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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 4. HORSE RACING BOARD

NOTICE OF PROPOSAL TO AMEND RULE 1891.1 PENALTY FOR POSSESSION OF ELECTRICAL DEVICE

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

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1891.1, Penalty for Possession of Electrical Device, to clarify that cases involving possession of an electrical device shall be referred to the stewards for hearing and adjudication.

The purpose of this proposed amendment is to return to the stewards the authority to hear cases involving the possession of an electrical device. In 2015, the Board adopted Rule 1891.1 to require that cases involving the possession of an electrical device be punished by revocation of license. The revocation of a license requires a formal hearing, as prescribed by the Government Code, which is heard by or with the assistance of Administrative Law Judges appointed by the Office of Administrative Hearings. This formal process is often protracted leaving both licensees and the Board without finality. Furthermore, the requirement that a license be revoked prohibits the Board from considering factors in mitigation as there is no leeway in punishment. As such, the Board proposes to amend Rule 1891.1 to return the authority to hear these cases to the stewards. This change will result in a more efficient and fair administration of justice in these cases.

PUBLIC HEARING

The Board will hold a public hearing starting at 9:30 a.m., Thursday, April 21, 2021, or as soon after that as business before the Board will permit, via teleconference. In accordance with the guidance form Executive Order N-29-20, a physical location will not be provided. Members of the public are strongly

encouraged to participate using the teleconference phone number provided below so as to minimize the spread of COVID-19 and reduce the risk of infection during this current state of emergency. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

To participate in the teleconference, dial 888-392-4564 and enter 6896291# when prompted.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes **on April 6, 2021**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Robert Brodnik, General Counsel
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6025
Fax: (916) 263-6022
E-Mail: rjbrodnik@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, and 19440, Business and Professions Code. Reference Sections: 19460, and 19523, Business and Professions Code. Section 337f(a)(1), Penal Code.

Business and Professions Code Sections 19420 and 19440 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19460 and 19523, Business and Professions Code

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 gives the Board jurisdiction and supervision over meetings in California where horse races with wagering on their results are held. Business and Professions Code section 19440 states that the Board shall have all powers necessary and proper to enable it to adopt rules and regulations for the protection of the public and the control of horse racing. Business and Professions Code section 19460 provides that all licenses granted by the Board are subject to all rules, regulations, and conditions prescribed by the Board. Penal Code

section 337f(a)(1) defines the use of any device not generally accepted as regulation racing equipment, to stimulate or depress a horse, as a misdemeanor. Board Rule 1890, Possession of Contraband, subsection (c) states that no person shall have in his possession, on the premises during any recognized meeting, any electrical stimulating or shocking device commonly known as a battery, or any mechanical stimulating device, or any other appliance, which might affect the speed or actions of a horse. Board Rule 1891, Seizure of Contraband, states that contraband defined in Rule 1890 will be confiscated from any person within the inclosure.

The proposed amendment Rule 1891.1, Penalty for Possession of Electrical Device, will restore authority to the stewards to hear cases involving possession of electrical device.

The proposed amendment to Rule 1891.1(a) provides that a complaint against a licensee for violation of or conspiring to violate Rule 1890(c) shall be referred to the Board of Stewards for hearing and adjudication. This is necessary to clarify that the appropriate venue for these cases will be before the Board of Stewards, which is the adjudicatory body of all other license complaints. This amendment will bring consistency pertaining to licensee complaints.

The proposed amendment to subsection (b) strikes the requirement mandating revocation of license for a licensee found to have violated Rule 1890(c). This amendment is necessary to allow for greater consideration of mitigating factors in considering punishment. Under the proposed amendment, hearings for possession of an electrical device will be conducted under the same procedure afforded to any other type of complaint. The outcome and penalty determination will be administered based on facts of the case, including aggravating and mitigating factors. The possible penalties can include suspension or fine.

Alternatively, if the Stewards believed the case was so egregious as to require revocation, they retain their authority under Rule 1529 to refer the case to the Board for hearing pursuant to Rule 1529, Referral to the Board. Rule 1529 states, “the Stewards may refer any matter within their jurisdiction to the Board when the penalty the Stewards have jurisdiction to impose is insufficient when a hearing cannot be held under the conditions or in the manner prescribed, when a hearing is impractical due to conclusion of the meeting, or for other good and sufficient cause, and they may order the suspension of the licensee pending further Order of the Board. In such event, the Board shall accept the matter for hearing and adjudication or such other action as the Board deems to be in the best interests of justice.”

Additional amendments to the text are for consistency and numbering purposes.

