CalPERS. The attached records are prepared by CalPERS staff in the ordinary course of business at or near the time of the act, condition or event described in the records and maintained as business records.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 8, 2012, at Sacramento, California.

Allyson Crooks

Allyson Crooks