



California Regulatory Notice Register

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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

STATE AGENCY: State Public Defender

MULTI-COUNTY: Citrus Height Water District

A written comment period has been established commencing on June 11, 2019, and closing on July 29, 2019. Written comments should be directed to the Fair Political Practices Commission, Attention: Amanda Apostol, 1102 Q Street, Suite 3000, Sacramento, California 95811.

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 her 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 her 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 July 29, 2019. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Amanda Apostol, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 324-3854.

**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 Amanda Apostol, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 324-3854.

**TITLE 11. COMMISSION ON PEACE
OFFICER STANDARDS AND TRAINING**

**Amend and Update the Training and Testing
Specifications for Peace Officer Basic Courses
Regulations 1005, 1007, and 1008**

Notice is hereby given that the Commission on Peace Officer Standards and Training (POST) proposes to amend regulations in Division 2 of Title 11 of the California Code of Regulations as described below in the Informative Digest. A public hearing is not scheduled. Pursuant to Government Code §11346.8, any interested person, or his/her duly authorized representative, may request a public hearing. POST must receive the written request no later than 15 days prior to the close of the public comment period.

Public Comments Due by August 5, 2019

Notice is also given that any interested person, or authorized representative, may submit written comments relevant to the proposed regulatory action by fax at (916) 227-6932 or by letter to:

Commission on POST
Attn: Veronica Wolfram
860 Stillwater Road, Suite 100
West Sacramento, CA 95605-1630

AUTHORITY AND REFERENCE

This proposal is made pursuant to the authority vested by Penal Code §13503 (authority of Commission on POST) and Penal Code §13506 (POST authority to adopt regulations). This proposal is intended to interpret, implement, and make specific Penal Code §13503(e), which authorizes POST to develop and implement programs to increase the effectiveness of law enforcement, including programs involving training and education courses.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

Penal Code § 13510 requires that POST develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers. This proposed action will update the incorporated by reference document, Training and Testing Specifications for Peace Officer Basic Courses (revised 4/1/2019), to include removal of a presenter-approved impact weapon technique and adding the student making a less-than-deadly force option decision. Additionally, the incorporation by reference statements in POST Regulations sections 1005, 1007, and 1008 will be revised to reflect the updated revised date for the Training and Testing Specifications for Peace Officer Basic Courses.

The benefit anticipated by the proposed amendments to the regulations will be to update the training specifications for Peace Officer Basic Courses, which will increase the effectiveness of law enforcement standards for peace officers in preserving peace, protection of public health and safety, and welfare of California.

During the process of developing these regulations and amendments, POST has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

All changes to curriculum begin with recommendations from law enforcement practitioners or in some cases via legislative mandates. POST then facilitates meetings attended by curriculum advisors and subject matter experts who provide recommended changes to existing curriculum. The completed work of all committees is presented to the POST Commission for final review and adoption. Upon adoption of the proposed amendments, academies and course presenters will be required to teach and test the updated curriculum. The proposed effective date is October 1, 2019.

DOCUMENT INCORPORATED BY REFERENCE

Training and Testing Specifications for Peace Officer Basic Courses, revised 10/1/2019.

ADOPTION OF PROPOSED REGULATIONS

Following the public comment period, the Commission may adopt the proposal substantially as set forth without further notice or may modify the proposal if such modifications remain sufficiently related to the text as described in the Informative Digest. If the Commission makes changes to the language before the date

of adoption, the text of any modified language, clearly indicated, will be made available at least 15 days before adoption to all persons whose comments were received by POST during the public comment period and to all persons who request notification from POST of the availability of such changes. A request for the modified text should be addressed to the agency official designated in this notice. The Commission will accept written comments on the modified text for 15 days after the date that the revised text is made available.

ESTIMATE OF ECONOMIC IMPACT

Fiscal impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Non-Discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Costs to any Local Agency or School District Affecting Government Code § 17500-17630 requires reimbursement: None.

Significant Statewide Adverse Economic Impact Directly Affecting California Businesses, including Small Business: The Commission on Peace Officer Standards and Training has made an initial determination that the amended regulations will not have a significant statewide adverse economic impact directly affecting California business, including the ability of California businesses to compete with businesses in other states. The Commission on Peace Officer Standards and Training has found that the proposed amendments will not affect California businesses, including small businesses, because the Commission sets selection and training standards for law enforcement which does not impact California businesses, including small businesses.

Affect on Housing Costs: The Commission on Peace Officer Standards and Training has made an initial determination that the proposed regulations would have no affect on housing costs.

RESULTS OF ECONOMIC IMPACT ASSESSMENT PER GOVERNMENT CODE § 11346.3(b)

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

The proposed amendments of regulations will increase the effectiveness of law enforcement standards for peace officers in preserving peace, protection of

public health and safety, and welfare of California. There would be no impact that would affect worker safety or the state's environment.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

CONSIDERATION OF ALTERNATIVES

To take this action, the Commission must determine that no reasonable alternative considered by the Commission, or otherwise identified and brought to the Commission, would be more effective in carrying out the purpose for which the action is proposed; or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSON

Questions regarding this proposed regulatory action may be directed to Veronica Wolfram, Commission on POST, 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630 at (916) 227-3204. General questions regarding the regulatory process may be directed to Heidi Hernandez at (916) 227-2802, or by FAX at (916) 227-5271.

TEXT OF PROPOSAL

Individuals may request copies of the exact language of the proposed regulations and of the initial statement of reasons, and the information the proposal is based upon, from the Commission on POST at 860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1630. These documents are also located on the POST Website at: <http://www.post.ca.gov/regulatory-actions.aspx>.

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

The rulemaking file contains all information upon which POST is basing this proposal and is available for public inspection by contacting the person(s) named above.

To request a copy of the Final Statement of Reasons once it has been prepared, submit a written request to the contact person(s) named above.

TITLE 14. DEPARTMENT OF FISH AND WILDLIFE

NOTICE IS HEREBY GIVEN that the Department of Fish and Wildlife (Department) proposes to amend sections 122.1, 125, 126.1, 180.1 and 180.5, Title 14, California Code of Regulations (CCR), implementing a standardized gear marking program described in Section 9005 of the Fish and Game Code (FGC). FGC Section 9005 directs the Department to implement standardized gear marking requirements by January 1, 2020. This timeline has been accelerated to November 15, 2019 due to a lawsuit settlement agreement. The proposed “Standardized Commercial Trap Marking Program” (Marking Program) would help with the identification of fishing gear if it is entangled with marine life, allowing the State to direct resources to those fisheries with the greatest contribution to marine life entanglement. The proposed Marking Program would improve and expand upon existing buoy markings required by regulation and statute, affecting six commercial trap fisheries: Spiny Lobster, Rock Crab, Tanner Crab, Spot Prawn, Coonstripe Shrimp, and Nearshore Finfish (e.g., California Sheephead, Cabezon).

After consideration of all public comments, objections, and recommendations regarding the proposed action, the Department may adopt the proposed regulations.

PUBLIC HEARING

A public hearing is scheduled as follows:

Date: Tuesday, August 6, 2019

Time: 10:00 a.m. to 12:00 p.m.

Location:

California Department of Fish and Wildlife
Monterey Office, Large Conference Room
20 Lower Ragsdale Drive, Suite 100
Monterey, CA

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments on the proposed action to the Department. All written comments must be received by the Department via mail, or e-mail, no later than **5:00 p.m. on August 6, 2019**, to the contact as follows:

California Department of Fish and Wildlife
Regulations Unit
Attn: Ona Alminas, Sr. Environmental Scientist
1416 9th Street, Room 1342-A
Sacramento, CA 95814
Email: Regulations@wildlife.ca.gov

AUTHORITY AND REFERENCE

Section 122.1:

Authority: Sections 7075 and 7078, Fish and Game Code.

Reference: Sections 7050, 7055, 7056, 8250.5, 9002, 9005 and 9010, Fish and Game Code.

Section 125:

Authority: Sections 1050 and 8282, Fish and Game Code.

Reference: Sections 1050, 7852.2, 7857, 7858, 8043, 8047, 8250.5, 8275, 8282, 8284, 9000, 9001, 9002, 9005, 9006 and 9011, Fish and Game Code.

Section 126.1:

Authority: Sections 713, 1050, 5508, 7090, 7857, 8026, 8282 and 9005, Fish and Game Code.

Reference: Sections 1050, 1052, 5508, 7050, 7051, 7055, 7056, 7058, 7850, 7857, 7881, 8026, 8031, 8040, 8041, 8042, 8043, 8046, 8051, 8250.5, 8282, 8284, 8834, 9000, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9008 and 9011, Fish and Game Code.

Section 180.1:

Authority: Sections 711 and 8591, Fish and Game Code.

Reference: Sections 710.7, 711, 8140, 8590, 8591, 8593, 8594, 8595, 8842, 9000, 9001, 9004–9008 and 9015, Fish and Game Code.

Section 180.5:

Authority: Sections 9003, 9005 and 9006, Fish and Game Code.

Reference: Sections 9002, 9003, 9005, 9006, 9007 and 9008, Fish and Game Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Department of Fish and Wildlife (Department) is tasked with developing a standardized system of marking commercial trap gear through the implementation of Senate Bill 1309 (SB 1309; Fisheries Omnibus Bill of 2018, McGuire). The Department proposes amendments to sections 122.1, 125, 126.1, 180.1, and 180.5, Title 14, California Code of Regulations (CCR) to implement the “Standardized Commercial Trap Marking Program” (Marking Program) pursuant to Fish and Game Code (FGC) Section 9005. The goal

of this program is to establish a standardized framework for marking commercial fishing gear to better identify the commercial trap fisheries involved in marine life entanglement events. The proposed regulations would create a standardized marking system for the Spiny Lobster, Rock Crab, Tanner Crab, Spot Prawn, Coonstripe Shrimp, and Nearshore Finfish commercial fisheries. Three other fisheries, Dungeness Crab, Hagfish, and Sablefish commercial trap fisheries, are not part of the proposed Marking Program at this time.