FORMS INCORPORATED BY REFERENCE

There is no form associated with this regulation.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment of Rule 1891.1 will enhance the Board’s enforcement of cases involving possession of an electrical device by making the process more efficient. Presently, Rule 1891.1 requires that cases involving the possession of an electrical device be punished by revocation of license. The revocation of a license requires a formal hearing, as prescribed by the Government Code, which is heard by or with the assistance of Administrative Law Judges appointed by the Office of Administrative Hearings. This formal process is often protracted, leaving both licensees and the Board without finality. Furthermore, the requirement that a license be revoked prohibits the Board from considering factors in mitigation as there is no leeway in punishment. As such, the Board proposes to amend Rule 1891.1 to return the authority to hear these cases to the Stewards. This change will result in a more efficient and fair administration of justice in these cases.

The efficiency of the process will also benefit the industry by enhancing the sport’s integrity. Licensees who have violated the rule can expect a hearing on the complaint with 10 days’ notice, whereas cases adjudicated through the Office of Administrative Hearings on average can take months. Commonly, licensees remain active while their cases are adjudicated which can confuse the public and lead to distrust that perceived “cheaters” are allowed to continue to participate.

CONSISTENCY EVALUATION

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

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

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

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

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

The Board has made an initial determination that the proposed amendment of Rule 1891.1 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.

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

The Board did not rely on any technical, theoretical, and/or empirical study, reports or documents in proposing the amendment of Rule 1891.1.

Cost impact on representative private persons or businesses: none.

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

Significant effect on housing costs: none.

RESULT OF ECONOMIC IMPACT ANALYSIS

The proposed amendment of Rule 1891.1 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California. The proposed amendment of Rule 1891.1 will enhance Board's enforcement of cases involving possession of an electrical device by making the process more efficient and fair.

The proposed amendment will benefit California residents' welfare by making the process for adjudicating these cases more efficient and fair. The proposed amendment will not benefit the health of California residents, worker safety, or the State's environment.

Effect on small businesses: none. The proposed amendment of Rule 1891.1 will not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

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

The Board invites interested persons to present statements or arguments with respect to alternatives

to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

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

Robert Brodnik, Staff Counsel
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6025
E-mail: rjbrodnik@chrb.ca.gov

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

Amanda Drummond
Policy and Regulation Manager
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6033
E-Mail: amdummond@chrb.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

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

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulation should be sent to the attention of Robert Brodnik at the

address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

**AVAILABILITY OF
STATEMENT OF REASONS**

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

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.

**TITLE 17. DEPARTMENT OF PUBLIC
HEALTH**

**DPH-19-001 Syringe Exchange Program
Regulatory Consistency**

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.

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 May 6, 2021, 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 "**Syringe Exchange Program Regulatory Consistency**" 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.
5. 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-19-001 Syringe Exchange Program Regulatory Consistency**" author's name and mailing address.

INFORMATIVE DIGEST

The California Department of Public Health (Department) proposes to make minor amendments to California Code of Regulations (CCR), Title 17, Sections 7000, 7002 and 7014. First, Assembly Bill (AB) 1810 (Ting, Chapter 34, Statutes of 2018) shortened the public comment period for state-authorized syringe exchange program (SEP) applications in Health and Safety Code (HSC) from 90 days to 45 days; the Department proposes to make the corresponding change in regulations. Second, the Department proposes to remove the words "local ordinances" from CCR Title 17, Section 7002(a)(13)(A) and Section 7014 to be in compliance with HSC 121349(c).

**BACKGROUND AND SUMMARY OF
EXISTING LAWS AND REGULATIONS**

Authority and Reference

HSC Section 131200 authorizes the Department to adopt and enforce regulations for the execution of its duties. Per HSC Section 131019, the Office of AIDS is the lead agency within the state responsible for coordinating HIV/AIDS-related programs. HSC Section 121349 gives the Department the authority to authorize SEPs. AB 1810 removed all sunset provisions from the SEP authorization program and extended the operation of these provisions indefinitely.

Background and Existing Laws

The practice of sharing needles and syringes, which is common among people who inject drugs (PWID), poses a substantial risk for the spread of bloodborne diseases, including HIV and viral hepatitis. Paraphernalia possession laws in many states, including California, have in the past made it difficult or illegal for PWID to obtain and possess

sterile syringes and difficult or illegal for agencies that serve them to provide them with sterile syringes. Such statutory barriers have consistently been found to be associated with increased sharing of syringes and increased prevalence of HIV. Removing those barriers is a key HIV prevention strategy endorsed by the California Legislature and the federal Centers for Disease Control and Prevention (CDC), which funds the prevention efforts of the Office of AIDS. Supporting syringe exchange programs is one of the strategies of the federal government’s current “Ending the HIV Epidemic” plan.

