



# 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 3. DEPARTMENT OF PESTICIDE REGULATION

Pest Control Aircraft Pilot Certification  
DPR Regulation No. 18-003

The Department of Pesticide Regulation (DPR) proposes to amend sections 6502 and 6540 of Title 3, California Code of Regulations (3 CCR). The proposed action will amend forms, Aircraft Pilot Pest Control Certificate Application DPR-PML-005 (Rev. 01/18) and Individual License/Certificate Renewal Application DPR-PML-141 (REV. 6/15), incorporated by reference, to make them consistent with the recently amended state law, Food and Agricultural Code (FAC) sections 11901, 11902, 11905, and 11910. Proposed changes to the forms will differentiate Manned and Unmanned Pest Control Aircraft Pilot certificates and add the subcategory of Vector Control Technician. The Individual License/Certificate Renewal Application is also used by pest control advisers, qualified applicators, and dealer designated agents. The proposed action will also update pilot supervision requirements to clarify that manned aircraft apprentice pilots must be supervised by a manned aircraft journeyman pilot and obtain their required apprentice hours operating a manned aircraft in pest control. Copies of these forms are included in the rulemaking file and are available upon request.

#### SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on December 3, 2018. Comments regarding this proposed action may also be transmitted via e-mail to <dpr18003@cdpr.ca.gov> or by facsimile at 916-324-1491.

A public hearing is not scheduled. However, one will be scheduled if any interested person submits a written

request to DPR no later than 15 days prior to the close of the written comment period.<sup>1</sup>

#### EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR protects human health and the environment through the regulation of pesticide sales and use, and by fostering reduced-risk pest management. DPR's strict oversight begins with product evaluation and registration; and continues through statewide licensing of commercial and private applicators, pest control businesses, and consultants; environmental monitoring; and residue testing of fresh produce. This statutory scheme is set forth primarily in FAC Divisions 6 and 7. DPR's Licensing and Certification Program administers examinations and licenses, certifies pest control dealer designated agents, qualified applicators, agricultural pest control advisers, and pilots operating in pest control. The Licensing and Certification Program also licenses pest control businesses, including maintenance gardener pest control businesses, pest control dealers, and pesticide brokers. DPR must ensure that people selling, possessing, storing, handling, applying, and recommending the use of pesticides are knowledgeable in their safe use.

Currently, the Pest Control Aircraft Pilot Certificate (Certificate) covers all pilots operating any aircraft in pest control, including: pilots employed by a licensed pest control business, pilots employed by vector control agencies or districts, and pilots who perform pest control on their own property. The current application for a Certificate, Aircraft Pilot Pest Control Certificate Application DPR-PML-005 (Rev. 01/18), incorporated by reference within 3 CCR section 6502, requires submission of a valid Federal Aviation Administration (FAA) Commercial Pilot's Certificate and a current Medical Certificate issued by the FAA. Both are specific to flying a manned aircraft.

Additionally, Individual License/Certificate Renewal Application DPR-PML-141 (REV. 6/15), incorporated by reference within 3 CCR section 6502, is currently required when pest control aircraft pilots, and certain other individuals, apply for renewal of their license. This form requires pilots to submit a copy of their valid medical certificate issued by the FAA, a document

<sup>1</sup> If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

specific to operating a manned aircraft. Furthermore, existing 3 CCR section 6540 describes the requirements for journeyman pilots supervising apprentice pilots and allows a journeyman pilot to supervise an apprentice pilot regardless of whether they are manned or unmanned aircraft pilots.

Recently, Assembly Bill 527 (Caballero) (Chapter 404, Statutes of 2017) amended the law to set new and more appropriate criteria for the operation of unmanned aircraft systems (UAS) in pest control. As amended, the law requires a person operating a manned aircraft in pest control to hold a Manned Certificate. Additionally, it is unlawful to operate UAS in pest control unless the pilot holds either a Manned or Unmanned Certificate from DPR. The operators of UAS in pest control must be FAA certified or otherwise authorized by the FAA to operate UAS approved by the FAA to conduct pest control. Finally, after a hearing, the Director may refuse to issue a Certificate for specified reasons including, if the person is not qualified, does not hold the required certificate or authorization from the FAA, or has violated state or federal law (FAC section 11910).

Assembly Bill 527 also added an additional certification category for the Unmanned Aircraft Pilot Certificate: Vector Control Technician. The 'Vector Control Technician' designation requires the applicant to hold a certification by the Department of Public Health in Mosquito Control pursuant to Health and Safety Code section 2052(1)(a) prior to taking the Unmanned Aircraft Pilot Vector Control Technician certification examination administered by DPR. The Vector Control Technician applicant must pass the DPR examination demonstrating their ability to legally and safely conduct aerial pest control operations before a Certificate is issued (FAC section 11905).

The recent changes to statute require DPR to revise the Aircraft Pilot Pest Control Certificate Application form DPR-PML-005 (REV. 01/18) and the Individual License/Certificate Renewal Application form DPR-PML-141 (REV. 6/15). To ensure that manned aircrafts continue to be operated safely in pest control, DPR also proposes to make changes to the requirements for apprentice pilot supervision set in 3 CCR section 6540. While additional Certificate types will be offered, the fees associated with new applications and examinations are not changing. Allowing pilots to operate UAS in pest control is not new; DPR is simply differentiating between manned and unmanned aircraft pilots as is consistent with state law. The applicant requirements for unmanned aircraft pilots operating in pest control will be more appropriate by requiring they meet the FAA mandates for the operation of UAS in pest control.

Adoption of this regulation will provide a benefit to public health and the environment. It will increase protection of residents, workers, and the environment by

ensuring that all pilots meet FAA and state requirements for operating aircrafts by demonstrating the safe operation of UAS in pest control.

During the process of developing this regulation, DPR conducted a search of any similar regulations on this topic and concluded that the proposed regulation is not inconsistent or incompatible with existing state regulations. DPR is the only agency that has the authority to regulate the sale and use of pesticides.

Incorporated by Reference Forms:

Pest Control Aircraft Pilot Certificate Application, DPR-PML-005 (Rev. 07/18)

Individual License/Certificate Renewal Application, DPR-PML-141 (Rev. 07/18)

**IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

DPR determined that the proposed regulatory action does not impose a mandate on local agencies or school districts. DPR also determined that there are no costs to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq. There are no other nondiscretionary costs or savings imposed upon local agencies that are expected to result from the proposed regulation action.

**COSTS OR SAVINGS TO STATE AGENCIES**

DPR determined that no savings or increased costs to any state agency will result from the proposed regulatory action.

**EFFECT ON FEDERAL FUNDING TO THE STATE**

DPR determined that no costs or savings in federal funding to the state will result from the proposed action.

**EFFECT ON HOUSING COSTS**

DPR made an initial determination that the proposed action will have no effect on housing costs.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES**

DPR has made an initial determination that adoption of this regulation 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.

**COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

DPR is not aware of any cost impacts that a representative private person or business would necessarily in-

cur in reasonable compliance with the proposed action because a private person or business can already operate UAS in pest control with the current Aircraft Pilot Pest Control license.

#### RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR determined it is not likely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

Adopting this regulation will benefit public health and the environment. It will increase protection of residents, workers, and the environment by ensuring that all pilots meet FAA and State requirements for operating aircrafts by demonstrating the safe operation of UAS in pest control.

#### CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, 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 implementing the statutory policy or other provision of the law.

#### AUTHORITY

This regulatory action is taken pursuant to the authority vested by FAC sections 11456 and 11502.5.

#### REFERENCE

This regulatory action is to implement, interpret, or make specific FAC sections 11502.5, 11703, 11707, 11903, 11904, 11908, and 11909.

#### AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR prepared an Initial Statement of Reasons and is making available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial State-

ment of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

#### AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

#### AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulation; and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Environmental Scientist  
Department of Pesticide Regulation  
1001 I Street, P.O. Box 4015  
Sacramento, California 95812-4015  
916-445-5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following back-up person at the same address as noted above:

Jill Townzen, Special Advisor  
Pesticide Programs Division  
916-324-6174

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>. Upon request, the documents can be made available in another language, or an alternate form as a disability-related accommodation.

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of



Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

#### TITLE 4. CALIFORNIA HORSE RACING BOARD

NOTICE OF PROPOSAL TO ADD  
RULE 1859.1, OUT-OF-COMPETITION  
TESTING PROCEDURES AND REQUIREMENTS  
RULE 1869, PROHIBITED DRUG SUBSTANCES  
IN OUT-OF-COMPETITION TESTING  
AND TO AMEND  
RULE 1858, TEST SAMPLE REQUIRED  
RULE 1859, TAKING, TESTING AND  
REPORTING OF SAMPLES  
RULE 1859.25, SPLIT SAMPLE TESTING  
RULE 1867, PROHIBITED  
VETERINARY PRACTICES

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

#### PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1859.1, Out-of-Competition Testing Procedures and Requirements, to establish procedures by which the Board will collect out-of-competition test samples, as well as penalties for non-compliance. Specifically, out-of-competition test samples will be collected at the direction of the official veterinarian, the Equine Medical Director, or his/her designee at any time and in any location. Trainers, owners, and their designees are required to disclose the location of all of their horses that are eligible for out-of-competition testing; however, any party may request that their horse be tested in an alternative location. Additionally, trainers, owners, their designee(s), and racing association employees are required to cooperate with persons collecting out-of-competition test samples. Licensees who willfully fail to make a horse available for out-of-competition testing, or who cause interference or obstruction to the sampling process will receive a minimum one-year license suspension, and horses not made available for out-of-competition testing will be placed on the Steward's List for a minimum of 180 days.

The Board also proposes to add Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing, to list all medications, drugs, and other substances that are prohibited from being present in an out-of-competition

test sample. The proposed rule will describe exceptions for certain therapeutic medications in cases where specific procedural and reporting requirements are followed by the trainer and/or their veterinarian. Finally, the rule will describe the liability and rights of trainers, owners, and other licensees who have the care and custody of a horse that tests positive for a prohibited substance in an out-of-competition test sample.

The Board also proposes to amend Rule 1858, Test Sample Required, to clarify the Board's authority to collect official blood, urine, and other biological test samples, as well as describe specifically which horses are eligible for out-of-competition testing. Additionally, the proposed amendment will make it a condition of trainers' and owners' licenses that the Board be given consent to collect out-of-competition test samples at any location where an eligible horse is present.

The Board also proposes to amend Rule 1859, Taking, Testing and Reporting of Samples, to make minor technical changes to existing language that ensures out-of-competition testing procedures do not conflict with existing official test sample collection requirements.

The Board also proposes to amend Rule 1859.25, Split Sample Testing, to extend the same split sample process and rights currently in place for post-race testing to licensees who have a horse in their custody that test positive for a prohibited substance in an out-of-competition test sample.

Finally, the Board proposes to amend Rule 1867, Prohibited Veterinary Practices, to add a number of medications and drug substances to the current prohibited list, and extend the regulation's application to substances detected in out-of-competition test samples.

#### PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, December 13, 2018**, or as soon after that as business before the Board will permit, in the **Finish Line Room** at the **Los Alamitos Race Course, 4961 Katella Avenue, Los Alamitos, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

#### WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on December 3, 2018**. 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, Staff Counsel  
 California Horse Racing Board  
 1010 Hurley Way, Suite 300  
 Sacramento, CA 95825  
 Telephone (916) 263-6026  
 Fax: (916) 263-6022  
 E-Mail: [Rjbrodnik@chr.ca.gov](mailto:Rjbrodnik@chr.ca.gov)

#### AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440, 19562, 19577, 19580, and 19582, Business and Professions Code. Reference: Sections 19401, 19420, 19440, 19577, 19580, 19581, 19582, and 19583, Business and Professions Code; Section 603, Evidence Code; and Sections 337f, 337g and 337h, Penal Code.

Business and Professions Code sections 19420, 19440, 19562, 19577, 19580, and 19582 authorize the Board to adopt the proposed regulatory additions and amendments, which would implement, interpret or make specific sections 19401, 19420, 19440, 19577, 19580, 19581, 19582, and 19583, Business and Professions Code; Section 603, Evidence Code; and Sections 337f, 337g and 337h, Penal Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19401(a) explains that it is the intent of the Horse Racing Law to allow pari-mutuel wagering on horse races while assuring protection of the public. Business and Professions Code section 19420 states that the Board has jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19580 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in California. Business and Professions Code section 19583 states that every veterinarian who treats a horse

within the inclosure shall report the details of such treatment to the official veterinarian in writing.

The Board proposes to add Rule 1859.1, Out-of-Competition Testing Procedures and Requirements, Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing, and to amend Rule 1858, Test Sample Required, Rule 1859, Taking, Testing and Reporting of Samples, Rule 1859.25, Split Sample Testing and Rule 1867, Prohibited Veterinary Practices to bring the CHR B's regulatory scheme in line with the recommendations and research of the Racing Medication Testing Consortium (RMTC)<sup>1</sup> and the Association of Racing Commissioners International (ARCI).<sup>2</sup> These organizations recently developed model rules and prohibited substance lists for out-of-competition testing that are intended to enhance the integrity of horse racing by controlling which medications race horses are administered while training. While the CHR B's current regulations restrict those medications that may be present in a horse during a race, they are generally silent as to which medications may or may not be used during training (i.e. when the horse is out-of-competition). Although many medications have legitimate therapeutic uses, others can have performance enhancing effects that give horses an unfair advantage when racing.

Until now, CHR B's drug testing efforts have focused almost exclusively on monitoring and restricting substances that are physically detectable in a horse immediately after a race. Although this has effectively curtailed the use of performance enhancing/altering substances immediately prior to a race, it does little to address the issue of substances that enhance performance long after they have been eliminated from the horse's body. For example, anabolic steroids, which have valid therapeutic uses, can also have muscle building side effects. Therefore, even after the steroid completely

<sup>1</sup> The RMTC strives to develop and promote uniform rules, policies and testing standards at the national level; coordinate research and educational programs that seek to ensure the integrity of racing and the health and welfare of racehorses and participants; and to protect the interests of the racing public. The RMTC was founded in 2001 by representatives of a broad spectrum of racing-related groups who participated in an industry effort to determine potential consensus points on the most basic elements of a uniform national medication policy for racehorses. The RMTC is incorporated as a 501(c)(3) charitable organization with both scientific and educational purposes. It is governed by a board of directors consisting of 24 industry stakeholder groups.