PROPOSED REGULATIONS

The Department developed the proposed Marking Program in Section 180.5, Title 14, California Code of Regulations (CCR), which improves and expands upon existing buoy markings required by regulation and statute pursuant to FGC Section 9005. Under the proposed Marking Program, every trap or string of traps must be attached to at least one buoy that is marked with a number that identifies the operator of the trap (“Identification Number”). This number is usually the commercial fishing license identification number of the trap’s operator. Furthermore, every buoy must be marked on multiple sides with a letter that identifies to which fishery the gear belongs (“Identification Letter”).

The following summarized changes are part of this regulatory proposal:

Amend **Section 122.1** by replacing specific requirements listed in subsection (b) with a reference to Section 180.5, Title 14, CCR.

Amend **Section 125** by replacing subsection (b)(2) with a reference to Section 180.5, Title 14, CCR. The subsection currently requires all traps to be marked with a buoy.

Amend **Section 126.1** by removing references to requirements in FGC sections 9006 and 9007 in subsection (a)(4)(F), and replace with a reference to Section 180.5, Title 14, CCR.

Amend **Section 180.1** by replacing specific marking requirements in subsection (d) with a reference to Section 180.5, Title 14, CCR.

Establish **subsection 180.5(a)** by removing the reference to FGC Section 9006 requiring every trap to be marked by a buoy and moving other parts of the current Section 180.5 to different, and new, subsections.

Add **Subsection 180.5(b)**, which requires participants in commercial trap fisheries to mark at least one surface buoy attached to their trap gear with an Identification Number, and that all buoys must be marked with fishery-specific Identification Letters, as described below:

Fishery & Gear Type

Lobster Trap:

Identification Number: operator’s commercial fishing license identification number — *Identification Letter:* P

Rock Crab Trap:

Identification Number: operator’s commercial fishing license number — *Identification Letter:* X

Tanner Crab Trap:

Identification Number: vessel’s California boat registration number — *Identification Letter:* T

Spot Prawn Trap:

Identification Number: operator’s commercial fishing license identification number — *Identification Letter:* S

Coonstripe Shrimp Trap:

Identification Number: operator’s commercial fishing license identification number — *Identification Letter:* C

Nearshore Finfish Trap:

Identification Number: operator’s commercial fishing license identification number — *Identification Letter:* Z

Add **Subsection 180.5(c)**, which specifies the minimum size for Identification Numbers.

Add **Subsection 180.5(d)**, which specifies the new minimum letter size of 3 inches in height for Identification Letters, doubling the current height requirement.

Add **Subsection 180.5(e)**, which reorganizes the existing requirement that all buoy identification be legible and in a color contrasting with the buoy into a new subsection.

The Department is required to recover all reasonable administrative and implementation costs associated with the Marking Program, pursuant to FGC Section 9005. However, due to the program’s novelty and relative simplicity, there are anticipated to be minimal administrative and implementation costs incurred by the Department.

BENEFITS OF THE PROPOSED REGULATIONS

The regulatory proposal is designed to provide a uniform standard of marking commercial traps pursuant to the directive of FGC Section 9005. The proposed Marking Program would help with the identification of fishing gear entangled with marine life, allowing the State to direct resources to those fisheries with the greatest contribution to marine life entanglement.

EVALUATION OF INCOMPATIBILITY WITH EXISTING REGULATIONS

The proposed regulations are neither inconsistent nor incompatible with existing State regulations. The Leg-

islature has delegated to the Department the authority to adopt the proposed Marking Program (FGC Section 9005). The Department has reviewed existing regulations in Title 14 of the California Code of Regulations and finds that the proposed regulations are neither inconsistent nor incompatible with existing State regulation.

DOCUMENTS RELIED UPON

Pacific States Marine Fisheries Commission and National Oceanic Atmospheric Administration (2018). Forensic Review Workshop Report — Reviewing Gear Involved in West Coast Whale Entanglement (Available at: <http://habitat.psmfc.org/wp-content/uploads/2018/10/Forensic-Review-Workshop-Report.pdf>).

DOCUMENTS INCORPORATED BY REFERENCE

None.

IMPACT OF THE REGULATORY ACTION/RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

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

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Fishery participants would incur minimal time and material costs from adding additional branding and/or paint to their existing buoys. A few who participate in multiple fisheries may find it more time-efficient to purchase additional buoys to keep marked for other trap fisheries that they participate in, rather than re-paint and cross-purpose one set of buoys for other trap fishery seasons.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:

The Department does not anticipate any impacts on the creation or elimination of jobs, the creation of new businesses, the elimination of existing

businesses, or the expansion of businesses in California, since the proposed regulation would only lead to a minor modification in existing commercial fishing operations. The proposed regulation would not directly benefit the health and welfare of California residents, nor worker safety. The proposed regulation would help the Department in developing appropriate measures for managing and reducing marine life entanglements, and thus would benefit the State’s environment.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action beyond the possible cost of purchasing of new additional paint and the time to mark the gear, or in some case cases, purchasing new or additional buoys.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

If future information indicates currently unanticipated administrative and implementation costs to the Department, then pursuant to FGC Section 9005, the Department will determine and adjust the fee as necessary. No costs or savings in Federal funding to the State are anticipated.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.

- (f) Programs Mandated on Local Agencies or School Districts: None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None.

- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The proposed regulations may affect small businesses specifically involved in the seven commercial trap fisheries, except for those who only participate in the commercial Dungeness crab trap fishery and the commercial Sablefish trap fishery.

BENEFITS TO THE STATE’S ENVIRONMENT

The proposed Marking Program would help with the identification of a fishing gear if it is entangled with marine life, allowing the State to direct resources to those fisheries with the greatest contribution to marine life entanglement. The Marking Program’s proposed Identification Letter would allow the gear to be identified to

a fishery, and the proposed Identification Number would allow the gear to be identified to an individual fisherman or operator.

CONSIDERATION OF ALTERNATIVES

The Department 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 regulation is proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

MITIGATION MEASURES REQUIRED BY REGULATORY ACTION

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action should be directed to:

California Department of Fish and Wildlife
Marine Region
Attn: Anthony Shiao, Environmental Scientist
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
Phone: (805) 560-6056
Email: Anthony.Shiao@wildlife.ca.gov

The backup contact person is:

California Department of Fish and Wildlife
Marine Region
Attn: Tom Mason, Senior Environmental Scientist
Supervisor
3883 Ruffin Road
San Diego, CA 92123
Phone: (858) 637-7100
Email: Tom.Mason@wildlife.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Travis Buck (see above for contact information).

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying at its office at the Santa Barbara address above. As of the date this notice is published, the rulemaking file consists of:

1. Notice of Proposed Action
2. Initial Statement of Reasons
3. Proposed Text of the Regulation
4. Economic and Fiscal Impact Assessment (Form STD 399) and addendum
5. Pacific States Marine Fisheries Commission and National Oceanic Atmospheric Administration (2018). Forensic Review Workshop Report — Reviewing Gear Involved in West Coast Whale Entanglement.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The rulemaking file is available online at:
<https://www.wildlife.ca.gov/Notices/Regulations>

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received by the Department, 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. Please send requests for copies of any modified regulations to the attention of Anthony Shiao (see above for further contact information). The Department would accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by checking the website at the link provided above, or contacting Anthony Shiao (see above for further contact information).

**TITLE 15. DEPARTMENT OF
CORRECTIONS AND REHABILITATION**

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation
Division of Juvenile Justice**

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Penal Code (PC) Section 5055, and Welfare and Institutions Code (WIC) Section 1712, and the rulemaking authority granted by WIC Section 1712, proposes to amend sections 4621.1 and 4621.2 and add sections 4621.3 and 4964 to the California Code of Regulations (CCR), Title 15, concerning citizens or nationals of a foreign country.

PUBLIC HEARING INFORMATION

Date and Time: August 19, 2019
11:00 a.m. to 12:00 p.m.

Place: CDCR — Division of Juvenile Justice
8220 Longleaf Drive, Building B
1st Floor, Room 126
Elk Grove, CA 95758

Purpose: To receive comments about this action.

This hearing site is accessible to the mobility impaired. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. It is not a forum to debate the proposed regulations. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

PUBLIC COMMENT PERIOD

The public comment period will close August 19, 2019 at 5:00 p.m. Any person may submit written comments (by mail or by email) regarding the proposed changes. To be considered, comments must be submitted to the California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice, Policy, Procedures, and Regulations Unit, P.O. Box 588501, Elk Grove, CA 95758-8501, or by e-mail to

M_DJJ-PPR@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

Shelly Jones
Division of Juvenile Justice
P.O. Box 588501
Elk Grove, CA 95758-8501
Telephone: (916) 683-7473

In the event the contact person is unavailable, inquiries should be directed to the following backup person:

Sandi Becker
Division of Juvenile Justice
Telephone: (916) 683-7467

AUTHORITY AND REFERENCE

Welfare and Institutions Code Section 1712 provides that, commencing July 1, 2005, the Secretary is authorized to make and enforce all rules appropriate to the proper accomplishment of the functions of the Division of Juvenile Facilities, Division of Juvenile Programs, and Division of Juvenile Parole Operations. The rules shall be promulgated and filed pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 Division 3 of Title 2 of the Government Code, and shall, to the extent practical, be stated in language that is easily understood by the general public.

References cited pursuant to this regulatory action are as follows:

Penal Code Section 5028 requires the Division to inform citizens or nationals of a foreign country in the Division's custody that they may contact their consulate. If contact is requested, the Division is required to notify the nearest consulate or embassy without delay. This section further provides citizens or nationals of a foreign country the right to request transfer to their current or former nation of citizenship for the remainder of their confinement time.

