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

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PROPOSED ACTION ON REGULATIONS

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TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

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

CONFLICT-OF-INTEREST CODES

AMENDMENT

MULTI-COUNTY: Elsinore Valley Municipal Water District
North Delta Water Agency

A written comment period has been established commencing on April 15, 2016, and closing on May 30, 2016. Written comments should be directed to the Fair Political Practices Commission, Attention Ivy Branaman, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for her review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

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

The Executive Director of the Commission, upon her or its own motion or at the request of any interested person, will approve, or revise and approve, or return the

proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than May 30, 2016. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

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

EFFECT ON HOUSING COSTS AND BUSINESSES

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

AUTHORITY

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

REFERENCE

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

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED
CONFLICT-OF-INTEREST CODES**

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Ivy Branaman, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. STATE PERSONNEL BOARD

Notice is hereby given that the State Personnel Board (Board) proposes to amend section 547.60 and adopt section 547.61 of Title 2, Chapter 1, of the Code of Regulations (CCR), which requires that when state agencies enter into personal services contracts under Government Code section 19130, subdivision (b), agencies shall document the reasons why the contract is permissible under subdivision (b), regardless of the contract amount. If approval from the Department of General Services (DGS) is required for the contract, agencies shall continue to include with the contract transmittal to DGS the written justification for the contract. These regulations also require that this documentation be legible and maintained pursuant to CCR section 26, concerning record retention.

PUBLIC HEARING

A public hearing regarding the proposed regulatory action will be held on June 2, 2016, at 10:00 a.m. in Room 150 at 801 Capitol Mall, Sacramento, California.

WRITTEN COMMENT PERIOD

Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Jeanne R. Wolfe
Senior Attorney
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Fax: (916) 653-4256
Email: jeanne.wolfe@spb.ca.gov

The written comment period closes on May 30, 2016, at 5:00 p.m. Only written comments received by that time shall be reviewed and considered by the Board before it adopts, amends, or repeals a regulation.

AUTHORITY AND REFERENCE

The Board proposes to amend section 547.60 and adopt section 547.61 of Title 2, Chapter 1 of the CCR pursuant to the authority vested in it by the California Constitution, article 7, section 3, and Government Code section 18701 and Public Contract Code section 10337, subdivision (a). The proposed regulations will implement, interpret, and make specific the provisions of Government Code sections 18661 and 19130.

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

The Board is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., art. VII, §§ 1, subd. (b) & 3; Gov. Code, § 18660.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*) Regarding personal services contracts entered into between state agencies and private contractors, the Board is empowered to establish such standards and controls over DGS's approval of these contracts as are necessary to assure that the approval is consistent with merit employment principles and Article VII of the California Constitution. (Pub. Contract Code, § 10337, subd. (a).) The Board is also empowered to audit a state agency's personal services contracts to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).)

Regulations adopted by the Board are exempt from the Administrative Procedure Act (APA), except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.) Regulations concerning contracting out are not exempt from the APA. (Gov. Code 18216.)

The purpose of this regulatory action is to update the Board's regulations to require that when state agencies enter into personal services contracts under Government Code section 19130, subdivision (b), agencies document and retain the reasons why the contract is permissible under subdivision (b), regardless of the contract amount. If approval from DGS is required for a subdivision (b) contract, agencies must continue to include with the contract transmittal to DGS the written justification for the contract.

The benefits of this regulatory change include: (1) conserving the fiscal interests of the State by promoting compliance with Government Code section 19130, subdivision (b); (2) enabling the Board to conduct thorough and effective compliance reviews of Government Code section 19130, subdivision (b) contracts; and (3) increasing openness and transparency in state government related to personal services contracting. The

amendments also include re-numbering and non-substantive style changes needed for clarity and consistency.

In reviewing other state regulations, the Board found that the instant regulatory proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ON PUBLIC AGENCIES

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any State agency: None given that State agencies are currently required to record and maintain certain documents and files related to personal services contracts.
- Other nondiscretionary cost of savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None.

SIGNIFICANT EFFECT ON HOUSING COSTS

None.

ECONOMIC IMPACT ON BUSINESS

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Effect on small business: The proposed regulations set a standard only related to the recordkeeping and transmittal procedures state agencies must follow when entering into personal services contracts under Government Code section 19130, subdivision (b). Accordingly, it has been determined that the adoption of the proposed regulations would not affect small businesses in any way.

COST IMPACT ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS

None, since the regulatory change only impacts recordkeeping requirements for state agencies and transmittal procedures state agencies must follow when

entering into personal services contracts under Government Code section 19130, subdivision (b).