<sup>2</sup> The ARCI is composed of the governmental regulators of horse and greyhound racing in the United States, Canada, Mexico, Jamaica, and Trinidad-Tobago. ARCI collaborates with other racing industry organizations who share its common goal of ensuring integrity in racing. ARCI is a not-for-profit trade association with no regulatory authority. Its members individually possess regulatory authority within their jurisdictions and solely determine whether or not to adopt ARCI recommendations on policies and rules.

clears a horse's system, the horse may still have enhanced muscle mass that it could not have naturally developed without the assistance of the steroid. Accordingly, the CHRB seeks to better control and restrict medications used while horses are not in competition so as to ensure greater fairness and safety in California racing.

The proposed addition of Rule 1859.1, Out-of-Competition Testing Procedures and Requirements, will establish procedures by which the Board will collect out-of-competition test samples, as well as penalties for non-compliance. Specifically, out-of-competition test samples will be collected at the direction of the official veterinarian; the Equine Medical Director, or his/her designee at any time and in any location. Trainers, owners, and their designee(s) are required to disclose the location of all of their horses that are eligible for out-of-competition testing; however, any party may request that their horse be tested in an alternative location. Additionally, trainers, owners, their designee(s), and racing association employees are required to cooperate with persons collecting out-of-competition test samples. Licensees who willfully fail to make a horse available for out-of-competition testing, or who cause interference or obstruction to the sampling process will receive a minimum one-year license suspension, and horses not made available for out-of-competition testing will be placed on the Steward's List for a minimum of 180 days.

The proposed addition of Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing, will define those drugs, substances, doping agents, and medications that are prohibited from being present in an out-of-competition test sample. Specifically, anabolic androgenic steroids will be prohibited unless the anabolic agent has been approved by the United States Food and Drug Administration (FDA), is administered pursuant to a valid veterinary prescription, and is reported to the Official Veterinarian on CHRB-60 (Rev. 7/15), Trainer Medication Report. Additionally, horses receiving permitted anabolic steroid treatments will be required to remain on the Veterinarian's List for a minimum of six months, and until such horse is declared raceably sound and in fit physical condition to exert its best effort in a race. Also prohibited will be: selective androgen receptor modulators, tibolone, and zeranol; Erythropoietin-Receptor agonists; Hypoxia-inducible factor stabilizers (except out-of-competition blood samples may contain cobalt in an amount that does not exceed 50 nanograms per milliliter); Chorionic Gonadotropin and Luteinizing Hormone and their releasing factors; Corticotrophins and their releasing factors (except adrenocorticotrophic hormone (ACTH) may be used in a horse that is out-of-competition, provided that the substance is administered pursuant to a valid veterinary prescrip-

tion, and is reported to the Official Veterinarian on CHRB-60 (Rev. 7/15), Trainer Medication Report); Beta-2 agonists, including all optical isomers (except clenbuterol and albuterol may be used in a horse that is out-of-competition, provided that the administration is pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division); aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatienedione), 4 androstene-3,6,17 trione (6-oxo), exemestane, formestane, letrozole, and testolactone; raloxifene, tamoxifen, and toremifene; clomiphene, cyclofenil, and fulvestrant; myostatin inhibitors; activators of the AMP-activated protein kinase, Peroxisome Proliferator Activated Receptor  $\delta$  (PPAR $\delta$ ) agonists, insulins, trimetazidine, Thyroxine, and thyroid modulators/hormones containing T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof (except Thyroxine (T4) will not be considered a prohibited substance, and altrenogest will not be considered a prohibited substance provided that such treatments are made pursuant to a valid veterinary prescription, and both the administrations and prescriptions are carried out in accordance with all rules and regulations in this division); desmopressin, furosemide, plasma expanders, probenecid, torsemide, acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, etacrynic acid, indapamide, metolazone, spironolactone, thiazides, triamterene, trichlormethiazide, vasopressin receptor antagonists, and vaptans (except furosemide and trichlormethiazide may be used in a horse that is out-of-competition, provided that the administration is pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division). Additionally, any of the diuretics mentioned above may be administered in an emergency situation in order to safeguard the health of the horse so long as the substance is administered pursuant to a valid veterinary prescription, and is reported to the Official Veterinarian by the trainer on CHRB-60 (Rev. 7/15), Trainer Medication Report, or by the treating veterinarian on form CHRB-24 (Rev. 7/15), Veterinarian Report, within 24 hours of the administration. Otherwise, any substance not prohibited by this regulation is permitted for use when a horse is out-of-competition, provided such substance has been approved by the FDA for use in the United States, and is prescribed and administered in accordance with all applicable federal and state laws and regulations, including all CHRB rules and regulations.

Additionally, proposed Rule 1869 will establish a presumption that a prohibited drug substance detected in an official out-of-competition test sample is prima facie evidence that the drug substance has been admin-



istered to the horse. If the out-of-competition test sample was obtained outside a CHRB licensed inclosure, then the trainer, owner and/or any other licensee shown by a preponderance of the evidence to have been responsible for the care, custody and control of the horse may be fined and/or have his/her license suspended or revoked. If the out-of-competition test sample was obtained inside a CHRB licensed inclosure, the proposed rule will make the trainer the absolute insurer of horses under their care and subject to a fine, and/or license suspension or revocation. Additionally, the proposed rule will make the defenses in CHRB Rule 1888, Defense to Trainer Insurer Rule, available to anybody charged with violating this proposed regulation, and will also apply the same penalty guidelines as described in Rule 1843.2, Classification of Drug Substances, and Rule 1843.3, Penalties for Medication Violations. Finally, an out-of-competition test sample containing a prohibited substance will require that the horse be placed on the Veterinarian's list for a minimum of 180 days.

The proposed amendment to Rule 1858, Test Sample Required, will add a new subsection (b) to explain that the Board may take official blood, urine or other biological samples from horses, in accordance with Rules 1859 and 1859.1, to enhance the ability of the Board to enforce its medication and anti-doping rules at any time or date. The amendment will further revise new subsection (c) to expand horses eligible for testing (out-of-competition or otherwise) to include any horse under the care or control of a licensed trainer, or owned by a licensed owner. The amendment also explains that a horse is "out-of-competition" when it is not entered in a race as defined in this Article, and otherwise prohibits testing of weanlings, yearlings, and horses no longer engaged in racing that are outside of the inclosure and not entered in a Board-authorized horse sale. Finally, the proposed amendment states that as a condition of licensure, persons holding trainer and owner licenses shall be deemed to have given consent for the Board to access any location, whether inside or outside of a licensed inclosure, where a horse eligible for testing may be found for the purpose of collecting official out-of-competition test samples. The proposed amendment further explains, however, that such consent does not permit the Board to search surrounding premises when collecting out-of-competition test samples.

The proposed amendment to Rule 1859, Taking, Testing and Reporting of Samples, specifies that all official test samples are to be "biological" in nature, and also makes an exception to the requirement that samples must be collected in a Board-approved detention area for out-of-competition test samples. Finally, the proposed amendment allows for test samples to be witnessed, confirmed or acknowledged by owners of horses, in addition to their trainers.

The proposed amendment to Rule 1859.25, Split Sample Testing, extends the same split sample process and rights currently in place for post-race testing under the regulation to licensees who have a horse in their custody test positive for a prohibited substance in an out-of-competition sample.

The proposed amendment to Rule 1867, Prohibited Veterinary Practices, adds the following medications and drug substances to the current prohibited list: venoms or derivatives thereof, aminoimidazole carboxamide ribonucleotide (AICAR), hemopure, Myo-Inositol Trispyrophosphate (ITPP), oxyglobin, and thymosin beta. It also makes an exception for platelet rich plasma and autologous conditioned plasma under the general prohibition against growth hormones and analogs, so long as they are administered pursuant to a valid, veterinary prescription and are reported to the Official Veterinarian by the trainer on CHRB-60 (Rev. 7/15) (Trainer Medication Report). Additionally, the proposed amendment deletes an obsolete reference to Guide 1240.3025 of the FDA Center for Veterinary Medicine (CVM) Program Policy and Procedures Manual that is no longer used by the FDA Center for Veterinary Medicine. Finally, the proposed amendment extends Rule 1867's application to prohibited substances detected in out-of-competition test samples.

#### FORMS INCORPORATED BY REFERENCE

- 1) Form CHRB-24, Veterinarian Report, revised 07/15
- 2) Form CHRB-60, Trainer Medication Report, revised 07/15

The proposed amendment to Rule 1867 and addition of Rule 1869 will incorporate by reference CHRB-24, Veterinarian Report (Revised 07/15), and CHRB-60, Trainer Medication Report (Revised 07/15), as it would be cumbersome, unduly expensive or otherwise impractical to publish these documents in the California Code of Regulations.

Form CHRB-24, Veterinarian Report (Revised 07/15), will be used by licensed veterinarians to report to the Official Veterinarian details of diuretic administrations made in emergency situations as described in Rule 1869(a)(13)(B). Under the proposed regulations, either the treating veterinarian or the trainer will need to report the administration to the Official Veterinarian within 24 hours. Under existing regulations, veterinarians treating horses within the inclosure already have to report all medication prescriptions and administrations to the Official Veterinarian on this form, and therefore this provision is consistent with other CHRB rules. If the emergency administration occurs outside of the inclosure, however, the trainer then will be responsible for reporting the administration on Form CHRB-60.

Form CHRB-60, Trainer Medication Report (Revised 07/15), will be used by licensed trainers to report each administration of platelet rich plasma and autologous conditioned plasma, anabolic androgenic steroids, adrenocorticotrophic hormone (ACTH), and emergency diuretic treatments given to horses in their care to the Official Veterinarian. The form includes fields for the name of the horse, name of the trainer, type of medication administered, and date and time of treatment so that the Official Veterinarian may properly identify all horses within the inclosure that have been administered these substances.

#### POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867, will substantially enhance the integrity and fairness of California horse racing by more effectively monitoring and controlling the use of medications in race horses when they are out-of-competition. Currently, the CHRB's drug enforcement efforts focus almost exclusively on restricting substances that are physically detectable in a horse immediately after a race. Although this has effectively curtailed the use of performance enhancing/altering substances immediately prior to a race, it does little to address the issue of substances that enhance performance long after they have been eliminated from the horse's body. While the CHRB regularly tests horses that are out-of-competition, it presently has no recourse when a substance is detected that is a known performance enhancer. Accordingly, these proposed regulatory changes will allow the CHRB to affirmatively restrict certain medications and drug substances in race horses that are intended to compete but not currently entered for a specific race (i.e. horses that are "out-of-competition").<sup>3</sup>

Such a change will first and foremost benefit the health and welfare of the horse. By giving the CHRB a mechanism to prosecute trainers, veterinarians, and/or owners who administer non-therapeutic medications or other drug substances to horses that are out-of-competition, the Board will be able to deter doping schemes that may harm the horse. A number of the substances prohibited under the proposed rules can have side ef-

fects that negatively impact the health of the horse.<sup>4</sup> By explicitly banning such substances — and attaching a penalty in those instances where the substance is detected in an out-of-competition test sample — the Board will further curtail use of such drugs.

The proposed changes will also benefit the wagering public because out-of-competition testing will further eliminate the chance that a horse will unnaturally and/or unlawfully have its performance enhanced during a race due to prior doping. This will help ensure that the public is wagering on the merits of the horses' natural abilities, and not being deceived by the improper and/or illicit use of performance enhancing drug substances.

Finally, the proposed changes will benefit the horse racing industry by enhancing the sport's integrity and perception. By expanding the CHRB's role in monitoring and restricting medication use in race horses, both the participating licensees and the public will have greater confidence in the fairness and safety of California racing, which in turn may grow viewership and wagering. Accordingly, these amendments will benefit the health, safety and welfare of horses, licensees, and the wagering public.

#### CONSISTENCY EVALUATION

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

#### DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code 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 addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867 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.

<sup>3</sup> Pursuant to current CHRB regulations, a horse is not entered to race (i.e. in-competition) until 48 hours before the race is actually run. Therefore a horse tested three days before it runs is still considered "out-of-competition."

<sup>4</sup> For example, auto-immune anemias associated with erythropoietin receptor agonists has been documented in horses. The World Anti-Doping Agency (WADA) issued a warning to athletes pointing out pre-clinical trials of the peroxisome proliferator-activated receptor agonist "GW501516" were halted over serious toxicity issues.

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

- ARCI Model Rules of Racing — Version 8.1 (revised July 2017), pgs. 258–265, 284–288, 416–425, and 443–447.
- World Anti-Doping Agency — The 2014 Prohibited List International Standard — (2014 Version 2.0)

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 addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867 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 regulatory changes promote the safety and welfare of race horses in California by implementing a mechanism for the CHRB to affirmatively monitor and restrict medications and drug substances in horses that are intended to compete but not currently entered for a specific race. Such a program not only protects the horses, but also protects their riders and the wagering public. Furthermore, an effective out-of-competition testing program will further enhance the integrity of horse racing in California, which in turn may grow viewership and wagering. An increase in wagering will have a positive economic impact on the industry by increasing handle, which in turn increases purses and commissions. The proposed regulation will not impact the state's environment.

Effect on small businesses: none. The proposed addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867 do 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) 263-6026  
 E-mail: [Rjbrodnik@chrb.ca.gov](mailto:Rjbrodnik@chrb.ca.gov)

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

Andrea Ogden, Manager  
 Policy, Regulations and Legislation  
 Telephone: (916) 263-6033

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the 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. Re-

quests for copies of any modified regulation should be sent to the attention of Robert Brodник 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 Brodник 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 web site address is: [www.chrb.ca.gov](http://www.chrb.ca.gov).

**TITLE 10. DEPARTMENT OF INSURANCE**

**GENDER NON-DISCRIMINATION IN AUTOMOBILE INSURANCE RATING**

**REG-2018-00020**

**Exempt Rulemaking**

Pursuant to Government Code section 11340.9(g), this proceeding is exempt from the rulemaking provisions of the Administrative Procedure Act.

SUBJECT OF PROPOSED RULEMAKING

Notice is given that California Insurance Commissioner Dave Jones will hold a public hearing to consider amending California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, Article 3, Section 2632.5, Subsections (d)(9), (d)(13), (c)(2)(F)(viii), (e), and Section 2632.11, Subsection (c) to eliminate the use of gender in private passenger automobile insurance rating in California pursuant to the authority granted by Insurance Code section 1861.02(a)(4).