Government Code Section 7284.10 provides a youth the right to decline or accept a request for an interview by a United States Immigration and Customs Enforcement representative, with or without an attorney present.

Government Code Section 12012.1 authorizes the Governor, or the Governor's designee, to approve the transfer of a youth committed to the Division of Juvenile Justice to the youth's current or former nation of citizenship.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The California Department of Corrections and Rehabilitation (CDCR), Division of Juvenile Justice (Division) proposes to amend sections 4621.1 and 4621.2 and add section 4621.3 to the California Code of Regulations (CCR), Title 15, Division 4, Chapter 3, Subchapter 1, Article 4. It further proposes to add section 4964 to the CCR, Title 15, Division 4.5, Chapter 2, Article 4, concerning citizens or nationals of a foreign country.

This rulemaking action will ensure compliance with current statutory authorities and requirements. Penal Code section 5028 requires the Division to inform citizens or nationals of a foreign country in the Division’s custody that they may contact their consulate. If contact is requested, the Division is required to notify the nearest consulate or embassy without delay. This section further provides citizens or nationals of a foreign country the right to request transfer to their current or former nation of citizenship for the remainder of their confinement time. The proposed text outlines a youth’s rights, establishes a transfer request process within the Division, and delineates criteria to be considered by the Board of Juvenile Hearings (Board) when considering the transfer of a youth to the youth’s nation of citizenship.

This rulemaking action will also ensure compliance with Government Code section 7284.10, which provides a youth the right to decline or accept a request for an interview by a United States Immigration and Customs Enforcement representative, with or without an attorney present. The proposed language requires parental consent for youth who are under the age of 18 and not emancipated. Further, the proposed language adds requirements for providing citizens or nationals of a foreign country with information received from the United States Immigration and Customs Enforcement, consistent with Government Code section 7284.10(a)(2).

This rulemaking action updates names and terms for consistency with current statutes and terminology used by the Division.

This action provides the following:

- Ensures youth are afforded the right to contact their consulate.
- Provides youth an opportunity to either accept or decline a request for interview by the United States Immigration and Customs Enforcement (ICE).
- Ensures youth are provided information received from ICE.
- Ensures youth are afforded the right to request transfer to a country where the youth is a citizen or

national to serve the remainder of their confinement time.

- Provides a timely hearing before the Board to consider their request for transfer to their country of citizenship or nationality.
- Ensures youth the right to be informed of and present at a transfer hearing before the Board.
- Provides the Board with criteria on which to base a decision regarding a request for transfer, consistent with the provisions of Foreign Prisoner Transfer Treaties and factors considered by the International Prisoner Transfer Program.
- Requires the Division obtain parental consent prior to an interview with the youth by a United States Immigration and Customs Enforcement representative.
- Changes the term “Department” to “Division” for consistency with Welfare and Institutions Code Section 1703(c).
- Changes the term “ward” to “youth” for consistency with Welfare and Institutions Code Section 224.70(e).
- Updates the terms “illegal aliens” and “foreign national” to “citizen or national of a foreign country”, consistent with the scope of Title 18 United States Code section 4100.
- Includes the name of the United States Department of Justice International Prisoner Transfer Program for consistency with current transfer process guidelines.

**BENEFITS ANTICIPATED BY THE
PROPOSED REGULATIONS**

The proposed regulatory action will benefit the youth committed to the Division by ensuring youth who are citizens or nationals of a foreign country are provided the right to contact their consulate, accept or decline a request for interview by the United States Immigration and Customs Enforcement (ICE), receive information from ICE, and request transfer to a country where the youth is a citizen or national to serve the remainder of their confinement time.

Additionally, the proposed regulatory action will ensure youth are provided a timely hearing before the Board to consider their request for transfer to their country of citizenship or nationality, as well as the right to be informed of and present at this hearing. Further, the proposed regulatory action will provide the Board with criteria on which to base their decision, consistent with the provisions of Foreign Prisoner Transfer Treaties and factors considered by the International Prisoner Transfer Program.

The requirement for obtaining parental consent prior to an interview with a United States Immigration and

Customs Enforcement representative, ensures youth under the age of 18 and not emancipated are afforded the same rights as they would have if they were not detained. This provision facilitates family engagement, an important aspect of the Division's rehabilitative mission.

**EVALUATION OF
CONSISTENCY/COMPATIBILITY WITH
EXISTING REGULATIONS**

Pursuant to Government Code 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing state regulations. Pursuant to this evaluation, the Department has determined these proposed regulations are not inconsistent or incompatible with any existing regulations within CCR, Title 15, Divisions 4 or 4.5.

LOCAL MANDATES

The proposed regulatory action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500–17630.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district that is required to be reimbursed: *None.*
- 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 determined that the proposed action will have no significant effect on housing costs because the proposed regulations affect only the internal operations of the Division and youth committed to the Division.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESS**

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

tions affect only the internal operations of the Division and youth committed to the Division.

**RESULTS OF ECONOMIC
IMPACT ASSESSMENT**

The Department has determined that the proposed regulations will have no impact 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 because the proposed regulations affect only the internal operations of the Division and youth committed to the Division.

**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.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will have no significant adverse economic impact on small businesses because the proposed regulations affect only the internal operations of the Division and youth committed to the Division.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations 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 proposed text and the Initial Statement of Reasons (ISOR) of the proposed regulatory action. The

rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (rulemaking file) is available to the public upon request directed to the contact person listed in this Notice. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website at https://www.cdcr.ca.gov/Regulations/Juvenile_Justice.

AVAILABILITY OF THE
FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the contact person listed in this Notice.

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 calendar days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person listed in this Notice. The Department will accept written comments on the modified regulations for 15 calendar days after the date on which they are made available.

**TITLE 17. DEPARTMENT OF
PUBLIC HEALTH**

**DPH-17-009 Radiologic Technology Act
Regulations: RTCC Recommendations**

PUBLIC PROCEEDINGS

The California Department of Public Health (Department) is conducting a 45-day written public proceeding 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 the Informative Digest/Policy Statement overview section of this notice.

PUBLIC HEARING

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

WRITTEN COMMENT PERIOD

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by August 5, 2019, 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 by dialing 711.

Written comments may be submitted as follows:

1. By email: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "**DPH-17-009 Radiologic Technology Act Regulations: RTCC Recommendations**" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission: (916) 636-6220;
3. By Postal Service: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814;
4. Hand-delivered: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All submitted comments should include the regulation package identifier, "**DPH-17-009 Radiologic Technology Act Regulations: RTCC Recommendations**" and the author's name and mailing address.

INFORMATIVE DIGEST

This proposal would adopt, amend or repeal provisions of Title 17, California Code of Regulations (17 CCR) to address recommendations of the Radiologic Technology Certification Committee (RTCC) regarding the movement of a patient or equipment during fluoroscopic X-ray procedures; the recording of cumulative irradiation time or exposure during fluoroscopic X-ray procedures; the scope of practice of a certified radiologic technologist (CRT); and the experience requirement of individuals who provide training oversight to students during training in radiologic technology. Nonsubstantial changes are also proposed.

POLICY STATEMENT OVERVIEW

Problem Statement: The California Department of Public Health (Department) regulations implementing both the Radiation Control Law (RCL) and the Radiologic Technology Act (RT Act) do not clarify when the RT Act applies during fluoroscopic X-ray procedures; do not specify the scope of practice of CRTs; do not require radiation exposure times or dose be recorded for patient protection; and place an unnecessary experience requirement on individuals overseeing X-ray students during clinical training.

Objectives: Broad objectives of this proposed regulatory action are to:

- Ensure patients receive the least amount of necessary radiation exposure during fluoroscopy procedures by limiting use of X-ray to qualified persons.
- Ensure facility staff understand radiation protection standards, so as to reduce unnecessary radiation exposure to patients, and how to protect themselves and others from radiation exposure.
- Ensure adequate oversight of students.
- Address RTCC’s recommendations.
- Clarify the CRT scope of practice.
- Clarify what actions invoke the RT Act requirements.

Benefits: Anticipated benefits from this proposed regulatory action are:

- Prevent patients from receiving excessive radiation exposure due to facilities’ use of unqualified individuals during fluoroscopy procedures.
- Reduce unnecessary radiation exposures to patients that occur due to a lack of understanding by facility staff of radiation protection standards.
- Reduce unnecessary radiation exposures to workers by ensuring they are educated on how to protect themselves and others.
- Ensure students receive adequate oversight by qualified persons when providing patient care during X-ray procedures.
- Reduce confusion as to the CRTs’ scope of practice.
- Reduce confusion by clarifying when a person must hold certain RT Act authorizations.

PROGRAM BACKGROUND/AUTHORITY

The RT Act codified in Health and Safety Code (HSC), sections 106965 through 107120 and sections 114840 through 114896 was enacted to protect the public from excessive or improper exposure to ionizing ra-

diation. The RT Act requires that any individual who uses X-rays on human beings for diagnostic or therapeutic purposes meet certain standards of education, training, and experience. The Department (successor to the Department of Health Services) is authorized under the RT Act to promulgate regulations to implement the Act’s provisions. (HSC §§ 131055 & 131200.¹)

Radiologic technology means the application of X-rays on human beings for diagnostic or therapeutic purposes. (HSC § 114850(c).) It is performed in hospitals, clinics, and private doctors’ offices, including mobile vans or vehicles.

Pursuant to the RT Act, the Department, in part:

- Certifies individuals as radiologic technologists in diagnostic, therapeutic, and mammographic X-ray use. An individual certified as a radiologic technologist is called a CRT. (17 CCR § 30400(a)(9).)
- Certifies and permits licensed medical, osteopathic, podiatric, and chiropractic doctors to use diagnostic or therapeutic X-rays within the scope of their professional license. These individuals are called “licentiates of the healing arts” (“licentiates”) as defined in HSC § 114850(h)(1). Once licentiates are certified or permitted under the RT Act, they are called a “certified supervisor or operator” as defined in HSC § 114850(i); and
- Approves schools that provide the training courses required for obtaining a non-licentiate certificate or permit.