RESULTS OF ECONOMIC IMPACT ASSESSMENT

Adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

The adoption of these regulations, however, will have a positive impact on the health and welfare of California residents in that the benefits of this regulatory action, as mentioned under the INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW, include openness and transparency in state government and improved efficiency in the Board's compliance reviews of personal services contracts.

CONSIDERATION OF ALTERNATIVES

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

CONTACT PERSONS

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Jeanne R. Wolfe
Senior Attorney
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Phone: (916) 653-1028
Fax: (916) 653-4256
Email: jeanne.wolfe@spb.ca.gov

In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Chian He
Senior Attorney
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814
Phone: (916) 653-1456
Chian.He@spb.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Senior Attorney Wolfe at the above address.

AVAILABILITY OF RULEMAKING FILE

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~ and underline;
2. A copy of this notice and statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, Fax: (916) 653-4256. Items 1 through 3 are also available on the Board's website at www.spb.ca.gov under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that 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 Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the person at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and ~~strikeout~~ can be accessed on the Board's website at www.spb.ca.gov under "What's New?"

TITLE 13. DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (department) proposes to amend Sections 345.44, 345.45, 345.46, 345.47, 345.48, 345.56, 345.65, and 345.66, in Article 4.7, Chapter 1, Division 1, Title 13, California Code of Regulations, related to the Traffic Violator School Program.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 p.m, **MAY 30, 2016**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code sec-

tions 1651, 1652, 11202, and 11219, in order to implement, interpret or make specific Vehicle Code sections 1808.5, 1808.7, 1808.21, 1808.45, 1808.46, 1808.47, 11202, 11203, 11205, 11212, 11219.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Assembly Bill (AB) 2499 (Chapter 599; Statutes of 2010) placed home study and online traffic violator schools (TVS) programs under the department's authority. AB 2499 amended Vehicle Code section 11200 to require a school to notify the court of successful course completion by posting the completion information on a web-based database developed by the department.

Vehicle Code section 11205(c) requires the department to develop a "Web-based database that will enable the department, the courts, and traffic violator schools to monitor, report and track participation and course completion." The database does not require access to the department's records. Instead, the traffic violator schools are authorized by Vehicle Code section 11212 to obtain from the students their name, address, instructional permit or license number, the court docket number for the violation, and the advertised fee. Vehicle Code section 11212(d) states "The address of any person kept [under this collection authority] shall only be used by the school for school administrative purposes."

Vehicle Code section 11200 authorizes the department to license schools, to adopt new and modified regulations to implement the section, and requires licensed schools to notify courts of successful course completion by students by posting the information on the department's web-based database. The Vehicle Code does not require courts to enroll in the database or to use the database to verify course completion.

The information a TVS must enter into the database is not specifically listed in the Vehicle Code. Instead, the information must be sufficient to inform of a student's "participation" and "completion." Completion information must be entered within three days of successful completion, including the exam, but TVS's must update "daily."

The Vehicle Code specifies content requirements for the receipt that each student is entitled to after successful completion. Section 11200, subdivision (e), states "the receipt shall include contact information, including name of the traffic violator school, address of the school's business location, name of the classroom instructor if classroom based, telephone number, email address if appropriate, hours of operation, and any other information that may be used to confirm course completion." Existing regulation in Section

345.30(d)(5) states "All students shall receive a completion receipt after successfully meeting all course requirements. The completion receipt shall conform to Vehicle Code section 11200(e)." The existing regulation prevents the TVS from including the date of the class attended, the date the exam was taken, whether the exam was successfully passed by the student, and the violation citation number remedied by the class attendance. The department is amending the completion receipt requirements to allow schools to include additional information on the receipt, if necessary.

This proposed action removes outdated paper certificate regulations from Title 13 and make mandatory the web-based database method the department has developed as directed by AB 2499, to inform the courts of the completion of court-ordered traffic violator school.

Prior to passage of AB 2499, courts offered a driver cited for a traffic safety violation the option to attend a traffic violator school course, and upon completion, the court dismissed the violation. The court reported the dismissal to the department, preventing negligent operator points from being assigned, and preventing the abstract from being the basis for suspension or revocation. If there was a prior TVS completion and a dismissal in the previous 18 months, the violation appeared on the driver record as a dismissal. This allowed more than one dismissal in an 18 month period to be added to the record.

Effective July 1, 2011, California courts must report traffic safety violations as convictions. If the driver is eligible and completes a traffic violator school course, the conviction will be kept confidential, i.e. masked, on the driver record rather than dismissed. Until a court orders the conviction to be masked, it appears on the driver's record. Prompt and accurate communication to the court avails driver's the benefit of a confidential conviction.