HEARING

**Public Hearing Date and Location**

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to these regulations, as follows:

**Date and time: December 3, 2018 at 10:00 a.m.**

**Location: California Department of Insurance  
300 Capitol Mall, 13th Floor  
Sacramento, California 95814**

The hearing will continue on the date noted above until all testimony has been submitted or until 5:00 p.m., whichever is earlier.

**Access to Hearing Rooms**

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person(s) for the hearing in order to make special arrangements, if necessary.

WRITTEN COMMENT PERIOD

**Presentation of Written Comments; Contact Persons**

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on Monday, December 3, 2018**. Please direct all written comments to the following contact person:

Emily Gallagher, Staff Counsel  
Rate Enforcement Bureau  
45 Fremont Street, 21st Floor  
San Francisco, CA 94701  
Phone: (415) 538-4108  
Fax: (415) 904-5490  
Email: [emily.gallagher@insurance.ca.gov](mailto:emily.gallagher@insurance.ca.gov)

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If the above contact person is unavailable, inquiries may be addressed to the following backup contact person:

Jennifer McCune, Attorney IV  
Rate Enforcement Bureau  
45 Fremont Street, 21st Floor  
San Francisco, CA 94701  
Tel: (415) 538-4148  
Fax: (415) 904-5490  
Email: [jennifer.mccune@insurance.ca.gov](mailto:jennifer.mccune@insurance.ca.gov)

Please note that under the California Public Records Act (Government Code Section 6250, et seq.), your written and oral comments, and associated contact in-



formation (e.g., your address, phone number, e-mail, etc.) become part of the public record and can be released to the public upon request.

#### **Deadline for Written Comments**

All written materials must be received by the Insurance Commissioner, addressed to the contact person at the address listed above, no later than **5:00 p.m. on Monday, December 3, 2018**. Any written materials received after that time may not be considered.

#### **Comments Transmitted by E-Mail or Facsimile**

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: [emily.gallagher@insurance.ca.gov](mailto:emily.gallagher@insurance.ca.gov). The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Emily Gallagher and sent to the following facsimile number: (415) 904-5490.

**Comments sent to e-mail addresses or facsimile numbers other than those designated in this notice will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

### AUTHORITY AND REFERENCE

The proposed regulations will implement the provisions of Insurance Code section 1861.02(a)(4), which also provides the rulemaking authority for this action.

### INFORMATIVE DIGEST

#### **Summary of Existing Law**

Proposition 103 is codified in Insurance Code 1861.05(a) which states that no rate subject to its terms should be inadequate, excessive, or unfairly discriminatory. Insurance Code section 1861.02 permits the Commissioner to adopt optional automobile insurance rating factors in conformity with Proposition 103's mandate. Pursuant to this authority, the Commissioner adopted by regulation gender of the rated driver as an optional rating factor in first years following the passage of Proposition 103, approximately thirty years ago. Insurance Code section 1861.02(a)(4) does not require the Commissioner to adopt any optional rating factors, and thus provides authority for him to eliminate previously established factors at his discretion.

#### **Effect of Proposed Action**

The proposed amendments will eliminate the use of a driver's gender in private passenger automobile insurance rating by eliminating gender of the rated driver from the list of optional rating factors in Insurance Code section 1861.02.

#### **Policy Statement Overview**

The purpose of the proposed amendments is to remove any consideration of a driver's gender in the setting of private passenger automobile insurance rating. Insurance Code section 1861.05(a) states that no rate should be inadequate, excessive, or unfairly discriminatory. A regime in which auto insurance rates are based on personal characteristics over which a driver has no control, such as gender, rather than on factors within a driver's control, is more likely to be unfairly discriminatory because it may not treat equally individuals who make the same risk-averse choices.

The logical justification for the apparent statistical basis of treating males and females differently in auto rating has become suspect over the years as company experience has come to vary widely, with some companies finding females to be a higher risk while other companies find similarly situated males to be a higher risk. With regard to distracted driving, currently reported by insurers to be one of the primary drivers of increased accident frequency and severity, there is no difference in the experience of male versus female drivers.

The Gender Recognition Act, which permits California driver license applicants to select "nonbinary" to appear on their driver license instead of "male" or "female" beginning on January 1, 2019, brought the problems with using gender as an optional rating factor to the fore. Insurers who use the optional rating factor have expressed uncertainty as to how to rate individuals who identify as nonbinary. There is no historical experience upon which to establish an actuarially justified nonbinary rate. Given the small population size of nonbinary drivers, it is likely that there will never be sufficiently credible data upon which to base such a rate. The term "nonbinary" as defined in the Gender Recognition Act describes a population with significant diversity. This combination of small population size and non-homogeneity reduces the value of treating drivers within that population as statistically similar.

Further, by extending legal recognition to persons with nonbinary identities through the courts and through legislative action, California has acknowledged that gender is a spectrum rather than a binary. Eliminating gender as a rating factor ensures that nonbinary individuals are treated fairly under Proposition 103's mandate to avoid unfairly discriminatory rates.

Even if data for nonbinary drivers were credible, allowing insurers to rate nonbinary drivers in a third category would not address the other problems with gender as an optional rating factor that have become apparent through the decades since its initial adoption. These numerous concerns weigh in favor of conforming the op-

tional rating factors to the spirit of the Unruh Civil Rights Act by eliminating gender.

**Benefits Anticipated**

The benefits anticipated to result from the adoption of the proposed amendments to these regulations include the promotion of efficiency, fairness, and social equity, and the prevention of discrimination. Eliminating gender from auto insurance rating helps to bring about a regime in which auto insurance rates are based on factors within a driver’s control, rather than personal characteristics over which drivers have no control. This promotes fairness and social equity by treating equally individuals who make the same risk–averse choices. Removing gender as a rating factor prevents discrimination based on gender by its terms. These regulations will ensure actuarially sound rates, fair treatment of nonbinary drivers as they begin to take advantage of the Gender Recognition Act, and simplified class plans that will not require insurers to attempt to rate nonbinary drivers based on gender.

**Consistency or Compatibility with Existing State Regulations**

The proposed amendments are not inconsistent or incompatible with any other existing regulations. These proposed amendments specifically address the optional automobile insurance rating factors, which no other state regulations do.

**NOT MANDATED BY FEDERAL LAW OR REGULATIONS**

These regulations are not mandated by federal law. There are no existing federal regulations or statutes comparable to these proposed regulations as no federal statutes or regulations address state automobile insurance rating factors.

**OTHER STATUTORY REQUIREMENTS**

The Department evaluated whether there were other requirements prescribed by statute applicable to these regulations by reviewing statutes and regulations relating to this issue, and determined that there were no such requirements.

**LOCAL MANDATE**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

**FISCAL IMPACT**

The submission of revised class plans will also create a one–time fiscal impact on the Department. Actuaries and analysts will review the revised class plans that insurers submit to ensure compliance. The time required for analyst or actuarial review of the revised class plan would be greatly reduced compared to the review of a complete class plan. Table 3 specifies the anticipated costs to the Department of conducting the reviews of the revised class plans required by the regulation. As a result, because the regulations are projected to lead to 167 insurers filing 174 revised class plans, there will be a \$276,000 fiscal impact on the Department to conduct reviews of the revised class plans.

**Table 3. Estimated Department Cost of a Revised Class Plan**

Title	Hours	Estimated Annual Salary	Salary + Benefits	Total Cost per Filing
Rate Analyst	20	\$70,000	\$98,000	\$942
Senior Casualty Actuary	4	\$160,000	\$224,000	\$431
Bureau Chief	2	\$95,000	\$133,000	\$128
Rate Analyst — Intake	2	\$65,000	\$91,000	\$88
<b>Average Cost per Filing</b>				<b>\$1,588</b>

The Department has determined that there will be no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

**HOUSING COSTS**

The proposed regulations will have no significant effect on housing costs.

**SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE**

The Department has made an initial determination that the proposed amendments 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. The facts and evidence upon which this determination was made is described below in the statement of the results of the economic impact assessment.

**Results of the Economic Impact Assessment**

Below is a summary of the results of the Economic Impact Assessment pursuant to Government Code sec-

tions 11346.3(b)(1)(A) through (D). Detailed analysis of the conclusions follows.

- A. The proposed regulations will likely have a minimal effect, a net loss of 18.9 jobs, on overall employment within the State of California. The regulation is expected to affect less than one-thousandth of a percent of the total employment in California (i.e.,  $18.9/17,336,552 = 0.0001\%$ ).
- B. Given that the average direct cost to an impacted insurer is estimated to be \$13,200 (\$2.2 million/167 firms), it is not anticipated that the proposed regulation will have a significant impact on the creation of new businesses or the elimination of existing businesses in California.
- C. Given that the average direct cost to an impacted insurer is estimated to be \$13,200 (\$2.2 million/167 firms), it is not anticipated that the proposed regulation will have an impact on the ability of businesses in California to expand. Additionally, the small impact on total output suggests that the regulation will have a very small impact on the California economy as a whole.
- D. The proposed regulation will benefit the welfare of California's residents and insurance consumers by ensuring actuarially sound auto insurance rates and the fair treatment of nonbinary drivers. This proposed regulation will also prevent discrimination on the basis of gender in auto insurance policies.

#### THE ECONOMIC IMPACT ON JOBS, BUSINESSES, AND THE STATE ECONOMY

The Department evaluated the potential changes in economic variables, including output and employment, which could result from the proposed regulation. Industry employment and output effects were assessed using the Regional Input–Output Modeling System (RIMS II) multipliers.<sup>1</sup> Job and economic impacts, including the ripple effects (indirect and induced costs/benefits)

<sup>1</sup> U.S. Department of Commerce; Bureau of Economic Analysis (BEA): Table 1.5 Regional Input–Output Modeling System (RIMS II) Multipliers (2007/2016). RIMS II multipliers show how an initial change in economic activity results in new rounds of spending (ripple effects including indirect and induced costs/benefits). For example, building a new road will lead to increased production of asphalt and concrete. The increased production of asphalt and concrete will lead to more mining. Workers benefiting from these increases will spend more, perhaps by eating out at nicer restaurants or splurging more on entertainment. For example, a new \$1 million road will lead to an estimated 9.9 jobs throughout the economy and an increase in output of \$2 million. Likewise, under RIMS an initial decrease in economic activity will lead to a decrease in production.

of the regulation on employment and output, are calculated using the direct cost estimates to insurers.

#### Creation or Elimination of Jobs within the State

The job impact estimates are based on aggregated data presented as full–time equivalents, not necessarily full–time jobs. The job impacts were calculated using the RIMS II multipliers for insurance carriers. The Department calculated that removing the gender rating factor will likely have offsetting impacts on males and females based on Years of Driving Experience (YDE), as described above. Since these direct impacts are offset within the same industry sector and premiums will not change overall, there are no expected induced or indirect economic impacts to the total economy resulting from the removal of the gender rating factor. The only cost that is estimated to have an impact on jobs, or output via induced or indirect economic impacts to the total economy, is the direct cost of preparing the revised class plan. The RIMS II multiplier for insurers is a ratio of 8.6023 jobs lost throughout the economy for every one million dollars in added costs. Due to strong job gains in the insurance industry sector the calculated job losses will likely not result in actual job losses, but will instead result in slightly slower job growth. The ratio multiplied by the estimated direct cost of \$2.2 million, equals the projected number of jobs lost, which is 18.9 ( $8.6023 \times \$2.2 \text{ million} = 18.9$ ).

The proposed regulation is expected to have a minimal effect on total statewide employment. According to the Department of Finance, the projected total nonfarm employment for 2019 is nearly 17.4 million in California.<sup>2</sup> When dividing the projected number of jobs lost by the number of people employed in nonfarm jobs in California, the result is that the proposed regulations would not affect even one-thousandth of a percent of the total employment in California (i.e.,  $18.9/17,336,552 = 0.0001\%$ ).

#### Creation of New Businesses or the Elimination of Existing Businesses, and the Expansion of Businesses

To address Government Code sections 11346.3(b)(1)(B) and (C) and determine the effect of the proposed regulation on the creation of new businesses or the expansion of existing businesses within the state, the Department uses a broad approach. Factors affecting the creation and expansion of businesses are intertwined and very similar so they are analyzed together.

The Department anticipates that due to the structure and competitiveness of the auto insurance market, the regulation will not cause a measurable impact on business expansion or contraction.

<sup>2</sup> [http://www.dof.ca.gov/Forecasting/Economics/EconomicForecasts/Us\\_Ca/index.html](http://www.dof.ca.gov/Forecasting/Economics/EconomicForecasts/Us_Ca/index.html). The Department of Finance economic forecast data was accessed October, 2018.



The Department also calculated the effect of the regulation on California's economic output. Output measures the total market value, including the value of all intermediary goods and services, used in production of a final good or service. The RIMS II multiplier for output of 1.9219 represents a \$1.92 total economic impact (accounting for all direct, indirect, and induced costs/benefits) for every one million dollars of direct impact on insurers. Multiplying the direct cost of the regulation by the RIMS output multiplier results in an estimated loss to total output of \$4.2 million (1.9219 x \$2.2 million = \$4.2 million). The relatively small impact on output suggests that the regulation will have a very small impact on the California economy as a whole and is not likely to lead to a measurable impact on the elimination of existing businesses or the ability of existing businesses to expand.

#### BENEFITS OF THE REGULATIONS

##### **Worker Safety and Environmental Effects**

The proposed regulation is not expected to impact worker safety. Compliance with the proposed regulation does not change the nature of existing job responsibilities of the employees in the affected industries. Thus, the proposed regulation will neither increase nor decrease worker safety. The Department also concludes that there will be no measurable effect on the state's environment.

##### **Health and Welfare Effects**

The proposed regulation will benefit the welfare of California's residents and insurance consumers by ensuring actuarially sound auto insurance rates and the fair treatment of nonbinary drivers. This proposed regulation will also prevent discrimination on the basis of gender in auto insurance policies.

#### COST IMPACT ON REPRESENTATIVE PERSONS OR BUSINESSES

A representative impacted business (private passenger auto insurer) will necessarily incur an average cost impact of \$13,200 in reasonable compliance with the proposed amendments.