SEPs have been operating in California since the late 1980s, providing sterile injection equipment, disposing of used syringes and providing linkages to health care and social services. Since the passage of AB 136 (Mazzoni, Chapter 762, Statutes of 1999), organizations in California that provide syringe exchange services have been permitted to apply for authorization to local (city or county) governments.

HSC 121349 and Business and Professions Code Section 4145 outline the mechanisms by which a SEP may be authorized to operate. Regulations approved in 2014 allow the Department to authorize SEPs in locations where the Department determines that the conditions exist for rapid spread of HIV or viral hepatitis. Organizations that want to add syringe exchange services may apply directly to the Department’s Office of AIDS for authorization, rather than to their local county or city government. Applications must meet minimal requirements outlined by the law to be considered. CCR, Title 17, Sections 7000–7016 define the application process, as well as the reauthorization process for state–authorized entities. All state–authorized SEPs are required to submit a yearly progress report. They may apply for reauthorization prior to the end of the two–year authorization period.

Effectiveness of Syringe Exchange Programs

The first SEP was established in California in 1988; there are currently 62 SEPs in the state. SEPs have been rigorously studied since they were first introduced in the mid–1980s in response to injection–related HIV transmission. As CDC has summarized, this evidence has shown that SEPs:

- Reduce HIV and viral hepatitis transmission;
- Reduce overdose mortality;
- Increase entry into substance use disorder treatment;
- Reduce needle–stick injuries;
- Save money; and
- Do not increase drug use or crime.

The impact of SEPs has been most notable in terms of controlling the HIV epidemic: between 2008 and 2014, the annual HIV diagnoses among PWID in the

U.S. fell by half. In jurisdictions where SEPs were adopted early and publicly funded, injection–related HIV transmission has been steeply reduced, such as in San Francisco where the number of infections decreased by two–thirds¹, or New York City where HIV prevalence among PWID fell from 54% in 1990 to 3% in 2012.

SEPs also play an important role in preventing the transmission of HCV, in linking individuals to substance use disorder treatment, and in safe disposal of used syringes. Studies have found, for example, that cities with SEPs have less syringe litter than those that don’t have SEPs, and that syringes obtained from SEPs are more likely to be safely disposed than those acquired from other sources.

Unintended Conflict Between Law and Regulation

Some local governments that do not support the establishment of authorized SEPs within their jurisdictions are taking steps to circumvent the intent of HSC 121349 by blocking SEPs from operating through issuing restrictive local ordinances. However, the law is designed such that the state can authorize a SEP specifically because not all jurisdictions, even those who have a high need, support the operation of SEPs within their boundaries.

The law specifically provides preemption language to make clear that a state authorization under HSC 121349 overrides any other laws. The law provides:

“In order to reduce the spread of HIV infection, viral hepatitis, and other potentially deadly bloodborne infections, the State Department of Public Health may, *notwithstanding any other law*, authorize entities that provide services set forth in paragraph (1) of subdivision (d), and that have sufficient staff and capacity to provide the services described in Section 121349.1, as determined by the department, to apply for authorization under this chapter to provide hypodermic needle and syringe exchange services consistent with state standards in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes [emphasis added].”

The improper inclusion of reference to local ordinances in CCR Title 17, Section 7002(a)(13)(A) and Section 7014 in the 2014 regulations has created a direct conflict with the law and had the effect of subverting the Legislature’s stated intent of the preemption language in HSC Section 121349. This error in the regulations opened an opportunity for

¹ San Francisco Department of Public Health, Population Health Division. *Syringe Access and Disposal Services*. (May 2018). <https://www.sfdph.org/dph/hc/HCCommPubHlth/Agendas/2018/May%2015/syringeprez.pdf>.

local ordinances to improperly shut down a SEP² that was otherwise approved through the legal mechanism in HSC 121349, could cause many communities deemed to be in need of SEP services to be denied access.

POLICY STATEMENT OVERVIEW

Problem Statement:

In 2018, AB 1810 was signed into law, amending HSC 121349(e). This changed the public comment period for state–authorized SEP applications from 90 days to 45 days. It is required that CCR, Title 17, Sections 7000 and 7002 be updated to reflect that change.