The RT Act also created the RTCC to assist, advise, and make recommendations to the Department for the establishment of rules and regulations necessary to insure the proper administration and enforcement of the RT Act. (HSC § 114855.) This advisory committee consists of six licensed physician and surgeons, a licensed podiatrist and chiropractor, two certified radiologic technologists, and a radiological physicist. (HSC § 114860.) Each member is appointed by the Department Director from at least three nominees for each position submitted by appropriate professional associations and societies. (HSC § 114855.) Lastly, any regulations proposed by RTCC shall be adopted by the Department only after consultation with the committee and approval by six affirmative votes of those present at an official meeting of the committee. (HSC § 114880.)

The RCL (HSC §§ 114960 et seq.) authorizes the Department to promulgate regulations regarding sources of ionizing radiation for the protection of the health and safety of the public and radiation workers. (HSC §§ 114965, 114970 & 115000.) As it pertains to use of

¹ This short format “HSC § 131055” for a given Health and Safety Code section will be used throughout this document for brevity.

X-ray for purposes of radiologic technology, the Department, under the RCL:

- Requires users who possess X-ray machines to register and renew that registration. (17 CCR §§ 30108–30146.) Users include hospitals, clinics, and physician, podiatric and chiropractic offices.
- Specifies, in part:
 - X-ray machine standards.
 - Radiation protection procedures.
 - Occupational and public radiation dose limits.
- Observe X-ray machine users to determine if the user safely uses radiation and whether the user is complying with both the RCL and the RT Act, and the regulations adopted under both laws.

The RCL focuses broadly on all uses of ionizing radiation sources (e.g. X-ray machines, radioactive materials) and the RT Act focuses narrowly on the use of X-ray for medical purposes. Both the RCL and the RT Act apply regardless of where radiologic technology is performed; how the organization providing it is structured; or who is providing it.

In October 2013, the Department adopted a number of RTCC recommendations. Since that adoption, RTCC has met and made additional recommendations in support of its advisory role to the Department. Therefore, this proposal addresses the following RTCC recommendations and other Department-determined needs regarding the administration of both the RT Act and the RCL.

RTCC Recommendation

1. The scope of practice of certified radiologic technologists should be established and as stated in the American Society of Radiologic Technologists’ (ASRT) publication titled “Practice Standards for Medical Imaging and Radiation Therapy” for both Radiography and Radiation Therapy.

See discussion of proposed section 30441.

Date of Meeting

October 29, 2014
(Reference 1.)

RTCC Recommendation

2. Air kerma received during fluoroscopic procedures should be documented in the patient’s record.

See discussion of section 30307.

Date of Meeting

April 8, 2015
(Reference 2.)

RTCC Recommendation

3. Movement of the patient or equipment during use

of fluoroscopic X-ray equipment by non-certified or non-permitted individuals should be allowed under certain conditions.

See discussion of sections 30305.5 and 30450.

Date of Meeting

October 28, 2015
(Reference 3) &
April 13, 2016
(Reference 4.)

RTCC Recommendation

4. As it pertains to student oversight, 17 CCR § 30417(f)(2) should be revised so that only those, except for a certified supervisor and operator (S&O), making the competency determination for purposes of the student moving from direct oversight to indirect oversight need to have at least two years of radiologic technology experience.

See discussion of proposed section 30400 and 30417.

Date of Meeting

April 13, 2016
(Reference 4.)

At the RTCC’s April 13, 2016 meeting, analyses containing draft regulations addressing the above RTCC recommendations were presented to the committee and the public for review and discussion. This proposal also addresses comments received at that public meeting.

AUTHORITY AND REFERENCE

The California Department of Public Health (Department) proposes to adopt, amend, or repeal, as applicable, sections 30252, 30305.5, 30307, 30400, 30411, 30417, 30418, 30423, 30441, 30450, 30456 and 30456.4 of 17 CCR, under the authority provided in sections 114870, 114975, 115000, 115060 and 131200 of the HSC. This proposal implements, interprets and makes specific sections 106965, 106980, 106985, 106990, 114850, 114870, 114995, 114970, 115060, 131050, 131051, and 131052 of the HSC.

EVALUATION AS TO WHETHER THE PROPOSED REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The Department evaluated this proposal and determined that, if adopted, it will not be inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department’s existing general regulations and those regulations specific to the implementation of the RCL and the RT Act. An Internet search of other California state agency regulations determined that no other state regulation addresses the same subject matter.

MANDATED BY FEDERAL
LAW OR REGULATIONS

Not applicable.

DOCUMENTS INCORPORATED
BY REFERENCE

None.

OTHER STATUTORY REQUIREMENTS

None.

BUSINESS REPORTING REQUIREMENT

The Department has determined that this proposed regulation would require businesses to submit a report, and that the report is necessary for the health, safety, and welfare of the people of this state.

SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT DIRECTLY AFFECTING
BUSINESS, INCLUDING ABILITY TO COMPETE

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.

LOCAL MANDATE

The Department has determined that this regulatory action 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.

COST IMPACTS ON REPRESENTATIVE
PERSON OR BUSINESS

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

EFFECT OF HOUSING

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

EFFECT ON SMALL BUSINESS

The Department has determined that there would be an effect on small businesses, because they will be legally required to comply with the regulation, and may incur a detriment from the enforcement of the regulation.

STATEMENTS OF DETERMINATIONS

The Department, based on the following, has determined that the proposed regulatory action would have no significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

- A facility could see a savings if a lesser paid person is used in lieu of a higher paid person as it pertains to movement of fluoroscopy equipment or the patient during fluoroscopic X-ray procedures.
- Allows a facility implementing the proposal to use existing personnel to provide proposed training.
- Recording of data and its retention is minimal and uses a facility's existing information technology systems.
- Makes it easier for approved schools to affiliate with clinical facilities.
- By specifying the CRT scope of practice, a facility can fully utilize a CRT's expertise in radiologic technology.

RESULTS OF THE
ECONOMIC IMPACT ANALYSIS

The Department has determined that the regulations affect the following as described:

- A. The creation or elimination of jobs within the State of California.** No effect is expected because it clarifies current practices.
- B. The creation of new businesses or the elimination of existing businesses within the State of California.** No effect is expected because it clarifies current practices.
- C. The expansion of businesses currently doing business within the State of California.** No effect is expected because it clarifies current practices.
- D. The benefits of the regulation to the health and welfare of California residents, and increased worker safety.** This proposal significantly increases the benefits to the health and welfare of California residents and worker safety because it ensures users of X-ray equipment have met specific training, education and experience

requirements. Competency of such users ensures operators can safely and competently keep a patient's radiation exposure to a minimum and protect themselves, and other workers, from receiving unnecessary radiation exposure. This proposal would not affect the state's environment because the radiation energy emitted from the use of X-ray equipment dissipates to normal atomic structures without environmental contamination.

FISCAL IMPACT ESTIMATE

- A. FISCAL IMPACT ON LOCAL GOVERNMENT:** There will be an impact as described in item D below.
- B. FISCAL IMPACT ON STATE GOVERNMENT:** There will be an impact as described in item D below.
- C. FISCAL IMPACTS ON FEDERAL FUNDING OF STATE PROGRAMS:** None.
- D. FISCAL IMPACT ON PRIVATE PERSONS OR BUSINESSES DIRECTLY AFFECTED:**

RTCC Recommendation Section 30305.5.

Movement of the patient or equipment during use of fluoroscopic X-ray equipment by individuals not authorized under the RT Act should be allowed under certain conditions.

Assessment

A facility is not required to implement subsections (b) through (g). A facility can implement either: only subsection (b); subsections (c) through (g); or subsections (b) through (g).

Assuming a facility only implements subsection (b), a savings of about \$20 per hour of fluoroscopy usage could result only if a lesser paid person is used in lieu of a higher paid person. Actual savings varies based on wages paid.

Assuming a facility only implements subsections (c) through (g), a savings of about \$20 per hour of fluoroscopy usage could result only if a lesser paid person is used in lieu of a higher paid person.

However, that savings is offset by about \$91 to \$203 annually, due to re-allocation of existing staff or use of a qualified non-staff person, to provide the required training. Actual savings varies based on wages paid.

The above conclusions apply for a facility implementing subsections (b) through (g).

RTCC Recommendation Section 30307(b).

Air kerma (a measurement of ionizing radiation)

received during fluoroscopic procedures should be documented in the patient's record.

Assessment

No cost or savings.

RTCC Recommendation

Section 30417.

As it pertains to student oversight, 17 CCR 30417(f)(2) should be revised so that only those, except for a certified supervisor and operator, making the competency determination for purposes of the student moving from direct oversight to indirect oversight, need to have at least two years of radiologic technology experience.

Assessment

Savings is likely but are not easily estimated due to significant variation between a school's physical location and the clinical site's physical location; the student's physical residence distance to a clinical site or the school's location; whether a facility wants to affiliate with the school; and the clinical site's staff availability and experience.

RTCC Recommendation

Section 30441.

The scope of practice of certified radiologic technologists should be established and be as stated in the ASRT publication titled "Practice Standards for Medical Imaging and Radiation Therapy" for both Radiography and Radiation Therapy.

Assessment

A facility could save about \$80 per day if a facility uses a qualified CRT in lieu of a higher qualified individual, such as a registered nurse, for administering medications during radiologic procedures. However, savings vary widely due to facility workloads, discretion, and union contract and liability insurance provisions, and is limited to radiologic procedures.

E. MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS: None.

F. OTHER NONDISCRETIONARY COSTS: None.

G. FISCAL IMPACT ON LOCAL AGENCY OR SCHOOL DISTRICT REQUIRING REIMBURSEMENT PURSUANT TO GOVERNMENT CODE SECTIONS 17500 ET SEQ.: None.