#### BUSINESS REPORT

The Department finds that it is necessary for the health, safety or welfare of the people of the state that the regulation apply to businesses.

#### IMPACT ON SMALL BUSINESSES

The proposed regulation will have a minimal adverse direct impact on insurers as discussed in the foregoing analysis, but by law they are not considered small businesses (Government Code § 11342.610(b)(2)).

#### ALTERNATIVES INFORMATION

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which this 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 underlying Insurance Code section 11736.5.

#### CONTACT PERSON

The name and telephone number of the agency representative and designated contact person are listed above under "WRITTEN COMMENT PERIOD."

#### AVAILABILITY STATEMENTS

The Department has prepared an Initial Statement of Reasons that sets forth the reasons for the proposed action. Upon request, the Initial Statement of Reasons will be made available for inspection and copying. Requests for the Initial Statement of Reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the Final Statement of Reasons will be made available for inspection and copying once it has been prepared. Requests for the Final Statement of Reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the express terms of the proposed action, the Initial Statement of Reasons, the Standardized Regulatory Impact Analysis, and all the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available by appointment for inspection and copying at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

If the amended regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least



15 days prior to the date of adoption. Interested persons should request a copy of these amended regulations prior to adoption from the contact person listed above.

INTERNET ACCESS

Documents concerning proposed regulations are available on the Department’s website at the following link: <https://legaldocs.insurance.ca.gov/publicdocs/RegulationList>.

**TITLE 13. CALIFORNIA HIGHWAY PATROL**

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6 AMEND ARTICLE 1, SECTIONS 1152.7 AND 1152.7.1

**Explosives Routes and Stopping Places (CHP–R–2018–04)**

The California Highway Patrol (CHP) proposes to amend regulations in Title 13 of the California Code of Regulations, Division 2, Chapter 6, Article 1, Sections 1152.7 and 1152.7.1, regarding designated routes for the transportation of explosives by commercial vehicles on highways in the state.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Pursuant to Division 14, Transportation of Explosives, commencing with Section 31600 of the California Vehicle Code, the CHP shall adopt regulations specifying the routes to be used in the transportation of explosives. The CVC requires the CHP to keep information current in regulations with maps indicating designated routes. The CHP’s field commands conduct annual surveys on the explosives routes and stops to determine if changes are necessary. The CHP’s Border Division proposed an update of explosives routes in the Calexico–El Centro–Brawley area. The proposed regulation amendments will remove 65.4 miles and extend 31.6 miles of currently designated routes. These updates will provide carriers an alternative route to reduce potential risks associated with the transportation of explosives, and enhance public health and safety in the Calexico–El Centro–Brawley area.

The proposed amendments have received concurrence from the CHP’s Border Division, Brawley Fire Department, Calexico Fire Department, El Centro Fire Department, Holtville Fire Department, Westmorland

Fire Department, Imperial County Fire Department, State Fire Marshal, and California Department of Transportation.

This proposed regulatory action will continue to provide a nonmonetary benefit to the protection of the health, safety, and welfare of California’s residents, workers, and environment. The changes to the application of the regulation are not substantive and bring the regulation in conformance with existing statute. The proposed changes update and clarify highway routes designated for carriers transporting explosives, and contribute to transportation safety and public health.

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

PUBLIC COMMENT

Any interested person may submit written comments on the proposed action via facsimile at (916) 322–3154, by electronic mail to [cvsregs@chp.ca.gov](mailto:cvsregs@chp.ca.gov), or by writing to:

California Highway Patrol  
Commercial Vehicle Section  
Attention: Dr. Tian–Ting Shih  
P.O. Box 942898  
Sacramento, CA 94298–0001

Written comments will be accepted until 5:00 p.m. on December 3, 2018.

PUBLIC HEARINGS

No public hearing has been scheduled. If any person desires a public hearing, a written request must be received by the CHP, Commercial Vehicle Section (CVS), no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF INFORMATION

The CHP has available for public review an initial statement of reasons for the proposed regulatory action, the information upon which this action is based, and the proposed regulation text in strikeout and underline format. Requests to review or receive copies of this information should be directed to the CHP either at the above address, by facsimile at (916) 322–3154, or by calling the CHP, CVS, at (916) 843–3400. All requests for information should include the following: the title of the rulemaking package, the requester’s name, proper mailing address (including city, state, and zip code), and a daytime telephone number in case the information is incomplete or illegible.

The rulemaking file is available for inspection. Interested parties are advised to call CHP, CVS, for an appointment.

All documents regarding the proposed action are available through the CHP's website at <https://www.chp.ca.gov/News-Alerts/Regulatory-Actions>. Any person desiring to obtain a copy of the adopted text and a final statement of reasons may request them at the above-noted address. Copies will also be posted on the CHP website.

#### CONTACT PERSON

Any inquiries concerning the written materials pertaining to the proposed regulations or the substance of the proposed regulations should be directed to Dr. Tian-Ting Shih or Sergeant Adam Roha, at (916) 843-3400.

#### ADOPTION OF PROPOSED REGULATIONS

After consideration of public comments, the CHP may adopt the proposal substantially as set forth without further notice. If the proposal is modified prior to adoption and the change is not solely grammatical or substantive in nature, the full text of the resulting regulation, with the changes clearly indicated, will be made available to the public for at least 15 days prior to the date of adoption.

#### FISCAL IMPACT AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The CHP has made an initial determination that this proposed regulatory action: (1) will have no effect on housing costs; (2) will not impose any new mandate upon local agencies or school districts; (3) will involve no nondiscretionary cost or savings to any local agency, no cost to any local agency or school district for which Government Code (GC) Sections 17500-17630 require reimbursement, no cost or savings to any state agency, nor costs or savings in federal funding to the state; (4) 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; and (5) 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.

Benefits of the Proposed Action: The proposed regulation updating designated routes for carriers transporting explosives will continue to provide benefits, includ-

ing the nonmonetary benefit of protecting public health and safety for residents, workers, and the environment by providing a regulatory basis for enforcement efforts as they relate to safety compliance ratings.

The regulated community is encouraged to respond during the comment period of this regulatory process if significant impacts are identified.

#### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The CHP 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 CHP has determined that the proposed regulatory action will not affect small businesses. The action is intended to clarify and update the designated routes for commercial vehicles transporting explosives on highways. As a result, no small business will be affected by the update.

#### ALTERNATIVES

In accordance with Section 11346.5(a)(13) GC, the CHP must determine that no reasonable alternative considered by the CHP, or otherwise identified and brought to the attention of the CHP 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 provision of law. The CHP invites interested parties to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

#### AUTHORITY

This regulatory action is being taken pursuant to Section 31616 CVC.

#### REFERENCE

This action implements, interprets, or makes specific Sections 31303, 31304, 31601, 31602, 31607, 31611, 31614, and 31616 CVC.

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

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department), proposes to revise Section 3075.2 of Title 15, Division 3, Chapter 1, regarding Releases.

**PUBLIC HEARING**

Date and Time: **December 5, 2018  
1:00 p.m. to 2:00 p.m.**

Place: Department of Corrections and Rehabilitation  
Conference Room 100N  
1515 S Street — North Building  
Sacramento, CA 95811

Purpose: To receive comments about this action.

**PUBLIC COMMENT PERIOD**

The public comment period begins **October 19, 2018** and closes on **December 5, 2018 at 5:00 p.m.** Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to [rpbm@cdcr.ca.gov](mailto:rpbm@cdcr.ca.gov), before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

**CONTACT PERSONS**

Primary Contact

T. Oberoi  
Telephone: (916) 445-2227  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283-0001

Back-Up

Y. Sun  
Telephone: (916) 445-2269  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283-0001

Program Contact

W. Mazza  
Accounting Services Branch  
Telephone: (661) 664-3417

**AUTHORITY AND REFERENCE**

**Government Code Section 12838.5** provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

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

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

**PC Section 5054** provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

**PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR.

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

**PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the Department require adoption, amendment, or repeal of a regulation on an emergency basis.

**INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW**

Currently, regulations concerning releases indicate the Department will disburse release funds and trust account balances via cash or revolving funds checks. Additionally, release funds were disbursed to inmates only upon certain types of release.

In this regulatory action, the Department proposes to amend regulatory provisions pertaining to release funds.

This action provides the following:

- Changes the method for which the Department will issue release funds and trust account balances.
- Improves the functionality of the form CDCR 102 Release Statement, by reorganizing and updating the information captured on the form.
- Provides that staff shall provide the contractor's cardholder terms and conditions to each person upon release.
- Incorporates language acknowledging receipt of a California Identification Card, medical card, debit card, transportation voucher, or any combination thereof.
- Specifies that the Department will issue release funds to all persons being "released" and not just "released upon parole".
- Adds language to include Community Correctional Facilities, and update specific situations in which inmates will be entitled to release funds, including enrollment into an alternative custody program.
- Establishes a \$1,000 limit to the amount of funds that will be loaded to a debit card.
- Deletes the reference to the Work Furlough program that was deactivated in 2006.
- Deletes the reference to the California Youth Authority which is now called the Division of Juvenile Justice.
- Deletes language with specific dollar amounts and replaces with language referencing Penal Code Section 2713.1.

#### FORMS INCORPORATED BY REFERENCE

CDCR 102 (Rev. 08/18) Release Statement

#### SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department has determined that the proposed regulations may have a positive impact on inmates by assisting with the successful transition from incarceration to society by getting them familiar with current technology and modern forms of managing money. The successful transition of previously incarcerated persons may reduce recidivism which will have a positive impact on public safety, the health and welfare of California's residents, worker safety, the State's environment, and inmates.

#### EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING LAWS/REGULATIONS

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 existing regulations within CCR, Title 15, Division 3.

#### LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 through 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 made an initial determination that the proposed action will have no significant effect on housing costs.

#### COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

#### SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT AFFECTING BUSINESSES

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

#### EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations will not affect small businesses and that this



action has no significant adverse economic impact on small businesses because they are not adversely affected by the use of debit cards for issuing funds to persons released from prison.

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. The Department has determined that the proposed regulations will have no effect on the state’s environment because the proposed regulations relate strictly to the management of issuing release funds.

The Department has determined that the proposed regulations may have a positive impact on public safety for California residents, worker safety, and inmates by ensuring that inmates are successful in their transition to society.

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 the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. In proposing the revisions to Section 3075.2, the Department considered the following alternatives:

1. Issue checks in all instances.  
The Department determined that issuing checks as the primary method of disbursing inmate funds was not a better alternative because checks would require the releasee to cash the check to receive their funds. Releasees often do not have a banking relationship to deposit or cash the check. Check cashing venues charge a fee to cash a check, reducing the amount available to the releasee. Banks and check cashing venues have limited business hours. Releasees often will not have suitable identification to verify their identity for check cashing purposes.
2. Issue cash in all instances.  
The Department determined that issuing cash as

the primary method of disbursing inmate funds was not a better alternative because it was impossible to obtain cash for several institutions. Obtaining cash is an ongoing service requiring a contract under state procurement guidelines. The Department is unable to obtain contracts for this service to all locations due to the remote locations of some of the institutions in relation to the bank’s regional cash vaults. Utilizing institution staff to make bank runs is time-consuming, taking staff away from critical work functions for a significant portion of a work day. Due to the amount of cash transported, an armed escort would be required, taking correctional officers away from essential duties. Due to the remote location of many facilities, banking locations may be up to one hour away, requiring at least two staff members be absent from the institution up to 3 hours per bank run.

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

AVAILABILITY OF CHANGES TO  
PROPOSED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT  
OF REASONS

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

**TITLE 22. DEPARTMENT OF PUBLIC  
HEALTH**

**Title 22. Social Security  
DPH-11-009 Medical Information Breach**

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulations permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The 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.

To request copies of the regulatory proposal in an alternate format, please write or call: Anita Shumaker, Office of Regulations, 1415 L Street Suite 500, Sacramento, CA 95814, at (916) 440-7718, email to [Anita.Shumaker@CDPH.ca.gov](mailto:Anita.Shumaker@CDPH.ca.gov) or use the California Relay Service by dialing 711.

WRITTEN COMMENT PERIOD

Written comments pertaining to this proposal, regardless of the method of transmittal, must be received by Office of Regulations by 5:00 p.m. on December 8, 2018, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely.

Written comments may be submitted as follows:

1. By email to: [regulations@cdph.ca.gov](mailto:regulations@cdph.ca.gov). It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-11-009 Medical Information Breach" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;

3. By postal service or hand delivered to: 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-11-009 Medical Information Breach**", with the comment author's name and email or mailing address.

PUBLIC HEARING

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received 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, pursuant to Government Code Section 11346.8.

ASSISTIVE SERVICES

For individuals with disabilities, the Department will provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takes, reading or writing assistance. To request these assistive services, please call (916) 558-1710 (or California Relay at 711 or 1-800-735-2929), email [Regulations@cdph.ca.gov](mailto:Regulations@cdph.ca.gov) or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are made less than 10 business days prior to a public hearing.

AUTHORITY AND REFERENCE

The Department may promulgate the proposed regulation sections under the Department's regulatory authority provided by Health and Safety Code sections 131000, 131050, 131051, 131052 and 131200. The proposed regulation sections implement, interpret, and make specific Health and Safety Code section 1280.15.

INFORMATIVE DIGEST/POLICY STATEMENT  
OVERVIEW

**Summary of Proposal**

The California Department of Public Health (Department) proposes to adopt Chapter 13 (sections 79900-79905) of Division 5, Title 22 of the California Code of Regulations to establish standards for assessing breaches of a patient's medical information, and administrative penalties related to such breaches.

**Background**

In 2008, Health and Safety Code section 1280.15 (Code) was enacted. The Code requires clinics, health facilities, home health agencies, and hospices (collectively, the health care facilities) to prevent the unlawful or unauthorized access to, and use or disclosure of, patient medical information (breaches). The Code authorizes the Department to assess administrative penalties against these health care facilities.

**Problem Statement**

The Department, in its efforts to assess administrative penalties for breaches of patient medical information pursuant to the Code, requires regulations to establish a framework by which administrative penalties will be assessed in a fair and consistent manner, as well as to clarify reporting requirements for the health care facilities.

**Objectives (Goals) of the Regulation**

Broad objectives of this proposed regulatory action are:

- Fewer breaches of patient medical information.
- Increased vigilance by health care facilities to protect patient medical information.
- Closer alignment of state and federal law relating to patient medical information breaches.
- Improved patient experiences for the people of California.