CCR, Title 17, Section 7002(a)(13)(A) defines one of the steps for state–authorized applicants. It states that SEP applicants must provide a signed statement attesting to “compliance with state laws, regulations and local ordinances.” Section 7014 states “the program and its staff shall operate and furnish services in compliance with all applicable state laws, regulations and local ordinances.” CCR, Title 17, Section 7002(a)(13)(A) and Section 7014 should not have included “local ordinances” as part of the regulations. This has caused numerous issues. First, it has given some local governments the impression that they have authority over the approval and oversight of state–authorized SEPs. This occurred when the City of Santa Ana moved to close Orange County Needle Exchange Program (OCNEP), a state–authorized SEP. The Department then followed all requirements in HSC 121349 and authorized OCNEP to operate a mobile outreach program. The County of Orange along with several local jurisdictions subsequently filed suit against OCNEP and the Department to void the authorization. A second issue is that some community groups applying for authorization with the state are under the mistaken impression they must be approved by local government as well as the Department in order to be authorized. As a result, community groups may be hesitant to apply for authorization if their local government has indicated that they are not interested in approving a SEP. This misunderstanding is being communicated to the public and creating false expectations for community members opposed to SEPs, who may believe that local government can halt Department authorization of syringe services in their jurisdictions.

² County of Orange, Orange County Flood Control District, City of Costa Mesa, City of Orange and City of Anaheim v. California Department of Public Health and Orange County Needle Exchange Program Case No. 37–2018–00039176–CU–MC–CTL Consolidated with 37–2018–00042617–CU–TT–CLT Superior Court of the State of California, County of San Diego.

Objectives (Goals):

The objectives of this regulatory proposal are to:

- Create consistency between HSC and CCR in defining the public comment period; and
- Correct the current regulations by removing “local ordinances” from the regulations to be in compliance with AB 604.

BENEFITS

Regulations are required to clarify and implement statute: these changes will improve both clarity and implementation. Additional benefits of this proposal are as follows:

- Amended regulations will be in compliance with changes to HSC 121349 made by AB 1810; and
- Amendments will remove ambiguity and clearly define the authority of the Department to authorize and oversee state–authorized SEPs notwithstanding any other law.

For further discussion of benefit analysis, please see Results of The Economic Impact Analysis

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

The Department has made a determination that these regulations are neither inconsistent nor incompatible with other 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 the Syringe Exchange Regulations. Internet search of other California state agency regulations determined that no other state regulation addresses the same subject matter.

SUBSTANTIAL DIFFERENCE FROM FEDERAL REGULATION OR STATUTE

State regulations are required, as there are no federal regulations governing the authorization of SEPs.

INCORPORATION BY REFERENCE

None.

DOCUMENTS RELIED UPON

1. Assembly Bill 1810 (Ting, Chapter 34, Statutes of 2018), http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1810.

2. Assembly Bill 604 (Skinner, Chapter 744, Statutes of 2011), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB604
3. California Health and Safety Code Section 121349, http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=121349.&lawCode=HSC.
4. California Code of Regulations, Title 17, Section 7000, [https://govt.westlaw.com/calregs/Document/IACE1B100F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IACE1B100F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).
5. California Code of Regulations, Title 17, Section 7002, [https://govt.westlaw.com/calregs/Document/IAD1CE540F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/IAD1CE540F70711E2A418DBA4AAEEF658?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).
6. U.S. Department of Health and Human Services. Federal Response – Ending the HIV Epidemic: A Plan for America, <https://www.hhs.gov/blog/2019/02/05/ending-the-hiv-epidemic-a-plan-for-america.html>, (as of October 2019).
7. Centers for Disease Control and Prevention. Summary of Information on the Safety and Effectiveness of Syringe Services Programs, (July, 2019), <https://www.cdc.gov/ssp/docs/SSP-Summary.pdf> (as of October 2019).
8. Centers for Disease Control and Prevention. Reducing Harms from Injection Drug Use & Opioid Use Disorder with Syringe Services Programs, (August, 2017), <https://www.cdc.gov/hiv/pdf/risk/cdchiv-fs-syringe-services.pdf> (as of October 2019).
9. California Department of Public Health (CDPH). Issue Brief: Syringe Access Policies for California Syringe Exchange Programs, April 2017, [https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/CDPH%20SEP%20Distribution%20Policy%20Issue%20Brief%20\(Approved%20w%20Logos\).pdf](https://www.cdph.ca.gov/Programs/CID/DOA/CDPH%20Document%20Library/CDPH%20SEP%20Distribution%20Policy%20Issue%20Brief%20(Approved%20w%20Logos).pdf) (as of October 2019).
10. San Francisco Department of Public Health, Population Health Division. Syringe Access and Disposal Services, (May 2018), <https://www.sfdph.org/dph/hc/HCCommPublHlth/Agendas/2018/May%2015/syringeprez.pdf> (as of October 2019).
11. County of Orange, Orange County Flood Control District, City of Costa Mesa, City of Orange and City of Anaheim v. CDPH and Orange County Needle Exchange Program Case No. 37–2018–00039176–CU–MC–CTL Consolidated with 37–2018–00042617–CU–TT–CLT Superior Court of the State of California, County of San Diego.
12. Doherty MC, Junge B, Rathouz P, Garfein RS, Riley E, Vlahov D. The effect of a needle exchange program on numbers of discarded needles: a 2–year follow–up. *Am J Public Health.* 2000;90(6):936–939.
13. Belani HK, Muennig PA. Cost–effectiveness of needle and syringe exchange for the prevention of HIV in New York City. *Journal of HIV/AIDS Social Services.* 2008;7:229–40.
14. Kong D, et al. Patient Costs, Characteristics, and Outcomes Associated with Hepatitis B and Hepatitis C Hospitalizations — California —2011. Poster presentation at Conference of State and Territorial Epidemiologists Conference, Pasadena, California, June 2013.