ALTERNATIVES CONSIDERED

Alternatives considered in this proposal are discussed or addressed in the detailed discussion of each regulation.

ALTERNATIVES STATEMENT

The Department must determine that no reasonable alternative considered by CDPH 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, or would be more cost-effective to affected private persons and equally effective in addressing RTCC's recommendations.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS RELIED UPON

1. RTCC meeting minutes of October 29, 2014.
2. RTCC meeting minutes of April 8, 2015.
3. RTCC meeting minutes of October 2, 2015.
4. RTCC meeting minutes of April 13, 2016.
- 4a. Handout for RTCC April, 13, 2016 meeting: CRT Scope of Practice.
- 4b. Handout for RTCC April, 13, 2016 meeting: Movement recommendation.
- 4c. Presentation for RTCC April, 13, 2016 meeting: Student supervision at clinical sites.
5. *The Practice Standards for Medical Imaging and Radiation Therapy: Radiography Practice Standards*. ASRT, Effective June 16, 2013.
- 5a. *The Practice Standards for Medical Imaging and Radiation Therapy: Radiation Therapy Practice Standards*. ASRT, Effective June 19, 2011.
- 5b. *The Practice Standards for Medical Imaging and Radiation Therapy: Advisory Opinion Statement — Medication Injection Through Existing Vascular Access*. ASRT, Effective June 16, 2013.
- 5c. *The Practice Standards for Medical Imaging and Radiation Therapy: Advisory Opinion Statement — Medication Injection by Radiologic Technologists*. ASRT, Effective June 16, 2013.
- 5d. *The Practice Standards for Medical Imaging and Radiation Therapy: Advisory Opinion Statement — Injecting Medication in Peripherally Inserted Central Catheter Lines or Ports with a Power Injector*. ASRT, Effective June 16, 2013.
6. *The Practice Standards for Medical Imaging and Radiation Therapy: Radiography Practice Standards*. ASRT, Effective June 26, 2016.
- 6a. *The Practice Standards for Medical Imaging and Radiation Therapy: Radiation Therapy Practice Standards*. ASRT, Effective June 26, 2016.

7. Email from Teri Braun-Hernandez to Lisa Russell & Phillip Scott dated 8-20-16 regarding RT role during cardiovascular, cathlab and hybrid imaging.
8. Email from Teri Braun-Hernandez to Lisa Russell, dated 4-27-16, as forwarded by Lisa Russell to Phillip Scott, et al., dated 4-28-16 regarding Fluoroscopy Analysis from RTCC meeting 4/2016.
9. Presentation for RTCC's October 23, 2013 meeting: Scope of Practice — Radiologic Technologist.
- 9a. RTCC meeting minutes of April 8, 2015.
10. RTCC meeting minutes of April 2, 2014.

CONTACT PERSON

Inquiries regarding the subject matter in this notice may be directed to Phillip Scott, Department's Environmental Management Branch (916) 440-7978. Inquiries regarding the regulatory process described in this notice should be directed to Dawn Basciano, Office of Regulations, at (916) 440-7367, or to the designated backup contact person, Linda Cortez (916) 440-7807.

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 order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 558-1710 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, 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.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

INTERNET ACCESS

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.cdph.ca.gov.

TITLE MMP. DEPARTMENT OF SOCIAL SERVICES

ORD #0219-06

ITEM #1 California Work Opportunities and Responsibility to Kids (CalWORKs) Exemption of Veterans Benefits and Related Allowances

The California Department of Social Services (CDSS) hereby gives notice of the proposed regulatory action(s) described below. Any person interested may present statements or arguments orally or in writing relevant to the proposed regulations at a public hearing to be held on August 7, 2019, at the following address:

Office Building #8
744 P St. Room 103
Sacramento, California

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

Statements or arguments relating to the proposals may also be submitted in writing, e-mail, or by facsimile to the address/number listed below. All comments must be received by 5:00 p.m. on August 7, 2019.

Following the public hearing CDSS may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. Except for nonsubstantive, technical, or grammatical changes, the full text of any modified proposal will be available for 15 days

prior to its adoption to all persons who testify or submit written comments during the public comment period, and all persons who request notification. Please address requests for regulations as modified to the agency representative identified below.

Copies of the express terms of the proposed regulations and the Initial Statement of Reasons are available from the office listed below. This notice, the Initial Statement of Reasons and the text of the proposed regulations are available on the internet at [CDSS Public Hearings for Proposed Regulations \(http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information\)](http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CDSS-Regulation-Changes-In-Process-and-Completed-Regulations/Public-Hearing-Information). Additionally, all the information which the Department considered as the basis for these proposed regulations (i.e., rulemaking file) is available for public reading at the address listed below. Following the public hearing, copies of the Final Statement of Reasons will also be available at the following address:

CONTACT

California Department of Social Services
Office of Regulations Development
744 P Street, MS 8-4-192
Sacramento, CA 95814
Tel: (916) 657-2856
Fax: (916) 654-3286
Email: ord@dss.ca.gov

CHAPTERS

Manual of Policies and Procedures, Chapter 44-100.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These proposed regulations revise references to the CalWORKs exemption of veteran benefits and related allowances. These changes are a result of Senate Bill (SB) 570 (Chapter 463, Statutes of 2017), which became effective January 1, 2018. SB 570 made very specific statutory changes to allow eligible CalWORKs families to have benefits received for education, training, vocation, rehabilitation, and related allowances from the United States Department of Veterans Affairs (VA) be exempt from consideration as income. The proposed regulations implement the following by referring to the statutes and noting that updates are published by CDSS through All County Letter (ACL) 17-125:

- Exemption for educational, training, vocation and rehabilitation benefits, and related allowances received from the VA.

CDSS conducted a review of existing regulations and evaluated the proposed regulations for any inconsistency or incompatibility. CDSS has found that these are the only regulations concerning the income exemptions in CalWORKs. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations but do fulfill the intent of the Legislature in enacting SB 570.

COST ESTIMATE

1. Costs or Savings to State Agencies: None.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance with Government Code Sections 17500–17630: None.
3. Nondiscretionary Costs or Savings to Local Agencies: None.
4. Federal Funding to State Agencies: None.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not upon school districts. The mandate is not required to be reimbursed pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code or Section 6 of Article XIII B of the California Constitution because implementation of the regulations will result in no additional costs to local agencies.

STATEMENT OF SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

CDSS has made an initial determination that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on the proposed regulatory action, which was designed to impact only the CalWORKs population.

STATEMENT OF POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

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

SMALL BUSINESS IMPACT STATEMENT

CDSS has made an initial determination that there is no impact on small businesses as a result of filing these regulations because these regulations are only applicable to state and county agencies and CalWORKs program applicants; therefore, they do not have a cost impact on the private sector, including small businesses.

STATEMENT OF RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The implementation of this regulatory action will benefit CalWORKs applicants. There are no additional benefits for worker safety or the state's environment, as the regulations only affect individuals applying for the CalWORKs program.

STATEMENT OF EFFECT ON HOUSING COSTS

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

STATEMENT OF ALTERNATIVES CONSIDERED

In developing the regulatory action, CDSS did not consider any other alternatives because there were no other alternatives proposed. SB 570 (Chapter 463, Statutes of 2017) specifically requires that CDSS exempt VA benefits as income in the CalWORKs program. These regulations will implement the exemption by referring to the appropriate Welfare and Institutions Code (WIC) sections which pertain to the exemption of veterans benefits and related allowances and by referring to ACLs issued by CDSS.

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

AUTHORITY AND REFERENCE CITATIONS

WIC sections 10553 and 10554 give CDSS the authority to write these regulations and WIC section 11250.9 is the statute CDSS is implementing through this regulatory change.

DEPARTMENT REPRESENTATIVE
REGARDING THE RULEMAKING
PROCESS OF THE PROPOSED REGULATION

Contact Person:

Oliver Chu
(916) 657-2586

Backup:

Sylvester Okeke
(916) 657-2586

GENERAL PUBLIC INTEREST

**DEPARTMENT OF
FISH AND WILDLIFE**

CESA CONSISTENCY
DETERMINATION REQUEST FOR
Hart Ranch Coho Salmon Safe Harbor Agreement
2089-2019-001-01
Siskiyou County

The California Department of Fish and Wildlife (CDFW) received a notice on June 7, 2019 that Hart Cattle, Inc. (Applicant) proposes to rely on a federal Safe Harbor Agreement that allows agencies to carry out a project that may provide a net conservation benefit to a species protected by the California Endangered Species Act (CESA). The proposed project involves the implementation of beneficial management activities to provide a net conservation benefit for Coho salmon (*Oncorhynchus kisutch*). The proposed project will occur on the Applicant's Valley Floor property at Hart Ranch, Shasta Valley, Siskiyou County, California.

The June 7, 2019 notice requested a CDFW determination pursuant to California Fish and Game Code Section 2089.22, that the enhancement of survival permit (# 21088) issued by the National Marine Fisheries Service (Service) and safe harbor agreement (SHA) issued by the Service to the Applicant on February 21, 2019, are consistent with CESA for purposes of the proposed Project. If CDFW determines the federal safe harbor

agreement is consistent with CESA for the proposed Project, the Applicant will not be required to obtain a California state safe harbor agreement under Fish and Game Code section 2089 for the Project.

**DEPARTMENT OF
FISH AND WILDLIFE**

**PROPOSED RESEARCH ON
FULLY PROTECTED SPECIES
Salvage of White-tailed Kites**

The Department of Fish and Wildlife (Department) received a study proposal from Katelyn J. Bishop, on behalf of University of California, Los Angeles, requesting authorization to take White-tailed Kite (*Elanus leucurus*), a Fully Protected bird, for scientific research purposes, consistent with conservation and recovery of the species.