This action also amends and adopts several departmental forms related to the traffic violator school program. The amended forms are updated to ensure consistency with the amendments being made in this proposed action. Forms being amended include:

- Information Security and Disclosure Statement (Firm), form EXEC 201X
- Traffic Violator Schools (TVS) Owner Surety Bond, form OL 704
- Deposit Agreement and Assignment, form OL 25E

The forms being adopted will allow schools to transmit to the department the newly required information being adopted in this action. Information solicited from forms such as the enrollment application and database access log were developed to ensure the schools have a method by which to report the information being re-

quired by this proposed action. Forms being adopted in this action include:

- Enrollment Application TVS/Court Primary Administrator Traffic Violator Course Completion Database, form OL 771
- Information Security and Disclosure Statement Public/Private Partnerships Employee, form EXEC 200X
- TVS Course Completion Database Access Log, form OL 770
- Traffic Violator School (TVS) Owner Surety Bond Who Offers Home Study or Internet Instruction, form OL 704B

Anticipated Benefits to this action (Government Code section 11346.5(a)(3)(C)):

The department does not anticipate any quantifiable benefits related to this proposed regulatory amendment, however, potential benefits exist to traffic violator's that are able to have their eligible traffic offense timely adjudicated. Consumer protection benefits exist when schools are issuing completion receipts in a consistent manner, as provided in this proposed adoption.

COMPARABLE FEDERAL AND STATE REGULATIONS

The department has conducted a review of both federal and state regulations related to schools for traffic violators and has determined that there are no comparable federal or state regulations.

DETERMINATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

The department has determined that this proposed regulation is not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern the administering of traffic violator school program in California.

DOCUMENTS INCORPORATED BY REFERENCE

This proposed action amends several departmental forms and adopts other forms necessary for traffic violator schools to supply the department with operational information. The following documents are incorporated by reference:

- Enrollment Application TVS/Court Primary Administrator Traffic Violator Course Completion Database, form OL 771 (Rev. 9/2013)
- Information Security and Disclosure Statement Public/Private Partnerships Employee, form EXEC 200X (Rev. 3/2003)
- Information Security and Disclosure Statement (Firm), form EXEC 201X (Rev. 3/2003)
- TVS Course Completion Database Access Log, form OL 770 (Rev. 12/2011)
- Traffic Violator Schools (TVS) Owner Surety Bond, form OL 704 (Rev. 11/2010)
- Traffic Violator Schools (TVS) Owner Surety Bond Who Offers Home Study or Internet Instruction, form OL 704B (Rev. 10/2011)
- Deposit Agreement and Assignment, form OL 25E (Rev. 1/2016)

These documents will not be published in the California Code of Regulations because it would be impractical and cumbersome to do so; however, the documents are readily available to interested parties by contacting the department representative identified below.

LOCAL MANDATE

Mandate on local agencies and school districts: None.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- Cost or Savings to Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that will impact a representative private person or business as part of compliance with these regulations.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Effects on Housing Costs: None.
- Small Business Impact: This proposed action may impact traffic violator schools that are identified as small businesses if those schools are required to purchase computer hardware or software that will allow them to interface with the department. However, most schools currently have the necessary equipment to fulfill the requirements of the regulations.

- Significant, Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States: None.

RESULTS OF THE ECONOMIC
IMPACT ASSESSMENT

The department states the following results of its Economic Impact Assessment per Government Code section 11346.3(b):

- (1) **Creation or Elimination of Jobs Within the State of California**
These regulations will neither create nor eliminate jobs within the State of California. The proposed regulations implement application standards by which a court or a school can apply to the department for database access. None of the provisions adopted, amended, or repealed by this proposed action have an impact on jobs within the State of California.
- (2) **Creation of New Businesses or Elimination of Existing Businesses in the State of California**
These regulations will neither create nor eliminate jobs within the State of California. The proposed regulations implement application standards by which a court or a school can apply to the department for database access. The entities impacted by this proposal are existing businesses and the provisions adopted with this action are unlikely to impact businesses.
- (3) **Expansion of Businesses Currently Doing Business with the State of California**
These regulations will neither create nor eliminate jobs within the State of California. The proposed regulations implement application standards by which a court or a school can apply to the department for database access. The entities impacted by this proposal are existing businesses and the provisions adopted with this action are unlikely to impact businesses.
- (4) **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment**
This regulation is not likely to impact the health of California residents, worker safety or the environment. Benefits may exist to the welfare of California residents as this proposed action implements information security and privacy standards as they relate to the completion database. With effective data protection processes in place, driver information contained in the database will be confidential.