BUSINESS REPORTING REQUIREMENTS

None.

AUTHORITY AND REFERENCE

HSC Section 131200 authorizes the Department to adopt and enforce regulations for the execution of its duties. Per HSC Section 131019, the Office of AIDS is the lead agency within the state responsible for coordinating HIV/AIDS–related programs. HSC Section 121349 gives the Department the authority to authorize SEPs. AB 1810 removed all sunset provisions from the SEP authorization program and extended the operation of these provisions indefinitely.

MANDATED BY FEDERAL LAW OR REGULATIONS

State regulations are required, as there are no federal regulations governing the authorization of SEPs.

OTHER STATUTORY REQUIREMENTS

Health and Safety Code 121349, California Code of Regulations (CCR) Title 17, Sections 7000–7016, Business & Professions Code Section 4145.

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.

FISCAL IMPACT STATEMENT

- The estimated cost to any local agency or school district requiring reimbursement: no costs.
- The estimated cost or savings to any state agency: If the Department certifies 5 additional SEPs, each of which averts an average of 6 HIV infections (for a statewide total of 30 infections averted) then SEP certification results in a yearly benefit to the state of \$596,074 per year (\$19,870 cost per year x 5 SEP x 6 averted infections). Subtract the estimated overall operating cost of an SEP per year (\$250,003) and the overall savings is \$346,071. More savings will be realized if additional programs are certified each year and if already-certified programs are re-certified and continue to operate.
- An estimate of any other non-discretionary cost or savings imposed upon local agencies: none.
- An estimate of any cost or savings in federal funding to the state: none.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The agency 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 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.

CONTACT PERSON

Inquiries regarding the subject matter in this notice may be directed to Marjorie Katz, Department's Center for Infectious Diseases, Office of AIDS, Harm Reduction Unit, (916) 449-5964. 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.

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.

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 <https://oal.ca.gov/proposed-regulations/>.

REASONABLE ALTERNATIVES

This regulation makes only technical, non-substantive or clarifying changes to current regulations. The Department has made the initial determination that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be

more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

The Department has made an initial determination that the proposed regulatory action would have no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

STATEMENTS OF DETERMINATION

The Department, based on the following, has made the determination 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.

HOUSING COSTS

The Department has determined that the regulation will not have an impact on housing costs.

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 which may include among others, the health and welfare of California residents, worker safety, and the State's environment.** Benefits may include the addition of newly-formed SEPs that will positively affect the health of California residents

by reducing incidence of new viral infections including HIV, viral hepatitis, and other bloodborne infectious disease.

GENERAL PUBLIC INTEREST

**DEPARTMENT OF
FISH AND WILDLIFE**

February 1, 2021

Jonathan G Swope
Canyon Produce, LLC
415 Hartford Ave.
Charlotte, NC 28209
swope@solisholdings.com

Subject: Request for Consistency Determination for Canyon Produce, LLC, at 7901 Old Careaga Ranch Road, Los Alamos, California, Santa Barbara County (2080-2021-001-05)

Dear Mr. Swope:

On January 5, 2021, the California Department of Fish and Wildlife (CDFW) received your notification that the United States Fish and Wildlife Service (Service) issued an Incidental Take Permit (ITP) (Service file No. TE89654D-0) for the proposed Canyon Produce, LLC Cannabis Cultivation (Project) located at 7901 Old Careaga Ranch Road, Santa Barbara County (Assessor's Parcel Numbers 101-080-082, -084, -086) pursuant to section 10(a)(1) (B) of the federal Endangered Species Act (16 U.S.C. § 1531 et seq.) under the Los Alamos Conservation Plan for Cultivation Activities in Santa Barbara County (LACP) (See Cal. Reg. Notice Register 2021, No. 4-Z, p. 88). The federal ITP and supplemental material describes the Project and sets forth a series of measures to minimize and mitigate for the incidental take of California tiger salamander (*Ambystoma californiense*), a species listed as threatened pursuant to the California Endangered Species Act (CESA; Fish & Game Code, § 2050 et seq.) [See Cal. Code Regs., title 14, § 670.5, subdivision (b)(3)(G)].