Ms. Bishop is planning to conduct studies throughout the range of the species in California, in accordance with methods approved by the Department and the U.S. Fish and Wildlife Service (Service). The research activities include salvage of kite carcasses, processing carcasses to isolate bones, and storage of full skeletal specimens. The purpose of the study is to ensure this species is represented in the skeletal avifaunal study collection being constructed at the University of California, Los Angeles. No adverse effects on individuals or populations are expected.

The Department intends to issue, under specified conditions, a Memorandum of Understanding (MOU) that would authorize Ms. Bishop, as the Principal Investigator, to carry out the proposed activities.

Pursuant to California Fish and Game Code (FGC) Section 3511(a)(1), the Department may authorize take of Fully Protected bird species after a 30-day notice period has been provided to affected and interested parties through publication of this notice. If the Department determines that the proposed research is consistent with the requirements of FGC Section 3511 for take of Fully Protected birds, it would issue the authorization on or after July 22, 2019, for an initial and renewable term of up to, but not to exceed three years. Contact: Carie Battistone, Carie.Battistone@wildlife.ca.gov, 916-445-3615.

**RULEMAKING PETITION
DECISION**

**DEPARTMENT OF
MANAGED HEALTH CARE**

June 11, 2019

Denise Feldman, President
CHCI Insurance Services
4924 Balboa Blvd. #415
Encino, CA 91316

ACTION

Notice of Decision on Petition for Rulemaking
Action

SUBJECT

Petition by CHCI Insurance Services, Requesting
Amendment of Title 28, California Code of Regulations
(CCR) Section 1300.67.005 Essential Health Benefits
(EHB), Subdivision (d)(12) Rehabilitative/Habilitative
Health Care Services and Devices

PETITIONER

The request for rulemaking action (Petition) from
Ms. Denise Feldman, President of CHCI Insurance Ser-
vices (Petitioner) was received by the Department of
Managed Health Care (Department) on May 20, 2019.
Pursuant to the requirements of Government Code sec-
tion 11340.7, the Department provides this response to
the Petition.

DEPARTMENT CONTACT PERSON

Inquiries concerning this decision may be directed to
Emilie Alvarez, Regulations Coordinator, Department
of Managed Health Care, Office of Legal Services, by
mail at: 980 9th Street, Suite 500, Sacramento, CA
95814, by telephone at: (916) 322-6727, or by e-mail
at: emilie.alvarez@dmhc.ca.gov or regulations@dmhc.ca.gov.

AVAILABILITY OF PETITION

The Petition for the amendment of regulations is
available upon request directed to the Department’s
Contact Person.

AUTHORITY

The Department’s regulation is located at section
1300.67.005, subdivision (d)(12), of title 28 of the
CCR. The Petitioner cites as authority to amend the reg-
ulation the Patient Protection and Affordable Care Act
“ACA” (Public Law 111-148, as amended), the Knox-
Keene Health Care Service Plan Act of 1975 (the
Knox-Keene Act),¹ including but not limited to Health
and Safety Code (HSC) sections 1341, 1344, and
1367.005, as well as Government Code section 11346.

DETERMINATION ON THE PETITION

For the reasons discussed below, the Department de-
nies in whole the Petition to amend title 28, CCR section
1300.67.005 (the EHB regulation).

**REASONS SUPPORTING THE
DEPARTMENT DETERMINATION**

The ACA requires the Secretary of the Department of
Health and Human Services (DHHS) to define EHB, in-
cluding at least ten specified general categories (e.g.,
ambulatory patient services, hospitalization, etc.). The
EHB are a minimum standard for health benefit cover-
age required under the ACA and the Public Health Ser-
vice Act. In December of 2011, the DHHS issued guid-
ance for state implementation of EHB. The guidance
authorized each state to select a base-benchmark plan
from a list of options to establish EHB particular to that
state. Pursuant to those federal guidelines, in 2012, the
California legislature enacted Assembly Bill (AB)
1453, adding HSC section 1367.005. HSC section
1367.005 defines California’s EHB, including the Cali-
fornia benchmark plan, and further specified param-
eters for the benchmark plan including but not limited to
coverage of medically necessary basic health care ser-
vices, all statutorily-mandated health benefits enacted
before December 31, 2011, and any other health ben-
efits covered by the plan that are not otherwise required
to be covered under the Knox-Keene Act.

In 2015, the DHHS directed states to select a new
base-benchmark plan from specified options. The Cali-
fornia Legislature enacted Senate Bill 43 (SB 43)² to
update the definition of EHB in California. As amended

¹ Health and Safety Code section 1340, *et seq.*

² SB 43 (Hernandez, Chapter 648, Statutes of 2015).

by SB 43, HSC section 1367.005 defines the new base-benchmark plan as the Kaiser Small Group HMO 30, “as this plan was offered during the first quarter of 2014,” and updates the EHB standards for rehabilitative/habilitative health care services and devices, pediatric benefits, and other EHB standards in accordance with the federal law and guidance.

To implement SB 43, in 2016, the Department promulgated emergency regulations pursuant to its authority under HSC section 1367.005(o) (DMHC Control No. 2016–5191; OAL Matter No. 2016–1117–01). The Department finalized and made permanent those regulations with a certificate of compliance in 2017 (DMHC Control No. 2016–5191; OAL Matter No. 2017–0516–01).

The EHB regulation, as written, is consistent with relevant law, including HSC section 1367.005, and accurately describes the benchmark plan’s health care service coverage. The Department addresses each of the Petitioner’s specific arguments, below.

1. The benchmark plan does not include coverage of residential treatment as described by the Petitioner.

The Petitioner asserts that an excerpt from a Mental Health Parity and Addiction Equity Act (MHPAEA) compliance filing, submitted by Kaiser Foundation Health Plan, Inc. (Kaiser), dated November 17, 2014, shows that the benchmark plan includes coverage of residential rehabilitative services. (Petition, p. 2.) On this basis, the Petitioner asserts that subdivision (d)(12)(A)(iii) of the EHB regulation should be amended to add, “an organized, multidisciplinary residential treatment program” to the listed health services in the habilitative/rehabilitative EHB category. (Petition, p. 5.)

The Petitioner is mistaken for two independent reasons. First, as the Petitioner acknowledges, the EHB benchmark plan is the Kaiser Foundation Health Plan Small Group HMO 30 plan, “as this plan was offered during the first quarter of 2014.” (HSC section 1367.005(a)(2)(A); Petition, p. 2.) However, the compliance filing cited by the Petitioner describes coverage effective subsequent to that period. To assess the validity of the Petitioner’s assertion, the Department identified the compliance filing the Petitioner cited as filing number 20142158, and reviewed the complete filing. In relation to the language the Petitioner quotes, Kaiser stated that the coverage of the residential treatment is effective, “as of July 1, 2014.” (Kaiser, Exhibit E–1,

November 17, 2014, p. 6 of 8.) The effective date of July 1, 2014, is after the relevant period: the first quarter of 2014. As the Department stated in response to public comments during formal rulemaking, it would exceed the scope of the relevant statute if the EHB regulation were to include changes made subsequent to the operative standard identified in HSC section 1367.005 (the first quarter of 2014).

Second, the Petitioner appears to misconstrue the meaning of Kaiser’s statement in the cited compliance filing. Contrary to the Petitioner’s assertions, the compliance filing does not indicate that the benchmark plan includes coverage for all residential rehabilitative services. To understand the meaning of the compliance filing, it is important to consider its context. The filing was in response to Department comments specifically related to the MHPAEA compliance. The Department’s comments were intended to ascertain whether Kaiser’s inpatient mental health/substance use disorder (MH/SUD) benefits met parity requirements in relation to inpatient medical/surgical benefits. Kaiser’s statement that it covers “residential treatment, including ‘residential rehabilitation,’” pertained only to coverage for MH/SUD. The statement did not pertain to all other benefit types, such as medical/surgical benefits (notably, the definition of medical/surgical benefits expressly excludes MH/SUD benefits; see 26 Code of Federal Regulations (C.F.R.) section 54.9812–1). The benchmark plan does not include residential treatment coverage to the extent suggested by the Petitioner.

The current EHB regulation correctly describes the residential treatment coverage, as offered by the benchmark plan in the first quarter of 2014, beyond what was otherwise required pursuant to the Knox–Keene Act, in subdivisions (d)(3)(C) (in re “chemical dependency services,” also called SUD), and (d)(6)(E) (regarding MH services). Accordingly, the Department declines to amend subdivision (d)(12) of the EHB regulation as requested by the Petitioner, because such an amendment is inconsistent with HSC section 1367.005.

2. The EHB regulation properly incorporates the definition of habilitative services as enacted in SB 43.

The Petitioner asserts that the changes in the EHB regulation “do not incorporate the federal definition of habilitative services as it was enacted in SB 43 and as it exists in statute 1367.005.” (Petition, p. 2.)

SB 43 amended HSC section 1367.005 in order to align with new federal EHB guidance and regulations

(see 45 C.F.R. section 156.115(a)(5)). Accordingly, SB 43 amended the definition of “habilitative services” in HSC section 1367.005, subdivision (p)(1),³ and also amended subdivision (a)(3) by prohibiting combined limits on habilitative and rehabilitative services. Subdivision (d)(12) of the EHB regulation expressly requires coverage of rehabilitative/habilitative health care services and devices that “shall be in accordance with subdivisions (a)(3) and (p)(1) of section 1367.005, and as follows.” (Emphasis added.) The Petitioner is therefore mistaken, because the EHB regulation directly incorporates the definition of habilitative services as it was enacted in SB 43 and as it exists under HSC section 1367.005.

3. The EHB regulation did not eliminate coverage of residential rehabilitative services.

The Petitioner asserts that the EHB regulation combined rehabilitative and habilitative services into an “entirely new definition,” and in doing so, “discarded each, separate prior definition [. . .] and instead created a new definition which eliminated residential rehabilitative services.” (Petition, p. 2. See also Petition, p. 5.)