**Anticipated Benefits**

- Increased security of patient medical information.
- Health care facilities will be more protective of patient medical information.
- Health care facilities will be more efficient in their internal data protection processes due to federal and state alignment.
- Health care facilities will be more efficient in responding to breaches due to federal and state alignment.
- Increased consumer confidence in the security of medical information.
- Increased transparency and consistency in calculation of assessed penalties.

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

The Department has reviewed existing state and federal regulation related or affecting this area and concludes that the proposed regulations are compatible or consistent with existing state and federal regulations.

Under the Health Insurance Portability and Accountability Act (HIPAA), the federal government has established provisions relating to medical information breaches. In drafting these proposed regulations, the Department has extensively used the HIPAA regulations as a model for developing its own. However, in some cases the HIPAA provisions differ from the final regulations proposed herein. These differences are often the result of variation between existing state and federal law as they relate to privacy and medical information (i.e. differences between underlying statutorily defined terms). In other cases, the Department has modeled its regulations after HIPAA regulations, but constructed them differently when the Department finds such changes are in the best interest of the people of California. HIPAA’s provisions are meant to be a “floor” for patient protection standards and a state may enact its own laws and regulations under certain circumstances, including, but not limited to, when the state’s law provides greater protection. (45 C.F.R. §§ 160.201–205 (2013).) Therefore, the Department concludes that the proposed regulations are consistent with existing state and federal laws.

FORMS INCORPORATED BY REFERENCE

Not applicable.

MANDATED BY FEDERAL LAW OR REGULATIONS

Not applicable.

OTHER STATUTORY REQUIREMENTS

Not applicable.

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.

DISCLOSURES REGARDING THE PROPOSED ACTION

FISCAL IMPACT ESTIMATES

- A) **Cost to any local agencies or school districts that must be reimbursed pursuant to Section 17561 of Government Code:**

The proposed regulations do not impose costs on

any local agency or school district for which reimbursement would be required pursuant to part 7 (commencing with section 17500) of division 4 of the Government Code.

**B) The cost or savings to any state agency:**

The department estimates that the overall effect will be cost neutral as affected regulated entities are already paying the financial penalties as appropriate under existing statutes. State operated facilities may receive fines if they fail to comply with patient medical information requirements.

**C) Impact on any cost or savings in federal funding of the program:**

There is no federal funding effected by the proposed regulatory action.

**D) Other nondiscretionary costs or savings imposed on local agencies:**

The proposed regulations do not impose other nondiscretionary costs or savings on any local agencies.

- The creation of new businesses or the elimination of existing businesses within the state because the Department estimates that the regulation's financial impact would be cost neutral and both existing and potential new businesses would pay similar financial penalties as appropriate under existing statutes.
- The expansion of businesses currently doing business within the state because the Department estimates that the regulation's financial impact would be cost neutral and affected regulated entities are already paying the financial penalties as appropriate under existing statutes.
- The regulatory action protects the patient's privacy rights regarding disclosures of medical information. Maintain security standards to prevent breaches which creates a positive impact to the health, safety and welfare of California. Also, the economy is not impacted because the Department estimates that cost is neutral as affected regulated entities are already paying the financial penalties as appropriate under existing statutes.

HOUSING COSTS

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

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

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

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department has made an initial determination that these regulations would 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 proposed regulations would not significantly affect:

- The creation or elimination of jobs within the state because the Department estimates that the regulation's financial impact would be cost neutral and affected regulated entities are already paying the financial penalties as appropriate under existing statutes.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

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.

BUSINESS REPORTING REQUIREMENT

The proposed regulations require that health care facilities must report to the Department details regarding unlawful or unauthorized access to patients' medical information. The Department has found that it is necessary for the health, safety, or welfare of the people of the state.

EFFECT ON SMALL BUSINESS

The Department has determined that there would be an effect on small business because small businesses will be legally required to comply with the regulation and may incur a financial penalty from the enforcement of the regulation. Depending on the type and frequency of information breach, a penalty would vary from no cost to a potentially substantial cost.

However, the proposed regulation has a mechanism to adjust costs for facilities for which penalties are a burden.



SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

ALTERNATIVES CONSIDERED

The Department must determine that no reasonable alternative considered, identified, or otherwise brought to the attention of the Department 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 provision of the law.

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

- Ponemon Inst., Third Annual Benchmark Study on Patient Privacy & Data Security (December 2012).
- Redspin, Inc., Breach Report 2013: Protected Health Information (PHI) (February 2014).
- The Health Insurance Portability and Accountability Act of 1996 (Pub.L. 104-191, 110 Stat. 1936, enacted August 21, 1996), Parts 160 and 164.
- Federal Register vol 78, no. 17, Jan. 25, 2013 (Part II).
- Cal. Reg. Notice Register 2012, No. 43-Z, p. 1564.
- *California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284 [65 Cal.Rptr.2d 872].
- *Eisenhower Medical Center v. Superior Court of Riverside County* (2014) 226 Cal. App. 4th 430 [172 Cal.Rptr.3d 165].

CONTACT PERSON

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Chelsea Driscoll (916) 552-8778. All other inquiries concerning the action described in this notice may be directed to, Anita Shumaker, Office of Regulations, at (916) 440-7718, or to the designated backup contact, Charlet Archuleta, Office of Regulations, at (916) 440-9403.

AVAILABILITY STATEMENTS

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 previously noted, will be the location of public records, including reports, documentation, and other material related to the proposed regulations.

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) 440-7718 (or the California Relay Service at 711), or send an email to [regulations@cdph.ca.gov](mailto: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.

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.

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 text of the proposed regulations, and the initial statement of reasons) that are available via the Internet may be accessed at [www.cdph.ca.gov](http://www.cdph.ca.gov) and by clicking on the following: Programs, Office of Regulations, and the Proposed Regulations link.

**TITLE 22. DEPARTMENT OF  
PUBLIC HEALTH**

**Title 22, California Code of Regulations  
DPH-17-011P — Skilled Nursing Facilities 3.5  
Direct Care Hours**

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the emergency regulation permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The Department is conducting a written comment period 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 scheduled a public hearing to accept comments on the proposed action. Any person may present statements or arguments described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Date: **December 7, 2018**  
Time: **9:00 a.m. to 5:00 p.m.**  
Location: **1500 Capitol Ave, Room 146  
Sacramento, CA 95814**

An agenda for the public hearing will be posted at the time and place of hearing location.

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 5 p.m. on December 7, 2018, 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 to: [regulations@cdph.ca.gov](mailto:regulations@cdph.ca.gov). It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "**DPH-17-011P-SNF 3.5 Direct Care Hours**" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;
3. By United States Postal Service to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814; or
4. Hand-delivered to: 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-17-011P-SNF 3.5 Direct Care Hours**), author's name and mailing address.

AUTHORITY AND REFERENCE

The Department is proposing to amend the proposed rulemaking under the authority provided in sections 1275, 1276.5, 1276.65, and 131200, of the Health and Safety Code.

The Department is proposing to implement, interpret, or make specific sections 1276, 1276.5, 1276.65, 131050, 131051, and 131052, of the Health and Safety Code; and section 14126.022, of the Welfare and Institutions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These regulations will implement new minimum staffing requirements for skilled nursing facilities (SNFs) as established by Senate Bill (SB) 97 (Chapter 52, Statutes of 2017).

This regulatory action is necessary to comply with language in the legislation directing the California Department of Public Health (Department) to adopt regulations to implement the amendments made by SB 97.

**Policy Statement Overview**

*Problem Statement:* SB 97 increased the minimum staffing standard for SNFs from 3.2 nursing hours per patient day (NHPPD) to 3.5 direct care service hours per patient day (DCSHPPD), with a minimum of 2.4 hours per patient day performed by certified nurse assistants (CNAs). This regulatory action is necessary to implement these new minimum staffing requirements and to make permanent the emergency regulations that became effective on July 1, 2018.

*Objectives:* The broad objectives of this proposed regulatory action are:

- To fulfill the legislative directive to adopt regulations to implement the amendments made by SB 97.
- To align the Department's regulations with changes to statute.

*Benefits:* The expected benefits of this proposed regulatory action, including, to the extent applicable, non-monetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things, are:

- To improve clarity and reduce confusion within the regulated community and for residents and

their families by aligning the staffing standards in the Department’s regulations with the standards set by the Legislature.

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

The Department evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations. This evaluation included a review of the Department’s laws, as well as those statutes and regulations related to SNFs. The Department has determined that this proposed regulatory action is not inconsistent or incompatible with existing operative regulations. After conducting a review for any regulations that would relate to or affect staffing requirements in SNFs, the Department has concluded that no known statute or operative regulation conflicts with this proposed regulatory action.

LOCAL MANDATE

The Department has determined that the proposed 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 ESTIMATE

- A. **Cost or Savings to Any State Agency:** None.
- B. **Cost to Any Local Agency or School District:** None.
- C. **Other Nondiscretionary Cost or Savings Imposed on Local Agencies:** There are no known costs or savings imposed on local agencies in connection to these proposed regulations.
- D. **Cost or Savings in Federal Funding to the State:** None.

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

Implementation of these proposed regulations is contingent upon an appropriation in the annual Budget Act and continued federal approval of the Skilled Nursing Facility Quality Assurance Fee, in accordance with Health and Safety Code section 1276.65, subdivision (i). The annual Budget Act for fiscal year 2018–19 included funding for these provisions.

The Department has made an initial determination that these proposed regulations would not have a significant statewide adverse economic impact directly impacting businesses, including the ability of California businesses to compete with businesses in other states. Jobs will not be created or eliminated in SNFs as a result of these regulations because the regulations only restate the new direct care service hour requirements found in Health and Safety Code section 1276.65. The 2018 Budget Act includes \$43 million (\$21.7 million General Fund) for the SNF staffing standard “add-on” to implement SB 97. The add-on reimburses SNFs participating in the Medi-Cal program for costs to increase their staffing levels to meet the new statutory mandated staffing standards. These regulations do not add any additional cost to the cost of the statutory change.

These proposed regulations would have a minor economic impact on SNFs applying for a patient needs waiver to waive the requirement to staff at 2.4 direct care service hours per patient day for CNAs. The Department will use an online application process for this waiver and proposes additional administrative requirements for waiver applicants. These requirements include renewing the patient needs waiver annually, posting a notice of an approved waiver in a public location within the facility, and providing written notice of approved or pending waivers to potential residents.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

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.

STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

In addition, the proposed regulations would not significantly affect the following:

- a) The creation or elimination of jobs within the State of California.
- b) The creation of new businesses or the elimination of existing businesses within the State of California.
- c) The expansion of businesses currently doing business within the State of California.
- d) The health and welfare of California residents, worker safety, and the State’s environment is expected to improve clarity and reduce confusion within the regulated community and for residents and their families by aligning the staffing standards in the Department’s regulations with the standards set by the Legislature.

**IMPACT ON SMALL  
BUSINESS DETERMINATION**

The Department has determined that the proposed regulations may affect small business. However, the effect will not be adverse. The proposed regulatory action would impose minimal direct or indirect costs on SNFs applying for a patient needs waiver. However, there is no reimbursable or calculable cost to the provider community or to the state to implement these regulations since the costs are a result of SB 97.

**HOUSING COSTS DETERMINATION**

The Department has determined that these proposed regulations will not impact housing costs.

**DOCUMENTS INCORPORATED  
BY REFERENCE**

None.

**CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons or SNFs than the proposed regulatory action, or would be more cost-effective to affected private persons or SNFs and equally effective in implementing the statutory policy, including the higher staffing requirements established by SB 97, or other provision of law.

**CONTACT PERSON**

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Chelsea Driscoll (916) 552-8778. All other inquiries concerning the action described in this notice may be directed to, Michael Boutros, Office of Regulations, at (916) 440-7822, or to the designated backup contact, Anita Shumaker, Office of Regulations, at (916) 440-7718.

**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](mailto: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/Programs/OLS/Pages/Proposed-Regulations.aspx](http://www.cdph.ca.gov/Programs/OLS/Pages/Proposed-Regulations.aspx).

**GENERAL PUBLIC INTEREST**

**DEPARTMENT OF  
DEVELOPMENTAL SERVICES**

**NOTICE OF EXTENSION OF WRITTEN  
COMMENT PERIOD**

On September 14, 2018, the Department of Developmental Services published a Notice of Proposed Rulemaking concerning Early Intervention Services. (California Regulatory Notice Register 2018, No. 37-Z, September 14, 2018, p. 1487.)



The original written comment period deadline for this action was November 1, 2018. The Department is now extending the written comment deadline to December 5, 2018.

Please submit all written comments to:

Sharon DeRego  
 Monitoring and Family Services Branch  
 Department of Developmental Services  
 1600 9<sup>th</sup> Street, Room 320, MS 3-11  
 Sacramento, CA 95814  
 FACSIMILE: (916) 654-1605  
 EMAIL: [Sharon.DeRego@dds.ca.gov](mailto:Sharon.DeRego@dds.ca.gov)

If you have any questions, please contact Ms. DeRego.

**DEPARTMENT OF  
 DEVELOPMENTAL SERVICES**

**NOTICE OF EXTENSION OF WRITTEN  
 COMMENT PERIOD**

On September 21, 2018, the Department of Developmental Services published a Notice of Proposed Rule-making concerning Speech-language Pathology Assistants. (California Regulatory Notice Register 2018, No. 38-Z, September 21, 2018, p. 1661.)

The original written comment period deadline for this action was November 9, 2018. The Department is now extending the written comment deadline to December 5, 2018.

Please submit all written comments to:

Sharon DeRego  
 Monitoring and Family Services Branch  
 Department of Developmental Services  
 1600 9<sup>th</sup> Street, Room 320, MS 3-11  
 Sacramento, CA 95814  
 FACSIMILE: (916) 654-1605  
 EMAIL: [Sharon.DeRego@dds.ca.gov](mailto:Sharon.DeRego@dds.ca.gov)

If you have any questions, please contact Ms. DeRego.