Your notification included a request pursuant to Fish and Game Code section 2080.1 that CDFW determine whether the ITP and the associated LACP is consistent with CESA as to the Project.

CDFW has determined that for purposes of California tiger salamander and the Project, as described in the ITP, its associated LACP, and supplemental material, the ITP is consistent with CESA. A copy of the CDFW

determination is enclosed for your records. (See also Fish & Game Code, § 2080.1, subdivision (d).)

If you have questions regarding CDFW's consistency determination, please contact Joseph Stanovich, Environmental Scientist, at (562) 430-7642 or by email at Joseph.Stanovich@wildlife.ca.gov.

Sincerely,

/s/

Chad Dibble
Deputy Director
Ecosystem Conservation Division

Enclosure

Ec: **California Department of Fish and Wildlife**

Ed Pert
Regional Manager
South Coast Region
Ed.Pert@wildlife.ca.gov

Wendy Bogdan
General Counsel
Office of the General Counsel
Wendy.Bogdan@wildlife.ca.gov

Katrina Smith
Senior Environmental Scientist (Specialist)
Habitat Conservation Planning Branch
Ecosystem Conservation Division
CESA@wildlife.ca.gov

United States Fish and Wildlife Service

Steve Henry
Field Supervisor
Ventura, California
Steve_Henry@fws.gov

Rachel Henry
Wildlife Biologist
Ventura, California
Rachel_Henry@fws.gov

County of Santa Barbara

Stephen Peterson
Senior Planner
Planning & Development
speterson@co.santa-barbara.ca.us

PROPOSITION 65

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT OF 1986
PROPOSITION 65**

**NOTICE OF PUBLIC HEARING AND
EXTENSION OF THE COMMENT PERIOD**

**TITLE 27, CALIFORNIA CODE OF
REGULATIONS**

**PROPOSED AMENDMENTS TO ARTICLE 6
SHORT-FORM WARNINGS**

On January 8, 2021, the Office of Environmental Health Hazard Assessment (OEHHA) proposed amendments to certain sections of the regulations for safe harbor warnings. Specifically, the proposed amendments would modify the content and methods for providing short-form warnings.¹ The Notice of Proposed Rulemaking for the proposed amendments was published in the California Regulatory Notice Register on January 8, 2021 (Z-2020-1229-01), and initiated a 60-day public comment period. OEHHA has received a request from The Gorilla Glue Company to hold a public hearing on the proposed amendments.

OEHHA has scheduled a public hearing on March 11, 2021, at 10:00 a.m. In accordance with Governor Newsom's Executive Orders N-29-20 and N-33-20 as well as recommendations from the California Department of Public Health, the hearing will not have a physical location. The hearing will be conducted remotely. Information concerning how to participate in the hearing will be posted on our website prior to the hearing. The public comment period for this regulatory action is being extended to March 29, 2021, to accommodate the hearing.

¹ Title 27, California Code of Regulations, Section 25601, Safe Harbor Clear and Reasonable Warnings — Method and Content; Section 25602, Consumer Product Exposure Warnings — Methods of Transmission; Section 25603, Consumer Product Exposure Warnings — Content; and Section 25607.1 Food Exposure Warnings — Methods of Transmission.

If you have special accommodation or language needs, please contact Monet Vela by telephone at (916) 323-2517 or by email at monet.vela@oehha.ca.gov by March 23, 2021. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

Because of limited in-office staffing during the COVID-19 emergency, OEHHA strongly recommends that written comments be submitted electronically through our website at OEHHA's Public Comments Webpage at <https://oehha.ca.gov/comments>. Comments submitted in paper form may still be mailed, but delays may occur if staff are unable to access them in a timely manner.

Monet Vela
Office of Environmental Health Hazard
Assessment
1001 I Street, 23rd Floor
P.O. Box 4010
Sacramento, California 95812-4010
Telephone: 916-323-2517

OEHHA is subject to the California Public Records Act and other laws that require the release of certain information upon request. If you provide comments, please be aware that your name, address, and e-mail may be available to third parties.