The Petition does not cite to prior, separate definitions for rehabilitative and habilitative services. Health and Safety Code section 1367.005 has never contained a definition of “rehabilitative” services. Health and Safety Code section 1367.005 has always defined “habilitative” services, and SB 43 amended that definition, as described in section 2, above. The EHB regulation does not define habilitative and rehabilitative services; rather, as described in section 2, above, the EHB regulation incorporates the statutory definition of “habilitative” services and devices.

As described in section 1, above, the benchmark plan did not include general coverage of residential rehabilitative services. Accordingly, the EHB regulation’s silence on this coverage is appropriate, and did not eliminate any covered benefits.

The Department notes that subdivision (d) of the EHB regulation does not describe the entire scope of health care benefits required under the Knox–Keene Act, nor does it operate as a cap or limit on benefits. Subdivision (d) pertains to “‘other health benefits’ covered by the base–benchmark plan [. . .] in the first quarter of 2014, which are not otherwise required to be

covered under the Act.” (Emphasis added, 28 CCR section 1300.67.005, subdivision (c)(2); HSC section 1367.005(a)(2)(A)(v).) In other words, as the Department explained in responses to public comments during the formal rulemaking process, subdivision (d) of the EHB regulation describes coverage in the benchmark plan, “beyond what was otherwise required by the Knox–Keene Act [. . .].” (See Department Responses to Comments number 2–4 and 2–7 for Comment Period #1: February 10, 2017–March 27, 2017.) That is why, for example, the EHB regulation’s subdivision (g) (Filing Worksheet), section #7 (rehabilitative and habilitative services and devices), requires plans to identify where this EHB, as required by the many noted sections of the Knox–Keene Act and title 28 regulations, is located in the plan’s documents. The benchmark plan is only one source among many sources of required coverage under the Knox–Keene Act and regulations.

The current language in subdivision (d)(12) of the EHB regulation accurately describes the additional habilitative/rehabilitative coverage provided by the benchmark plan as of the first quarter of 2014. However, the Department notes that it also continues to enforce both the rest of the EHB regulation and all other relevant laws related to health benefits, including but not limited to the MHPAEA.

4. The EHB regulation satisfies the Administrative Procedures Act (APA) “clarity” standard.

The Petitioner asserts that the EHB regulation violates the APA clarity standard for regulations because subdivision (d)(12)(A)(iii) does not expressly enumerate residential services. (Petition, p. 3.)

The Petitioner’s assertion is based on a mistaken conclusion that the benchmark plan included residential coverage to the extent described by the Petitioner. As described in section 1, above, the benchmark plan did not include residential treatment for all rehabilitation. Rather, the benchmark plan as of the first quarter of 2014 included residential treatment in relation to MH/SUD benefits, as described in subdivisions (d)(3) and (d)(6) of the EHB regulation.

5. The EHB regulation satisfies the APA “consistency” standard.

The Petitioner asserts that the EHB regulation violates the APA consistency standard for regulations because subdivision (d)(12)(A)(iii) of the EHB regulation does not enumerate residential services. (Petition, p. 3.) The Petitioner asserts that in its MHPAEA compliance filing, Kaiser “attested that it complied with the MHPAEA which means that residential rehabilitation was covered as a medical/surgical service in the first quarter of 2014.” (Petition, p. 3.)

The Petitioner’s assertions are incorrect for the reasons noted in section 1, above. Therefore, the EHB reg-

³ As amended by SB 43, “ ‘Habilitative services’ means health care services and devices that help a person keep, learn, or improve skills and functioning for daily living. Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech–language pathology, and other services for people with disabilities in a variety of inpatient or outpatient settings, or both. Habilitative services shall be covered under the same terms and conditions applied to rehabilitative services under the plan contract.” (HSC section 1367.005(p)(1).)

ulation is consistent with the EHB statute, HSC section 1367.005. Additionally, the Department notes that the MHPAEA generally prohibits treatment limitations on MH/SUD benefits that are “more restrictive” than the limits on medical/surgical benefits. (See 26 C.F.R. section 54.9812–1(c).) Contrary to the Petitioner’s assertions, the MHPAEA does not require the reverse. It does not require medical/surgical benefits to be as generous as MH/SUD benefits. Therefore, the MHPAEA does not require a plan to cover residential treatment service for medical/surgical benefits to the same extent it covers such treatment for MH/SUD. Finally, the EHB regulation expressly states that coverage must satisfy the MHPAEA (see subdivision (d)(3) and (d)(6)). Therefore, the EHB regulation is consistent with the MHPAEA.

The Petitioner also asserts that the EHB regulation is inconsistent with ACA section 1557 and 42 C.F.R. section 440.347(e). The Petitioner asserts that “[b]y eliminating residential rehabilitative services, the . . . [EHB regulation] implements a discriminatory plan design that deprives disabled individuals of a vital EHB — residential rehabilitative and habilitative services.” (Petition, p. 3.)

The Petitioner is mistaken, for the reasons described in sections 1 and 3, above.

6. The EHB Regulation’s Economic and Fiscal Impact Statements were appropriate.

The Petitioner asserts that the Economic and Fiscal Impact Statement for the EHB regulation is inaccurate. The Petitioner incorrectly claims the economic impact statement finding “no impact to individuals” was wrong. The Petitioner incorrectly argues there is an economic impact between \$75 million to \$173 million dollars due to elimination of residential rehabilitative services as a covered EHB. Additionally, the Petitioner cites a California Health Benefits Review Program (CHBRP) legislative report, which is unrelated to the EHB regulation, as evidence that the residential aspect of the habilitative/rehabilitative EHB is unclear. (Petition, pp. 3–4.)

The Petitioner’s arguments regarding the economic and fiscal impact of the EHB regulation are based on a mistaken conclusion that the benchmark plan includes general coverage of rehabilitative residential services, and that the EHB regulation eliminated that benefit. Additionally, the cited CHBRP report does not support the Petitioner’s assertions. The CHBRP report stated that

the health services to be required under SB 190⁴ were residential, and expressed an opinion that the residential aspects of habilitative and rehabilitative EHBs were unclear, meaning CHBRP was uncertain whether SB 190 would exceed the EHB (i.e., whether SB 190 would mandate new health benefits beyond what the law already required, thus triggering state costs.)⁵ This report is ultimately irrelevant to the Petition. First, the CHBRP report pre-dates the relevant EHB regulation by over a year.⁶ Second, the CHBRP report did not cite or discuss any Department EHB regulation. Third, a CHBRP report’s opinion regarding the clarity of laws related to EHB is not dispositive, particularly when the report’s cited sources supporting that opinion are “personal communication[s].”⁷

As described in sections 1–5, above, the benchmark plan did not include the residential treatment coverage described by the Petitioner, and the EHB regulation did not eliminate health benefits. The economic and fiscal impact analysis related to the EHB regulation was correct.

7. The EHB Regulation is not a major regulation requiring a Standardized Regulatory Impact Assessment.

The Petitioner incorrectly argues that the emergency regulation is a major regulation and should have included a Standardized Regulatory Impact Assessment (SRIA). The Petitioner argues that the legislative report from the CHBRP, regarding SB 190, demonstrates the cost of the EHB regulation exceeded the threshold for a major regulation. (Petition, p. 4.)

As defined, “major regulation” is any rule “. . . that will have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months

⁴ SB 190 (Beall, 2015); this bill failed passage.

⁵ CHBRP Analysis of SB 190 (Acquired Brain Injury), A Report to the 2015–2016 California State Legislature, April 11, 2015, pp. 2, 13.

⁶ The CHBRP report is dated April 11, 2015. The EHB regulation subject to the Petition was promulgated in November of 2016 as an emergency regulation (OAL matter number 2016–1117–01), and finalized with a certificate of compliance in June of 2017 (OAL matter number 2017–0516–01).

⁷ CHBRP Analysis of SB 190 (Acquired Brain Injury), A Report to the 2015–2016 California State Legislature, April 11, 2015, p. 14.

after the major regulation is estimated to be fully implemented . . . ” (Title 1, CCR section 2000). The Petitioner cites the CHBRP analysis of SB 190, which failed passage, but which would have required coverage of residential rehabilitative coverage for acquired brain injury, as evidence of the cost of the EHB regulation. However, the CHBRP report is irrelevant to the economic and fiscal impact analysis of the EHB regulation. The EHB regulation did not eliminate health benefits. The Petitioner’s assertions are incorrect for reasons described in sections 1–6, above.

8. The Department’s response to the public comments and OAL affirms the statutory standard for the benchmark plan.

The Petitioner asserts the Department’s response to public comment regarding Durable Medical Equipment (DME) and Kaiser’s attestation in the MHPAEA compliance filing regarding residential rehabilitative services confirm that residential rehabilitative services must be covered as an EHB. (Petition, pp. 4–5.)

The Petitioner is correct that HSC section 1367.005 requires coverage of health benefits covered by the Kaiser benchmark plan “as this plan was offered during the first quarter of 2014.” (See HSC section 1367.005 and see Department Responses to Comments for Comment Period #1, February 10, 2017–March 27, 2017.) However, the Petitioner inaccurately concludes “Kaiser attested that residential rehabilitative services were covered without annual or lifetime dollar or visit limits in commercial plans in the first quarter of 2014.” (Petition, p. 5.) For the reasons explained in section 1 above, the Petitioner is incorrect in concluding that all residential rehabilitative services are EHB.

CONCLUSION

For the reasons set forth above, the Department declines in whole the Petition to amend the EHB regulation.

DISAPPROVAL DECISION

DEPARTMENT OF MOTOR VEHICLES

DECISION OF DISAPPROVAL OF REGULATORY ACTION

Printed below is the summary of an Office of Administrative Law disapproval decision. You may request a

copy of a decision by contacting the Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814–4339, Phone: (916) 323–6225 — Fax: (916) 323–6826. Please request by OAL file number.