**DEPARTMENT OF FISH  
 AND WILDLIFE**

**CALIFORNIA ENDANGERED SPECIES ACT  
 CONSISTENCY DETERMINATION NO.  
 2080-2018-009-05**

**Project:** Laguna County Sanitation District  
 Facilities Construction, Operation,  
 and Maintenance Project

**Location:** Western Santa Maria Valley, Santa  
 Barbara County, California

**Applicant:** Laguna County Sanitation District,  
 Santa Barbara County Public Works  
 Department

**BACKGROUND**

The Laguna County Sanitation District (Applicant) proposes to construct new facilities, as well as conduct ongoing operation and maintenance activities (Project). The Project is located northwest of Orcutt and southwest of the city of Santa Maria in Santa Barbara County, California. The Project Area includes Applicant-owned property located at the western terminus of Durtard Road, adjacent and nearby land not owned by the Applicant, and access roads. The operation and maintenance activities would occur on the Applicant's property and within established rights-of-way. New facilities would be constructed both onsite and offsite. The construction, operation, and maintenance activities (Covered Activities) involve the following:

- Phased expansion of existing treatment facilities;
- Removal of an existing soil stockpile and expansion of an existing storage reservoir;
- Burial of an above-ground segment of a supply pipeline to the existing storage reservoir;
- Construction of a tertiary-treated water pipeline to the Rancho Maria Golf Course and environs;
- Construction of a tertiary-treated water pipeline to Waller Park and environs;
- Replacement of the Foster Road segment of the trunk sewer line; and
- Operation and maintenance activities, such as repair/replacement of the existing piping and pump facilities, repair and maintenance of roads, vegetation maintenance, and erosion control.

The Project will require heavy equipment (e.g., water truck, excavator, backhoe, loader, flatbed trailer), and all necessary equipment needed to complete construction.

The Project Area lies within the historic range and federal critical habitat of California tiger salamander (CTS) (*Ambystoma californiense*) and the Covered Activities described above have the potential to incidentally take<sup>1</sup> CTS where those activities take place within development and farming areas. In particular, CTS could be incidentally taken as a result of crushing or entombment by equipment or personnel (from collapsing of burrows), or entrapment in trenches during trench excavation. CTS is designated as an endangered species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(3)(G).)

CTS are distributed in six metapopulations in Santa Barbara County:

- southwestern Santa Maria Valley (West Orcutt), which includes the Project Area;
- southeastern Santa Maria Valley (Bradley–Dominion);
- west Solomon Hills/north Los Alamos Valley;
- east Los Alamos Valley;
- Purisima Hills; and
- Santa Rita Valley.

There are five known CTS breeding ponds in and near the Project Area. These are: (1) GUAD–3, also known as the Reservoir Pool; (2) SAMA–3, also known as the Black Road Pool; (3) SAMA–2, also known as the Mahoney Pools, east of the Project Area; (4) GUAD–2, south of the Project Area; and (5) GUAD–1, south of the Project Area.

Three known CTS breeding ponds lie in proximity to the proposed recycled water pipeline alignments: SAMA–4; SAMA–6; SAMA–7; SAMA–10; and SAMA–21. Another two potential CTS breeding ponds are within 2,200 feet of the Foster Road segment of the trunk sewer line: SAMA–8 and SAMA–20. The Project Area is within the southwestern West Orcutt subpopulation of CTS. This subpopulation is part of the Southwestern Santa Maria Valley metapopulation, and encompasses the known CTS breeding sites extending from the Casmalia Hills on the south to the Santa Maria

Airport on the north and from west of Black Road to eastward to SR 135. There are 12 known CTS breeding sites and several potential breeding sites within this area. Four of these known ponds occur along the base of the Casmalia Hills, just off the southwestern edge of the Orcutt Dune Sheet. The other eight ponds occur on the Orcutt Dune Sheet.

Larval CTS have been found at three locations during field surveys on and adjacent to the Applicant's property: (1) a seasonal pool, the majority of which lies on Applicant-owned property (Reservoir Pool = GUAD–3); (2) a seasonal pool adjacent to Black Road (Black Road Pool = SAMA–3); and (3) a complex of seasonal pools on private property north of Dutard Road east of Black Road (Mahoney Pools = SAMA–2). These locations are among the westernmost documented occurrences of CTS in the Santa Maria Valley. There are also anecdotal accounts of adult CTS reported at three other locations within and adjacent to the Applicant's property.

The Reservoir Pool covers approximately 2–3 acres at capacity. It is bisected by PG&E's transmission line corridor (a legal parcel). During the spring seasons of 2005, 2006, and 2008, the United States Fish and Wildlife Service (USFWS) and local biologists surveyed the Reservoir Pool. CTS larvae were observed in each year. Additionally, the Applicant's operations and maintenance personnel have found adult CTS above-ground on foggy mornings in grassland several hundred feet north of Reservoir Pool. An adult male CTS was captured during the course of upland drift fence surveys in February of 2014, near the western boundary of APN 113–240–014.

Anticipated incidental take associated with the proposed construction, operation and maintenance or repair of new facilities could potentially include mortality to, or injury of, terrestrial adult or juvenile CTS associated with the removal of upland habitat. CTS could be crushed while harboring in burrows. Vehicle traffic has some potential to result in mortality of CTS, however vehicle use associated with facility operations is generally limited to daytime hours. Finally, harassment from relocating encountered CTS may significantly disrupt normal behavioral patterns, including breeding, feeding, or sheltering. Take resulting from Covered Activities will be incidental to the otherwise lawful and permitted activities conducted by the Applicant.

Because the Project is expected to result in take of a species designated as endangered under the federal ESA, the applicant prepared a Habitat Conservation Plan (HCP) in support of an application for an Incidental Take Permit (ITP) pursuant to section 10(a)(1)(B) of the ESA. On August 22, 2017, the USFWS issued an ITP (Service file No. TE16913C) to the Applicant. The HCP describes the Project and specifies measures the Applicant will take to minimize and mitigate impacts to

<sup>1</sup> Pursuant to Fish and Game Code section 86, " 'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459,507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), " 'take' . . . means to catch, capture or kill").

species resulting from the taking that will likely result from the Project. The ITP requires the Applicant to comply with terms of the HCP and its related ITP, and incorporates additional conditions.

Quantification of potential impact to CTS habitat from each Project component is based on best available information. Impacts requiring compensatory mitigation will be offset through establishment of a Conservation Easement on 132.83 acres owned by the Applicant. An evaluation of habitat value for CTS within the proposed Conservation Easement is provided in the HCP. The assessment concluded that it supports high quality CTS aquatic breeding and upland refuge habitat. A Management Plan for the Conservation Easement is also included in the HCP.

Some individuals could be injured or killed if they are not detected during pre-activity capture and relocation surveys. The number of individuals that would be harassed, harmed, injured, or killed is undetermined but would likely be proportional to habitat quantity and quality (e.g., rodent burrow density). In addition, populations of CTS are likely to vary substantially from year-to-year. Because of this uncertainty and difficulty of estimating the actual number of CTS that might be taken by proposed activities, the Applicant will rely primarily on habitat acreage as a proxy to measure impacts to CTS. In addition, both annual and cumulative (30-year term of permit) take limits for individuals will be set. In any one year, the annual take limits are two CTS dead or injured, and five CTS harassed. During the life of the permit the cumulative take limits are 20 CTS found dead or injured, and 40 CTS captured and relocated (i.e., "harassed"). If either annual or cumulative take limits are exceeded, the Applicant will immediately contact the Ventura Field Office to discuss the need for a permit amendment. Project activities that are likely to cause additional take will be suspended until the review is completed.

The project could realize beneficial impacts in addition to the preservation, management, and protection of aquatic breeding and upland refuge habitat for CTS afforded by the Conservation Easement. The Rancho Maria Recycled Water Pipeline portion of the Project would require construction of a new reservoir to provide irrigation water supply and increase storage capacity. Existing irrigation reservoirs on the Rancho Maria Golf Course may be used by CTS for breeding.

Loss of habitat is the primary factor that led to the listing of CTS. The preservation of 132.83 acres of aquatic and upland habitat associated with the Reservoir Pool and maintaining the land in its current use as irrigated livestock pasture will help to ensure the viability of local CTS populations by preventing conversion to more intensive land uses, such as irrigated cropland. Therefore, protection and management of the Conservation

Easement effectively mitigates for the Project's impacts to CTS and its habitat.

Adaptive management is a component of HCPs required by the Five-point Policy developed by the USFWS and the National Marine Fisheries Service in 2000. This process will allow the Applicant's management activities to be adjusted during the life of the Permit through periodic assessment. Adaptive management provides a means for ensuring that the biological goals and objectives of the HCP are being met. It employs feedback loops to incorporate results of surveys and monitoring into decision-making regarding future management techniques. Periodic assessment may also indicate the need to revise management strategies that could require amending the HCP. The process of adaptive management is integral to ensuring that the biological goals and objectives will be achieved.

On September 13, 2017, the Director of the CDFW received the initial notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the ITP and its required implementation of the HCP are consistent with CESA for purposes of the Project and CTS. On September 28, 2017, the Applicant sent the Director a Rescind Request in order to further evaluate and coordinate with CDFW on the Conservation Easement and associated management funding instruments. On August 27, 2018, the Applicant once again submitted to the Director of CDFW a consistency determination request (Cal. Reg. Notice Register 2018, No. 37-Z, p. 1602).

#### DETERMINATION

CDFW has determined that the ITP and its associated HCP are consistent with CESA as to the Project and CTS, because the mitigation measures contained in the ITP and its associated HCP meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of CTS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the HCP and ITP will minimize and fully mitigate the impacts of the authorized take; (3) adequate funding is ensured to implement the required avoidance, minimization, and mitigation measures and to monitor compliance with, and effectiveness of, those measures; and (4) the Project will not jeopardize the continued existence of CTS. The mitigation measures in the ITP and its associated HCP include, but are not limited to, the following:

##### Avoidance, Minimization, and Mitigation Measures

- The Applicant proposes to preserve and endow a Conservation Easement of 132.83 acres to be held by CDFW as mitigation for the conservation of the CTS.



- The Applicant will ensure field crews participate in training prior to the initiation of activities. Trainings will emphasize Project-specific information on CTS, avoidance and minimization measures, roles and responsibilities, and communication protocols.
  - Project workers shall limit their vehicle use to existing routes of travel. The Applicant will prohibit cross-country travel unless access is determined critical for a particular activity and the route has been flagged to avoid or minimize adverse effects.
  - The Applicant will ensure Project-related vehicle speeds will not exceed 10 miles-per-hour within CTS upland habitat.
  - Prior to moving vehicles or equipment, employees shall look under the vehicles or equipment for CTS individuals. If employees observe an individual, no one shall move the vehicle until the animal has vacated the area on its own accord or has been relocated out of harm's way by the USFWS-approved biologist.
  - A USFWS-approved biologist shall be present daily during the pre-initial ground disturbance period surveys, as well as during initial grading and excavation activities. Upon completion of initial ground disturbance, the biologist will periodically (minimum twice per week) visit the Project site throughout the construction period. During periods of rain or heavy fog/dew, the biologist will conduct daily pre-activity surveys to ensure that no CTS individuals have migrated into the work area. No construction work will be initiated until the USFWS-approved biologist determines that the work area is clear of CTS individuals.
  - The Applicant shall implement The Declining Amphibian Task Force Fieldwork Code of Practice for all amphibian relocation activities. The USFWS-approved biologist shall relocate any CTS found within the Project footprint to an active rodent burrow system located no more than 300 feet outside of the Project Area unless otherwise approved by CDFW and USFWS. The USFWS-approved biologist shall identify relocation areas based upon best suitable habitat available. Only a USFWS-approved biologist shall relocate California tiger salamanders. The USFWS-approved biologist shall document both locations by photographs and GPS positions. The USFWS-approved biologist shall photograph and measure (snout-vent) CTS for identification purposes prior to relocation. The Applicant will provide all documentation to the USFWS and CDFW within 24 hours of relocation.
  - The Applicant will avoid rodent burrows to the extent possible. If burrows cannot be avoided, the Applicant may perform burrow excavation using hand tools or via gentle excavation using construction equipment, under the direct supervision of the USFWS-approved biologist. In lieu of burrow excavation, the Applicant may use steel plates or plywood to protect small mammal burrows from ground disturbance. The Applicant will remove plates and plywood nightly when a significant rain event is forecasted within 48 hours and if work is scheduled to cease for consecutive days.
  - The Applicant will install exclusionary barriers at the discretion of the USFWS-approved biologist to minimize the potential for CTS to enter the worksite.
  - The USFWS-approved biologist will inspect steep-walled excavations (e.g., trenches) that may act as pitfall traps for wildlife at least once per day and immediately before backfilling. In lieu of daily inspections (e.g., weekends), the Applicant will install exclusionary fencing, covers, ramps, or similar mechanisms to prevent wildlife entrapment.
  - The Applicant will cap or seal with tape (or equivalent material) open pipe segments each night, or otherwise will store open pipe segments at least three feet above ground.
  - If covered activities must occur during the rainy season, the Applicant will not work during rain events (greater than 0.5 inches of rainfall), 48 hours prior to rain events, or during the 48 hours after these events.
- Monitoring and Reporting Measures
- If a dead or injured CTS is found, the Applicant shall notify the USFWS Ventura Field Office at (805) 644-1766 within 72 hours. In addition, the Applicant shall notify CDFW immediately.
  - The Applicant will conduct onsite construction monitoring, maintain daily monitoring logs, and prepare a post-construction compliance report.
  - By January 31 following each year of permit issuance and Project implementation, the Applicant shall submit a report to the Ventura USFWS Office to document the status of the Project. Although not a condition of the HCP, CDFW requests a copy of the report as well.
- Financial Assurances
- The Applicant will provide financial assurances consistent with CESA, in the form of a letter



demonstrating the establishment of a trust fund that will hold the Conservation Easement management fund endowment with the Applicant. The Applicant will provide a copy of the trust fund establishment letter to CDFW. The Applicant will also provide a copy of the executed Conservation Easement over 132.83 acres identified in the HCP as mitigation for the conservation of the CTS.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of the state-listed threatened CTS, provided the Applicant implements the Project as described in the HCP and its associated ITP including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the HCP and its associated ITP. If there are any substantive changes to the Project, including changes to the minimization and mitigation measures in the HCP, or if USFWS amends or replaces ITP, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1, 2081, subs. (b) and (c)).