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH THE
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.

Board of Parole Hearings
File # 2021-0127-01
Comprehensive Risk Assessments

This emergency rulemaking action by the Board of Parole Hearings (Board) amends section 2240 of title 15 of the California Code of Regulations (CCR) to excuse the Board from the requirement to prepare a Comprehensive Risk Assessment (CRA) prior to initial or subsequent parole consideration hearings or subsequent parole reconsideration hearings scheduled to occur between April 1, 2021 and June 30, 2022 (or which were previously scheduled to occur between April 1, 2021 and June 30, 2022, but were postponed or

rescheduled to occur after June 30, 2022). The exception to the requirement to prepare CRAs as described above applies to inmates designated as Security Level IV as of January 1, 2021, and who received two or more serious Rules Violation Reports, as specified by section 3315(a) of title 15 of the CCR, for which the Department of Corrections and Rehabilitation found the inmate guilty at a disciplinary hearing between January 1, 2018 and January 1, 2021. The action also adopts related provisions concerning notice to affected inmates and the ability of, and process for, inmates to challenge the Board's determination or to obtain a CRA for other reasons.

Title 15
Amend: 2240
Filed 02/05/2021
Effective 02/05/2021
Agency Contact: Heather McCray (916) 323-1463

Board of Pharmacy
File # 2020-1223-03
Pharmacy Technician Application

This change without regulatory effect modifies the Pharmacy Technician Application (Form 17A-5) to add information regarding expedited licensure for applicants who meet certain criteria regarding their immigration status and military service.

Title 16
Amend: 1793.5
Filed 02/08/2021
Agency Contact: Lori Martinez (916) 574-7917

Board of Psychology
File # 2020-0827-01
AB 2138 — Substantial Relationship Criteria,
Rehabilitation Criteria

This action by the Board of Psychology adopts criteria to be used in determining whether a crime, act, or professional misconduct is substantially related to the qualifications, functions, and duties of a licensee, or when an applicant or licensee has made a showing of rehabilitation related to a crime, act, or professional misconduct when considering denial, suspension, or revocation of a license. The amendments implement amendments to the Business and Professions Code made by Assembly Bill 2138 (Stats. 2018, ch. 995).

Title 16
Amend: 1394, 1395, 1395.1
Filed 02/08/2021
Effective 02/08/2021
Agency Contact: Jason Glasspiegel (916) 574-7137

Bureau for Private Postsecondary Education
File # 2020–1230–04
Student Tuition Recovery Fund

This action by the Bureau for Private Postsecondary Education amends the Student Tuition Recovery Fund assessment rate that each student at Bureau–approved institutions pays from \$0 per \$1000.00 of institutional charges to \$0.50 per \$1000.00 of institutional charges. This action is exempt from the Administrative Procedure Act under the rates exemption in Government Code section 11340.9(g).

Title 05
Amend: 76120
Filed 02/08/2021
Effective 02/08/2021
Agency Contact: David Dumble (916) 574–8924

Bureau of Automotive Repair
File # 2020–1229–03
Mobile Automotive Repair and Automatic Transmissions

This action without regulatory effect (1) removes “minor service” from the scope of unlawful activity pursuant to Business and Professions Code section 9880.1(e) to align with statutory amendments; and (2) corrects an internal cross–reference to align with another previously–amended regulation.

Title 16
Amend: 3351.7.3, 3361.1
Filed 02/08/2021
Agency Contact: Lusine Sarkisyan
lusine.sarkisyan@dca.ca.gov

California Apprenticeship Council
File # 2020–0924–01
Apprenticeship Oversight, Reporting and Evaluations

The California Apprenticeship Council amended eleven sections to update electronic data submission requirements, application requirements, program evaluation, and program approval or disapproval procedures pursuant to Senate Bill 56 (stats. 2011, ch. 696) and Assembly Bill 235 (stats. 2018, ch. 704). This action also makes nonsubstantive stylistic changes.

Title 08
Amend: 205, 206, 207, 208, 210, 212, 212.1, 212.2, 212.3, 281, 282
Filed 02/09/2021
Effective 04/01/2021
Agency Contact:
Glen Forman Forman GForman@dir.ca.gov

California Energy Commission
File # 2020–1218–03
Computers and Computer Monitors

In this regular rulemaking action the California Energy Commission amends four sections related to computer and computer monitor energy efficiency standards and testing.