**State of California
Office of Administrative Law**

**In re:
Department of Motor Vehicles**

**Regulatory Action: Title 13
California Code of Regulations**

**Adopt sections:
153.00, 153.02, 153.04, 153.06, 153.08, 153.10,
153.12, 153.14, 153.16, 153.18, 153.20, 153.22,
153.24, 153.26, 153.28**

**DECISION OF DISAPPROVAL OF
REGULATORY ACTION**

Government Code Section 11349.3

OAL Matter Number: 2019–0417–02

**OAL Matter Type: Resubmission of Regular
Rulemaking Action (SR)**

SUMMARY OF REGULATORY ACTION

On July 2, 2018, the Department of Motor Vehicles (Department) submitted to the Office of Administrative Law (OAL) this proposed regulatory action to adopt specific requirements and forms necessary for lenders and service providers to become participants in the Electronic Lien and Title Program. The action was identified as OAL matter 2018–0702–02S.

On August 3, 2018, OAL notified the Department that it could not approve this action because of failure to meet the clarity and necessity standards and certain procedural requirements of the California Administrative Procedure Act (APA). On August 3, 2018, the Department elected to withdraw OAL matter 2018–0702–02S from OAL review pursuant to Government Code section 11349.3(c).

From February 21, 2019, through March 8, 2019, the Department made certain revisions to the regulatory text available for public comment and also made available a Statement of Reasons for the Modified Regulatory Text and Addendum to the Initial Statement of Reasons. On April 17, 2019, the Department resubmitted the regulatory action to OAL for a second review.

DECISION

On May 30, 2019, OAL notified the Department that OAL disapproved the proposed regulatory action because it continued to fail to comply with the clarity and necessity standards of Government Code section 11349.1, and because the Department failed to follow procedural requirements of the APA. This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

CONCLUSION

For these reasons, OAL disapproved the above-referenced rulemaking action. Pursuant to Government Code section 11349.4(a), the Department may resubmit this rulemaking action within 120 days of its receipt of this Decision of Disapproval. A copy of this Disapproval Decision will be emailed to the Department on the date indicated below.

Any changes made to the regulation text to address the issues discussed above must be made available for at least 15 days for public comment pursuant to Government Code section 11346.8 and section 44 of title 1 of the CCR prior to adoption. Additionally, any document relied upon by the Department in proposing this action, including any Addendum to the ISOR that the Department created or creates and proposes to add to the record in order to address any necessity-explanation deficiencies must be made available for at least 15 days for public comment pursuant to Government Code section 11347.1 prior to adoption of the regulations.

Date: June 6, 2019

Dale P. Mentink
Senior Attorney

For: Holly Pearson
Acting Director

Original: Kathleen Webb, Acting Director

Copy: Randi Calkins

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# 2019-0425-04
AIR RESOURCES BOARD
Clean Cars 4 All and Enhanced Fleet Modernization Programs

In this rulemaking action, the Board amends and adopts regulations to comply with Assembly Bill 630 (Stats. 2017, Ch. 636). The amendments update the regulatory language used in the existing Enhanced Fleet Modernization Program (EFMP) to be consistent with AB 630. The adoptions establish the Clean Cars 4 All program, which makes permanent a pilot program that existed under the EFMP, as required by AB 630.

Title 13
ADOPT: 2622.5, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2639.5
AMEND: 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2629, 2630 [renumbered as 2629.5]
Filed 06/07/2019
Effective 06/07/2019
Agency Contact: Bradley Bechtold (916) 322-6533

File# 2019-0501-01
AIR RESOURCES BOARD
Heavy-Duty Warranty Regulation

This rulemaking action by the California Air Resources Board amends California emission control system warranty regulations and maintenance provisions for 2022 and subsequent model year on-road heavy-duty diesel vehicles and heavy-duty engines with gross vehicle weight ratings greater than 14,000 pounds and heavy duty diesel engines in such vehicles.

Title 13
AMEND: 1956.8, 2035, 2036, 2040
Filed 06/12/2019
Effective 10/01/2019
Agency Contact: Chris Hopkins (916) 445-9564

File# 2019-0423-02
BOARD OF BARBERING AND COSMETOLOGY
Definition of Access

This action interprets and makes specific the extent of inspection "access" authorized by section 7313 of the Business and Professions Code.

Title 16
AMEND: 904
Filed 06/05/2019
Effective 10/01/2019
Agency Contact: Kevin Flanagan (916) 575-7104

File# 2019-0603-02

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING
AUTHORITY**

Commercial Energy Efficiency Financing Program

This action readopts emergency regulations which authorize the California Alternative Energy and Advanced Transportation Financing Authority (Authority) to administer the “Commercial Energy Efficiency Financing Program” which enables the Authority to continue to promote energy savings and the reduction of greenhouse gases through more affordable small business energy efficiency upgrades.

Title 4

ADOPT: 10092.1, 10092.2, 10092.3, 10092.4,
10092.5, 10092.6, 10092.7, 10092.8, 10092.9,
10092.10, 10092.11, 10092.12, 10092.13, 10092.14

Filed 06/11/2019

Effective 06/18/2019

Agency Contact: David Gibbs (916) 653-2212

File# 2019-0426-01

CALIFORNIA ENERGY COMMISSION

Appliance Efficiency Regulations

This action adopts definitions, test procedures, reporting requirements, and efficiency standards for air compressors.

Title 20

AMEND: 1601, 1602, 1604, 1605.1, 1605.2,
1605.3, 1606, 1608

Filed 06/10/2019

Effective 06/10/2019

Agency Contact: Corrine Fishman (916) 654-4976

File# 2019-0425-01

CALIFORNIA HEALTH BENEFIT EXCHANGE

Certified Application Counselor Program

The California Health Benefit Exchange proposed this action to adopt 10 regulations that set forth eligibility criteria and application, certification, suspension and revocation, and appeal procedures for the certified application counselor program.

Title 10

ADOPT: 6850, 6852, 6854, 6856, 6858, 6860, 6862,
6864, 6866, 6868

Filed 06/07/2019

Effective 06/07/2019

Agency Contact: Faviola Adams (916) 228-8668

File# 2019-0521-04

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Supplemental Reforms to Parole Consideration

This emergency rulemaking by the Department of Corrections and Rehabilitation (Department) readopts regulations adopted and amended in prior emergency action No. 2018-1211-01EON, which allow inmates who are incarcerated for a term of life with the possibility of parole for nonviolent offenses to be eligible for parole consideration by the Board of Parole Hearings. These changes are in response to the decision in *In re Edwards* (2018) 26 Cal.App. 5th 1181.

Title 15

ADOPT: 2249.30, 2449.31, 2449.32, 2449.33,
2449.34, 3495, 3496, 3497

AMEND: 2449.1, 3490, 3491

Filed 06/06/2019

Effective 06/11/2019

Agency Contact: Laura Lomonaco (916) 445-2217

File# 2019-0430-01

DEPARTMENT OF DEVELOPMENTAL SERVICES

Early Intervention Services

The Department of Developmental Services (DDS) is aligning text to Part C of the federal Individuals with Disabilities Education Act (20 U.S.C. Section 1431 et seq.). As a condition of receiving federal funding DDS must ensure that all State policies align with the requirements of Part C.

Title 17

AMEND: 52000, 52086

Filed 06/12/2019

Effective 10/01/2019

Agency Contact: Sharon DeRego (916) 654-3681

File# 2019-0610-01

DEPARTMENT OF FISH AND WILDLIFE

Rock Crab Fishery Closure Update

This file and print request amends the commercial rock crab fishery closure to open a portion of the waters near Cape Mendocino, Humboldt County to the north jetty at the Humboldt Bay entrance. This action is exempt from the Administrative Procedure Act pursuant to Fish and Game Code section 5523(c).

Title 14

AMEND: 131

Filed 06/12/2019

Effective 05/23/2019

Agency Contact: Christy Juhasz (707) 576-2887

File# 2019-0531-03

DEPARTMENT OF FOOD AND AGRICULTURE

Industrial Hemp Cultivation Sampling

The California Department of Food and Agriculture is adopting through this emergency action the timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction.

Title 3
ADOPT: 4940, 4941, 4942, 4943, 4944, 4945, 4946,
4950, 4950.1
Filed 06/10/2019
Effective 06/10/2019
Agency Contact: Rachel Avila (916) 403-6813

File# 2019-0426-02
DEPARTMENT OF PESTICIDE REGULATION
Pesticide Registration, Renewal, and Reevaluation
Consultation (PREC) and Licensing Forms

In this action without regulatory effect, the Department of Pesticide Regulation is correcting outdated names of agencies and amending forms to make them easier to understand.

Title 3
AMEND: 6252, 6502, 6524
Filed 06/10/2019
Agency Contact: Lauren Otani (916) 445-5781

File# 2019-0530-03
DEPARTMENT OF PUBLIC HEALTH
Newborn Screening Forms

This emergency rulemaking action by the Department of Public Health revises Newborn Screening Program (NBSP) requirements for newborn's physicians, midwives, perinatal health facilities/hospitals, and oth-

er out-of-hospital newborn screening providers. This action consolidates two NBSP forms, amends internal cross references, and updates reporting requirements and procedures.

Title 17
AMEND: 6500.50, 6501.5, 6505, 6506, 6506.6
Filed 06/06/2019
Effective 06/06/2019
Agency Contact:
Hannah Strom-Martin (916) 440-7371

**PRIOR REGULATORY
DECISIONS AND CCR
CHANGES FILED WITH THE
SECRETARY OF STATE**

A quarterly index of regulatory decisions by the Office of Administrative Law (OAL) is provided in the California Regulatory Notice Register in the volume published by the second Friday in January, April, July, and October following the end of the preceding quarter. For additional information on actions taken by OAL, please visit www.oal.ca.gov.