By:

/s/

Chad Dibble, Deputy Director  
Ecosystem Conservation Division  
California Department of Fish and Wildlife

Date:

10/3/18

#### REFERENCES

Searcy, C. A. and H. B. Shaffer. 2008. Calculating biologically accurate mitigation credits: insights from the California tiger salamander. *Conservation Biology* 22: 997–1005.

## RULEMAKING PETITION DECISIONS

### DEPARTMENT OF CORRECTIONS AND REHABILITATION

#### NOTICE OF DECISION ON PETITION TO REPEAL REGULATIONS

Pursuant to Government Code 11340.7

**Petitioner**

Lonnie Lee Poslof, #BE0659

**Department Contact Person**

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

**Availability of Petition**

The petition to repeal regulations is available upon request directed to the Department’s contact person.

**Authority**

The authority granted by Government Code (GC) Section 12838.5 vests to the California Department of Corrections and Rehabilitation (CDCR) all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished Youth and Adult Correctional Agency, California Department of Corrections, Department of the Youth Authority, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and the State Commission on Juvenile Justice, Crime and Delinquency Prevention. Penal Code (PC) Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections refers to the Secretary of the CDCR. PC Section 5054 vests with the Secretary of the CDCR the supervision, management, and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein. PC Section 5055 provides that commencing July 1, 2005, all powers/duties previously granted to and imposed upon the CDC shall be exercised by the Secretary of the CDCR. PC Section 5058 provides that the Director may prescribe and amend regulations for the administration of prisons.

**Summary of Petition:**

Petitioner requests repeal of regulations implemented by the Department via memorandum dated November 30, 2018 regarding Non-Designation of Classification for Enhanced Outpatient Program Inmates. Petitioner cites the authority for his request is GC Section

11340.6, which allows any interested person to petition a state agency to adopt, amend or repeal a regulation.

Petitioner states the regulation creates dangerous situations for those inmates who cannot be housed with general population, especially those who have commitment offenses of sex crimes or crimes against children.

Petitioner states the government has an affirmative duty to protect or reasonably protect its inmates from constant threat of violence from their fellow inmates, and requests a public hearing pursuant to GC Section 11340.7. Petitioner further states that pursuant to that GC Section, within 30 days of receiving such a request, the agency must either notify the person in writing why the requested change has been denied, or set the matter for public hearing.

**Department’s Decision:**

The Department denies the petition in its entirety.

The Petition, received by the Department on September 11, 2018, does not provide enough detail for the Department to ascertain the specific regulation section the petitioner requests be repealed. The petitioner states the regulation is implemented in a Department memorandum dated November 30, 2018; however, this does not provide clarity as the date cited is two months in the future. The Department also denies the Petitioner’s request for public hearing.

**DEPARTMENT OF PUBLIC HEALTH**

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

Pursuant to Government Code 11340.7

**Petitioner**

Deborah Rotenberg, DJR Health Law & Consulting

**Department Contact Person**

Please direct any inquiries regarding this action to:

Keith Van Wagner, Assistant Chief Counsel  
 Regulations, Privacy & Special Projects  
 California Department of Public Health  
 1415 L Street, Suite 500, MS 0505  
 Sacramento, CA 95814

**Availability of Petition**

Pursuant to subdivision (d) of Government Code section 11340.7, the California Department of Public Health (Department) will provide a copy of this deci-

sion to the Office of Administrative Law for publication in the California Regulatory Notice Register. Any interested persons have the right to obtain a copy of the petition that is the subject of this decision by sending a request to the Department contact person listed in this notice. When submitting such a request, please reference DPH PETITION RESPONSE P-18-02 in the request.

**Authority**

Health and Safety Code Section 1225.

**Provisions of California Code of Regulations Affected**

Title 22, Social Security  
 Division 5, Licensing and Certification of Health Facilities, Home Health Agencies, Clinics, and Referral Agencies  
 Chapter 7, Primary Care Clinics  
 Article 2, License  
 Subsection 75021, Application Required

**Summary of Petition and Department Decision: Subsection 75021(2)**

**Petitioner’s Request:** Remove the language “dental service, medical service or podiatric service.”

**Reason for Request:** Petitioner states that the amendment of this section is required because this section conflicts with Health and Safety Code section 1212(b)(1). Petitioner further states that this change “would help the Department reduce its workload, remain current in its review of other applications, and remove an undue barrier to the clinics’ ability to continue to treat and expand services for California’s safety-net population.”

**Department’s Response:** The petition is granted. Language added to Health and Safety Code section 1212(b)(1) in amendments in 2003 superseded the requirement of a new application for dental, medical, or podiatric services in title 22, section 75021(2) of the California Code of Regulations. Therefore, section 75021(2) must be amended to comply with the statute. The Department will initiate a rulemaking action to amend section 75021(2). The Department will submit to the Office of Administrative Law a proposal under title 1, section 100(a)(6) of the California Code of Regulations to amend section 75021(2) to comply with the superseding language in Health and Safety Code section 1212(b)(1). While the Department has granted this petition for regulatory changes, the Department retains the right to alter proposed language or add further wording to clarify or to address other issues.

**Date of Decision:** October 8, 2018.

**AVAILABILITY OF INDEX OF  
PRECEDENTIAL DECISION**

**BOARD OF PHARMACY**

**ANNUAL NOTICE OF AVAILABILITY OF  
PRECEDENTIAL DECISIONS INDEX**

NOTICE IS HEREBY GIVEN that the California State Board of Pharmacy (Board), pursuant to section 11425.60 of the Government Code, the Board maintains an index of precedential decisions, which is annually made available by the Board to the public by e-mail subscription. To join the Board's e-mail list, go to [www.pharmacy.ca.gov](http://www.pharmacy.ca.gov). The index and the text of the precedent decisions are continuously available on the Board's website at <http://www.pharmacy.ca.gov/enforcement/precedential.shtml>.

For additional information, contact:

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**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# 2018-0907-04  
BOARD OF REGISTERED NURSING  
Credit for Military Education/Experience

This rulemaking action implements Senate Bill 466 (Stats. 2015, ch. 489) and expands requirements on nursing education programs to award students credit for

military education and experience toward the requirements for licensure as Registered Nurses.

Title 16  
ADOPT: 1423.1, 1423.2  
AMEND: 1418, 1424, 1426, 1430  
Filed 10/08/2018  
Effective 10/08/2018  
Agency Contact: Dean Fairbanks (916) 574-7684

File# 2018-0821-01  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION  
Security Threat Group Management

The California Department of Corrections and Rehabilitation (Department) submitted this timely certificate of compliance to make permanent the amendments made in OAL File No. 2017-0918-05EON, and readopted in OAL File No. 2018-0214-01EON regarding security threat group management.

Title 15  
ADOPT: 3378.9, 3378.10  
AMEND: 3000, 3023, 3043.8, 3044, 3084.9, 3269, 3335, 3337, 3341, 3341.2, 3341.3, 3341.5, 3341.6, 3341.8, 3341.9, 3375, 3375.1, 3375.2, 3376, 3376.1, 3378, 3378.1, 3378.2, 3378.3, 3378.4, 3378.5, 3378.6, 3378.7, 3378.8  
REPEAL: 3334  
Filed 10/03/2018  
Effective 10/03/2018  
Agency Contact: Anthony Carter (916) 445-2220

File# 2018-0913-02  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION  
Dental Care for Patients in CDCR Institutions

The California Department of Corrections and Rehabilitation (Department) filed this action to amend regulations that address dental care for patients within Department institutions.

Title 15  
AMEND: 3352.2, 3352.3, 3354, 3355.1  
Filed 10/08/2018  
Effective 10/08/2018  
Agency Contact: Julie Inderkum (916) 691-0697

File# 2018-1005-03  
DEPARTMENT OF FOOD AND AGRICULTURE  
Peach Fruit Fly Eradication Area

This emergency action adds the entire county of Orange to the list of counties proclaimed to be eradication areas with respect to the peach fruit fly, *Bactrocera zonata*.

Title 3  
AMEND: 3591.12  
Filed 10/08/2018  
Effective 10/08/2018  
Agency Contact: Karen Olmstead (916) 403-6879

File# 2018-0905-01  
DEPARTMENT OF MOTOR VEHICLES  
Appendix of Approved Identity Documents

This change without regulatory effect filing by the Department of Motor Vehicles adds the Republic of Fiji passport to the list of documents that have been deemed to provide satisfactory proof of an applicant's identity for purposes of subdivision (b) of section 16.04.

Title 13  
AMEND: Appendix (Article 2.0)  
Filed 10/10/2018  
Agency Contact: Randi Calkins (916) 657-8898

File# 2018-0830-03  
DEPARTMENT OF PUBLIC HEALTH  
CLPP \$12 Fee Increase (Section 100)

The Department of Public Health submitted this action without regulatory effect, pursuant to California Code of Regulations, title 1, section 100, to amend the fee for the application of lead-related construction certifications from \$75.00 to \$87.00 in a regulation that establishes these fees and in a corresponding incorporated by reference application form. The change in these fees is authorized in Health and Safety Code section 105250.1, as amended in A.B. 1810 (Stats.2018, c. 34). Additional, non-regulatory amendments are also proposed for the subject regulation of this action.

Title 17  
AMEND: 35095  
Filed 10/10/2018  
Agency Contact: Linda M. Cortez (916) 440-7807

File# 2018-1001-02  
DEPARTMENT OF PUBLIC HEALTH  
Cannabis Regulations for CEQA Compliance and Shared-Use Facilities

This emergency rulemaking action by the Department of Public Health readopts seven sections implementing the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Senate Bill 94, Stats. 2017, Ch. 27). This action will: 1) establish the licensing scheme, including temporary licenses, for manufacturers of cannabis products to utilize shared-use facilities; and 2) establish a CEQA annual license application requirement.

Title 17  
ADOPT: 40127, 40132, 40190, 40191, 40192, 40194, 40196  
Filed 10/09/2018  
Effective 10/11/2018  
Agency Contact: Linda M. Cortez (916) 440-7807

File# 2018-0925-01  
DEPARTMENT OF STATE HOSPITALS  
Emergency Readopt — Patient Electronic Property

The Department of State Hospitals is re-adopting emergency language to continue to address the possession, viewing, and distribution of illicit materials by removing digital memory storage, other means of memory storage, specified digital media players, and digital media burners from the personal possession of patients. Additionally, commercially produced CDs and DVDs and video game systems without access to the internet will be permitted, but those that are not commercially produced and video game systems with access to the internet will be prohibited. Finally, the amendments allow hospitals to provide digital media on a supervised basis.

Title 9  
AMEND: 4350  
Filed 10/04/2018  
Effective 10/11/2018  
Agency Contact: Trini Balcazar (916) 562-2824

File# 2018-0824-04  
DIVISION OF LABOR STANDARDS  
ENFORCEMENT  
Foreign Labor Contractor Registrations

This rulemaking action by the Division of Labor Standards Enforcement adopts regulations to administer and enforce the foreign labor contractor registration program and disclosure requirements required by Statutes 2014, chapter 711 (SB 477).

Title 8  
ADOPT: 13850, 13851, 13853, 13855, 13856, 13857, 13858, 13859, 13860, 13861, 13862, 13863, 13864, 13865, 13866, 13867, 13868, 13870, 13871, 13872, 13873, 13874  
Filed 10/08/2018  
Effective 01/01/2019  
Agency Contact: Jennifer Stevens (916) 263-1563

File# 2018-0829-01  
OCCUPATIONAL SAFETY AND HEALTH (CAL-OSHA) DIVISION  
Portable Amusement Ride Fees

This action establishes the hourly rate for Division engineers to perform certain specified services for owners and operators of portable amusement rides. This action effectively makes permanent the identical lan-



guage proposed as an emergency regulation in OAL no. 2017-0623-03EFP (later readopted in OAL nos. 2017-1215-03EFP and 2018-0309-01EFP), which lapsed and expired by operation of law on June 19, 2018.

Title 8  
 AMEND: 344.18  
 Filed 10/10/2018  
 Effective 10/10/2018  
 Agency Contact:  
 Christopher Grossgart (510) 286-7348

**CCR CHANGES FILED  
 WITH THE SECRETARY OF STATE  
 WITHIN May 9, 2018 TO  
 October 10, 2018**

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

**Title 1**

05/21/18 AMEND: 44

**Title 2**

09/27/18 AMEND: 43000, 43001, 43002, 43003, 43004, 43005, 43006, 43007, 43008, 43009  
 09/26/18 AMEND: 1859.2, 1859.51(j), 1859.70, 1859.82, 1859.93.1  
 09/26/18 AMEND: 59760  
 09/24/18 AMEND: 18700.2  
 09/20/18 AMEND: 559.885  
 09/20/18 ADOPT: 211.2 AMEND: 211  
 09/13/18 ADOPT: 21902, 21903.6 AMEND: 21902 (renumbered to 21901), 21903, 21904, 21905, 21905.5  
 09/11/18 AMEND: 1859.77.3  
 08/02/18 ADOPT: 59830  
 08/01/18 AMEND: 58200  
 07/17/18 REPEAL: 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2700, 2701, 2702, 2703, 2704, 2705  
 07/03/18 ADOPT: 18308, 18308.1, 18308.2, 18308.3  
 06/21/18 AMEND: 1859.190, 1859.194, 1859.195, 1859.198  
 06/19/18 AMEND: 554.7  
 05/17/18 ADOPT: 11027.1 AMEND: 11028

05/16/18 ADOPT: 20150, 20151, 20152, 20153, 20154, 20155, 20156, 20157, 20158, 20159, 20160, 20161, 20162, 20163, 20164, 20165