Title 20
Amend: 1602, 1604, 1605.3, 1606
Filed 02/03/2021
Effective 12/09/2021
Agency Contact:
Corrine Fishman (916) 654–4976

California Horse Racing Board
File # 2020–0820–02
Continuing Education Trainers/Assistant Trainers

This action adds a continuing education component to the existing requirements for renewing a license as a trainer or assistant trainer.

Title 04
Adopt: 1503.5
Filed 02/04/2021
Effective 02/04/2021
Agency Contact: Zachary Voss (916) 263–6036

Commission on Peace Officer Standards and Training
File # 2020–1221–04
Peace Officer Psychological Evaluation

This action by the Commission on Peace Officer Standards and Training (POST) makes changes without regulatory effect to Peace Officer Psychological Evaluation requirements.

Title 11
Amend: 1955
Filed 02/04/2021
Agency Contact: Melani Singley (916) 227–4258

Contractors State License Board
File # 2020–1229–01
Renewal Application Form

In this rulemaking action, the Board amends its regulation to specify that renewal applications must be postmarked or hand delivered to the Board with the payment of the fee on or before the expiration date of the license. The amendment further clarifies that for incomplete renewal applications, licensees must resubmit the completed renewal application, postmarked or hand delivered, to the Board on or before the expiration date of the license.

Title 16
 Amend: 853
 Filed 02/09/2021
 Effective 04/01/2021
 Agency Contact: Betsy Figueria (916) 255-3369

Dental Board of California
 File # 2020-0904-02
 Citation and Fine

This action raises the maximum penalty amount to \$5,000 for Class A and Class B violations of statutes and regulations relating to the practice of dentistry and for the unlicensed practice of an activity requiring licensure by the Dental Board of California.

Title 16
 Amend: 1023.2, 1023.3
 Filed 02/10/2021
 Effective 02/10/2021
 Agency Contact: Gabriel Nevin (916) 263-2027

Dental Hygiene Board of California
 File # 2020-0825-01
 Substantial Relationship & Rehabilitation Criteria

In this action, the Dental Hygiene Board adopts criteria to be used in determining whether a crime, professional misconduct, or other act is substantially related to the professional practice of its licensees for purposes of license denial, suspension, or revocation. The action adopts criteria for determining whether an applicant for a license, or for reinstatement of a license, or for the modification or termination of probation of a license, has been rehabilitated subsequent to a criminal conviction, professional misconduct or other act. The action also adopts criteria for determining whether a licensee has been rehabilitated, subsequent to a criminal conviction, professional misconduct, or other act, when considering whether to suspend or revoke his/her licensee.

Title 16
 Adopt: 1135, 1136, 1137
 Filed 02/05/2021
 Effective 02/05/2021
 Agency Contact:
 Adina Pineschi-Petty (916) 516-5537

Department of Industrial Relations
 File # 2020-1224-04
 Civil Penalties for Cal/OSHA Citations

This file and print action amends maximum and minimum civil penalties in accordance with statutory adjustments based upon the annual percentage increase in the applicable Consumer Price Index for All Urban Consumers. The adjustments increase (1) the maximum civil penalties for regulatory, general, and

repeat violations; and (2) the minimum and maximum civil penalties for willful violations. These regulations are exempt from the Administrative Procedure Act pursuant to Labor Code sections 6427(b), 6429(a) (2), and 6431(b).

Title 08
 Amend: 336
 Filed 02/08/2021
 Effective 02/08/2021
 Agency Contact:
 Christopher Grossgart (510) 286-7348

Occupational Safety and Health (Cal-OSHA)
 Division
 File # 2020-1207-02
 Pressure Vessel Fees

This action adjusts the Division of Occupational Safety and Health's (Division's) fees in connection with the Division's qualified safety engineers' inspections of pressure vessels (boilers and tanks) and operating permit processing. The hourly fee for inspections required or related to the American Society of Mechanical Engineers code or other national standards concerning the design or construction of pressure vessels is increasing from \$135 to \$150. The hourly fee for field, resale, and alteration permit inspections of pressure vessels is decreasing from \$160 to \$150. The Division's fee for processing permits to operate pressure vessels is increasing from \$15 to \$45.

Title 08
 Amend: 344, 344.1, 344.2
 Filed 02/09/2021
 Effective 02/09/2021
 Agency Contact:
 Denise M. Cardoso (510) 286-7348

Veterinary Medical Board
 File # 2020-1224-03
 RVT Job Tasks

This rulemaking action by the Veterinary Medical Board amends the allowed functions that can be performed by registered veterinary technicians.

Title 16
 Amend: 2036
 Filed 02/09/2021
 Effective 04/01/2021
 Agency Contact: Justin Sotelo (916) 515-5238

**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.