05/09/18 AMEND: 321

05/09/18 AMEND: 11034

**Title 3**

10/08/18 AMEND: 3591.12  
 10/02/18 AMEND: 3591.12  
 09/13/18 AMEND: 6502  
 09/12/18 AMEND: 3591.13  
 09/12/18 AMEND: 3591.12  
 09/06/18 AMEND: 3601  
 08/22/18 AMEND: 3591.2  
 08/16/18 ADOPT: 5000, 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013, 5014, 5015  
 08/10/18 AMEND: 1380.19, 1430.10, 1430.12, 1430.13, 1430.50, 1430.51, 1430.53  
 08/02/18 AMEND: 3591.2  
 07/31/18 AMEND: 3  
 07/19/18 AMEND: 3591.2  
 06/28/18 AMEND: 3435(b)  
 06/21/18 AMEND: 3439(b)  
 06/21/18 AMEND: 3591.5  
 06/18/18 AMEND: 1280.11  
 06/04/18 ADOPT: 8000, 8100, 8101, 8102, 8103, 8104, 8105, 8106, 8107, 8108, 8109, 8110, 8111, 8112, 8113, 8114, 8115, 8200, 8201, 8202, 8203, 8204, 8205, 8206, 8207, 8208, 8209, 8210, 8211, 8212, 8213, 8214, 8215, 8216, 8300, 8301, 8302, 8303, 8304, 8305, 8306, 8307, 8308, 8400, 8401, 8402, 8403, 8404, 8405, 8406, 8407, 8408, 8409, 8500, 8501, 8600, 8601, 8602, 8603, 8604, 8605, 8606, 8607, 8608  
 05/30/18 AMEND: 3439(b)  
 05/24/18 AMEND: 3439(b)  
 05/24/18 AMEND: 6502  
 05/18/18 AMEND: 3439(b)

**Title 4**

09/26/18 AMEND: 12205.1  
 09/21/18 ADOPT: 5700, 5710, 5711, 5720, 5721, 5722, 5730, 5731 AMEND: 5000, 5020, 5033, 5035, 5037, 5054, 5060, 5100, 5101, 5102, 5120, 5144, 5170, 5191, 5212, 5230, 5240, 5250, 5540 REPEAL: 5259  
 09/18/18 AMEND: 7051, 7054, 7055, 7056, 7063, 7071  
 09/17/18 AMEND: 10091.1, 10091.2, 10091.3, 10091.4, 10091.5, 10091.6, 10091.7,

10091.8, 10091.9, 10091.10, 10091.11,  
10091.12, 10091.13, 10091.14, 10091.15  
08/22/18 ADOPT: 7213, 7214, 7215, 7216, 7218,  
7219, 7220, 7221, 7222, 7223, 7224,  
7225, 7227, 7228, 7229  
07/26/18 AMEND: 10176, 10177, 10178, 10179,  
10180, 10181, 10182, 10183, 10184,  
10185, 10186, 10187, 10188, 10190  
07/18/18 AMEND: 2050  
07/09/18 AMEND: 10325, 10326  
07/03/18 AMEND: 10152, 10153, 10154, 10155,  
10158 (amended and renumbered),  
10159 (amended and renumbered),  
10160 (amended and renumbered).  
REPEAL: 10156, 10157  
07/02/18 ADOPT: 5700, 5710, 5711, 5720, 5721,  
5722, 5730, 5731 AMEND: 5000, 5020,  
5100  
05/30/18 AMEND: 10091.1, 10091.2, 10091.3,  
10091.4, 10091.5, 10091.6, 10091.7,  
10091.8, 10091.9, 10091.10, 10091.12,  
10091.13, 10091.14, 10091.15  
05/25/18 AMEND: 5000, 5033, 5035, 5037, 5054,  
5060, 5101, 5102, 5120, 5144, 5170,  
5191, 5212, 5230, 5240, 5250, 5540  
REPEAL: 5259  
05/17/18 AMEND: 12590  
05/15/18 AMEND: 12204, 12220, 12238, 12560

**Title 5**

08/03/18 AMEND: 11517.6, 11518, 11518.15,  
11518.20, 11518.25, 11518.30,  
11518.35, 11518.40, 11518.45,  
11518.50, 11518.70, 11518.75, 11519.5  
07/23/18 AMEND: 40050.2, 40100.1, 40513,  
40514, 41021  
07/03/18 ADOPT: 71396, 71397, 71398, 71399  
06/21/18 AMEND: 19810  
06/07/18 AMEND: 19810  
05/18/18 ADOPT: 11301, 11309, 11310, 11311,  
11312 AMEND: 11300, 11316 REPEAL:  
11301, 11309, 11310

**Title 8**

10/10/18 AMEND: 344.18  
10/08/18 ADOPT: 13850, 13851, 13853, 13855,  
13856, 13857, 13858, 13859, 13860,  
13861, 13862, 13863, 13864, 13865,  
13866, 13867, 13868, 13870, 13871,  
13872, 13873, 13874  
05/30/18 AMEND: 1618.1  
05/17/18 ADOPT: 11770, 11771, 11771.1,  
11771.2, 11772, 11773

**Title 9**

10/04/18 AMEND: 4350  
08/20/18 ADOPT: 4020, 4020.1

06/21/18 AMEND: 4350  
05/17/18 AMEND: 3850, 3850.010  
05/14/18 AMEND: 3560, 3560.010, 3560.020,  
3705, 3726, 3735, 3750, 3755

**Title 10**

09/25/18 AMEND: 2498.4.9  
09/25/18 AMEND: 2498.5  
09/25/18 AMEND: 2498.6  
09/24/18 ADOPT: 6408, 6410, 6450, 6452, 6454,  
6470, 6472, 6474, 6476, 6478, 6480,  
6482, 6484, 6486, 6490, 6492, 6494,  
6496, 6498, 6500, 6502, 6504, 6506,  
6508, 6510, 6600, 6602, 6604, 6606,  
6608, 6610, 6612, 6614, 6616, 6618,  
6620, 6622  
09/17/18 ADOPT: 6520, 6522, 6524, 6526, 6528,  
6530, 6532, 6534, 6536, 6538  
08/31/18 ADOPT: 2218.80, 2218.81, 2218.82,  
2218.83  
06/13/18 AMEND: 2498.5  
05/31/18 AMEND: 2715, 2728.5, 2752  
05/22/18 AMEND: 2498.6

**Title 11**

09/26/18 AMEND: 44.2  
08/23/18 AMEND: 1004, 1005, 1081  
08/15/18 AMEND: 1005, 1015  
08/02/18 AMEND: 4002  
07/31/18 AMEND: 49.18  
06/21/18 AMEND: 1005  
06/18/18 AMEND: 1005, 1007, 1008, 1052  
06/13/18 ADOPT: 51.32  
06/05/18 AMEND: 1005, 1007, 1008  
06/05/18 ADOPT: 49.18  
05/21/18 ADOPT: 5505, 5506, 5507, 5508, 5509,  
5510, 5511, 5512, 5513, 5514, 5515,  
5516, 5517, 5518, 5519, 5520, 5521,  
5522

**Title 12**

09/27/18 AMEND: 500 (renumbered to 501), 501  
(renumbered to 505), 501.1 (renumbered  
to 501.3), 501.2 (renumbered to 505.2),  
501.3 (renumbered to 505.1), 501.4  
(renumbered to 505.11), 502  
(renumbered to 505.3), 502.1  
(renumbered to 505.6), 502.2  
(renumbered to 505.12), 502.3  
(renumbered to 505.4), 503 (renumbered  
to 501.2), 503.1 (renumbered to 505.7),  
504 (renumbered to 505.8), 504.1  
(renumbered to 505.9), 505 (renumbered  
to 510.1), 506 (renumbered to 500), 507  
(renumbered to 510.9), 508 (renumbered  
to 510.10), 509 (renumbered to 520.2)  
09/25/18 AMEND: 600

**CALIFORNIA REGULATORY NOTICE REGISTER 2018, VOLUME NO. 42-Z**

07/05/18	AMEND: 451, 452, 453, 454, 455	05/24/18	ADOPT: 3803.1, 3803.2, 3803.3 AMEND: 3802, 3803
<b>Title 13</b>		05/16/18	AMEND: 131
10/10/18	AMEND: Appendix (Article 2.0)	05/10/18	ADOPT: 29.11
09/24/18	AMEND: 2222	05/09/18	AMEND: 18660.5, 18660.10, 18660.21, 18660.34
09/24/18	ADOPT: 2461.1 AMEND: 2450, 2451, 2452, 2453, 2455, 2456, 2458, 2459, 2460, 2461, 2462, 2464, 93116.1, 93116.2, 93116.3, 93116.4	<b>Title 15</b>	
08/30/18	AMEND: 1213	10/08/18	AMEND: 3352.2, 3352.3, 3354, 3355.1
08/30/18	AMEND: 1239	10/03/18	ADOPT: 3378.9, 3378.10 AMEND: 3000, 3023, 3043.8, 3044, 3084.9, 3269, 3335, 3337, 3341, 3341.2, 3341.3, 3341.5, 3341.6, 3341.8, 3341.9, 3375, 3375.1, 3375.2, 3376, 3376.1, 3378, 3378.1, 3378.2, 3378.3, 3378.4, 3378.5, 3378.6, 3378.7, 3378.8 REPEAL: 3334
08/16/18	ADOPT: 25.23 AMEND: 25.06, 25.08, 25.09, 25.10, 25.11, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, 25.22	10/03/18	ADOPT: 3378.9, 3378.10 AMEND: 3000, 3023, 3043.8, 3044, 3084.9, 3269, 3335, 3337, 3341, 3341.2, 3341.3, 3341.5, 3341.6, 3341.8, 3341.9, 3375, 3375.1, 3375.2, 3376, 3376.1, 3378, 3378.1, 3378.2, 3378.3, 3378.4, 3378.5, 3378.6, 3378.7, 3378.8 REPEAL: 3334
07/23/18	ADOPT: 223.00, 223.02, 223.04, 223.06, 223.08, 223.10, 223.12, 223.14, 223.16	09/13/18	AMEND: 1006, 1029, 1041, 1050, 1069, 1206
07/16/18	AMEND: 1151.1, 1152.4, 1152.4.1	08/20/18	AMEND: 3294.5
06/12/18	ADOPT: 1231.3 AMEND: 1212.5, 1218, 1239, 1264	08/13/18	AMEND: 3000, 3190, 3213
05/30/18	ADOPT: 125.19 AMEND: 125.00, 125.02 REPEAL: 127.06	08/06/18	ADOPT: 3999.98, 3999.99, 3999.320 AMEND: 3355, 3087 renumbered as 3999.225, 3087.1 renumbered as 3999.226, 3087.2 renumbered as 3999.227, 3087.3 renumbered as 3999.228, 3087.4 renumbered as 3999.229, 3087.5 renumbered as 3999.230, 3087.6 renumbered as 3999.231, 3087.7 renumbered as 3999.232, 3087.8 renumbered as 3999.233, 3087.9 renumbered as 3999.234, 3087.10 renumbered as 3999.235, 3087.11 renumbered as 3999.236, 3087.12 renumbered as 3999.237, 3350 renumbered as 3999.200(a), 3350.1 renumbered as 3999.200(b), (c), and (d), 3350.2 renumbered as 3999.200(f), (g), and (h), 3351 renumbered as 3999.210, 3353 renumbered as 3999.202, 3353.1 renumbered as 3999.203, 3354.2 renumbered as 3999.206, 3356 renumbered as 3999.410, 3357 renumbered as 3999.440, 3358 renumbered as 3999.375, 3359
<b>Title 14</b>			
09/17/18	ADOPT: 18660.44, 18660.45, 18660.46 AMEND: 18660.5, 18660.6, 18660.7, 18660.8, 18660.9, 18660.10, 18660.12, 18660.13, 18660.15, 18660.16, 18660.17, 18660.18, 18660.19, 18660.20, 18660.21, 18660.22, 18660.24, 18660.25, 18660.30, 18660.31, 18660.32, 18660.33, 18660.35, 18660.36, 18660.37, 18660.39, 18660.41 REPEAL: 18660.23		
09/06/18	AMEND: 1104.1		
08/13/18	AMEND: 7.50		
08/09/18	AMEND: 13055		
07/30/18	ADOPT: 798 AMEND: 791, 791.6, 791.7, 792, 793, 794, 795, 796, 797		
07/30/18	ADOPT: 820.02		
07/30/18	ADOPT: 817.04 AMEND: 790		
07/30/18	AMEND: 819, 819.01, 819.02, 819.03, 819.04, 819.05, 819.06, 819.07		
07/19/18	AMEND: 3805.1		
07/05/18	AMEND: 1038		
07/02/18	AMEND: 916.9, 936.9, 956.9		
06/28/18	ADOPT: 1726, 1726.1, 1726.2, 1726.3, 1726.3.1, 1726.4, 1726.4.1, 1726.4.2, 1726.4.3, 1726.5, 1726.6, 1726.6.1, 1726.7, 1726.8, 1726.9, 1726.10 REPEAL: 1724.9		
06/28/18	AMEND: 18660.25, 18660.34		
06/28/18	AMEND: 502		
06/25/18	AMEND: 7.50		
06/07/18	AMEND: 1760, 1774, 1774.1, 1774.2		

renumbered as 3999.411, 3359.8  
renumbered as 3999.200(e)  
08/01/18 AMEND: 3350, 3350.1  
06/28/18 AMEND: 3043.3  
06/14/18 AMEND: 3000, 3075.1, 3075.2, 3075.3,  
3521.1, 3521.2, 3720, 3763 REPEAL:  
3800, 3800.1, 3800.2, 3800.3  
06/13/18 ADOPT: 3087, 3087.1, 3087.2, 3087.3,  
3087.4, 3087.5, 3087.6, 3087.7, 3087.8,  
3087.9, 3087.10, 3087.11, 3087.12  
06/07/18 ADOPT: 3371.1 AMEND: 3043.7, 3044  
REPEAL: 3371.1  
05/15/18 AMEND: 3000, 3030, 3190, 3269

**Title 16**

10/08/18 ADOPT: 1423.1, 1423.2 AMEND: 1418,  
1424, 1426, 1430  
09/17/18 AMEND: 1735.2  
09/13/18 ADOPT: 3353.1, 3353.2, 3354, 3355,  
3357 AMEND: 3303, 3352, 3353, 3356,  
3358, 3371 REPEAL: 3356.1, 3359,  
3355  
08/30/18 AMEND: 1399.573  
08/29/18 AMEND: 1805.01, 1816, 1816.1, 1820,  
1820.5, 1820.7, 1821, 1822, 1822.51,  
1822.52, 1829.2, 1829.3, 1833, 1833.1,  
1845, 1846, 1870, 1874, 1886  
08/08/18 REPEAL: 1399.531, 1399.532  
08/02/18 AMEND: 3340.17, 3340.41, 3340.45  
08/01/18 AMEND: 2070, 2071  
06/18/18 AMEND: 1735.2  
06/14/18 REPEAL: 1399.620, 1399.621,  
1399.622, 1399.623  
06/07/18 AMEND: 321, 364  
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