PUBLIC DISCUSSIONS OF PROPOSED
REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

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

CONTACT PERSON

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

Randi Calkins, Regulations Analyst
Department of Motor Vehicles
Legal Affairs Division
P.O. Box 932382, MS C-244
Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 657-8898
Facsimile: (916) 657-6243
E-Mail: LADRegulations@dmv.ca.gov

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

Kari Johnson, Attorney IV
Telephone: (916) 657-6469

AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS

The department has prepared an Initial Statement of Reasons for the proposed regulatory action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strikeout to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, the revised handbook and Express Terms) may be accessed at <http://www.dmv.ca.gov/portal/dmv/dmv/dmvhomes/regulatoryactions>.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period and the hearing, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections 3000, 3078.1, 3078.2, 3078.3, and 3078.4 of the California Code of Regulations, Title 15, concerning the Alternative Custody Program, pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Sections 5058 and 5058.3.

PUBLIC HEARING

Date and Time: **June 10, 2016 — 10:00 a.m. to 11:00 a.m.**
Place: Kern/Colorado Room
1515 S Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close **June 10, 2016, at 5:00 p.m.** Any person may submit public comments in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883,
Sacramento, CA 94283-0001
Telephone (916) 445-2269

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

Joshua Jugum
Regulation and Policy Management Branch
Telephone (916) 445-2228

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

Kelly Medina
Division of Adult Institutions
Telephone (916) 323-2812

AUTHORITY AND REFERENCE

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

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

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

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

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

The Alternative Custody Program (ACP) is authorized by Penal Code (PC) Section 1170.05. The ACP was originally designed for female offenders who met the eligibility criteria for placement. In *Sassman v. Brown*, CDCR was ordered to amend its regulations to remove gender-specific language from the ACP eligibility criteria, to allow eligible male offender participation.

The ACP is a voluntary program developed for non-violent, non-serious and non-registerable sex offense offenders that allows them to serve their sentences in the community in lieu of confinement in state prison as prescribed by their individual case plans. Pursuant to PC section 1170.05, admission to ACP is solely at the discretion of the Secretary or designee.

In 2015, Senate Bill 219 (SB 219) was signed into law amending PC 1170.05 to prohibit CDCR from excluding a person from participating in ACP solely on the basis that the inmate has an existing medical or psychiatric condition that requires ongoing care. SB 219 also established certain time frames for processing ACP applications, which have been incorporated into the revised regulation.

This action will:

- Amend eligibility requirements of the Alternative Custody Program (ACP) to allow male offenders to participate in the program, in accordance with the *Sassman v. Brown* judgment.
- Amend exclusionary criteria of the ACP to allow inmates with existing psychiatric or medical conditions that require ongoing care to participate in the program, if they meet other eligibility requirements.
- Amend eligibility requirements of the ACP to reduce the amount of time an offender has remaining to serve on his/her sentence from 24 to 12 months to be eligible to participate in the ACP.
- Add ACP exclusionary criteria to be applied on a case-by-case basis, such as a current or prior conviction for arson, a prior conviction for a serious or violent felony, or a history of non-compliance with rules and regulations while in custody or on parole.
- Remove references to probable/good cause findings by the Board of Parole Hearings from ACP exclusionary criteria, as BPH no longer conducts these hearings.

FORMS INCORPORATED BY REFERENCE

CDCR Form 2234 (Rev. 03/16) Alternative Custody Program (ACP) Application and Voluntary Agreement.
CDCR Form 2235 (Rev. 03/16) ACP Screening.

SPECIFIC BENEFITS ANTICIPATED BY THE
PROPOSED REGULATIONS

The proposed regulatory action will benefit inmates by establishing that both male offenders, and offenders with existing psychiatric or medical conditions that require ongoing care, will be eligible to participate in the ACP. This program allows participating inmates to serve their sentences in a community setting rather than a state prison and offers rehabilitative programming. This program may help to reduce overcrowding in state prisons.

EVALUATION OF
CONSISTENCY/COMPATIBILITY WITH
EXISTING LAWS AND REGULATIONS

Pursuant to Government Code 11346.5(a)(3)(D), the Department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review, the Department has concluded these are the only regulations that concern the Alternative Custody Program within the California Code of Regulations.

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 17500–17630.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: \$3.3 million cost in fiscal year 2015–16 and an additional 2.7 million in fiscal year 2016–17. Total ongoing need is \$6 million.
- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

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

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has made an initial determination that the proposed regulations 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, because the proposed regulations relate strictly to internal management of state prisons.

EFFECT ON SMALL BUSINESSES

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

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

CDCR has determined the proposed regulation will have an impact on the creation or elimination of existing jobs within California as the CDCR proposes to create positions in order to review and approve eligible offenders into the ACP, conduct case management, provide supervision via electronic device monitoring (ankle monitors), and for general program oversight. The Department will create 20 positions in Fiscal Year 2015–16 and an additional 20 in Fiscal Year 2016–17 and ongoing. The proposed regulations will not effect the expansion of businesses currently doing business in California or the creation of new, or elimination of existing, businesses within the state.

The Department has determined that the proposed regulations will have no effect on worker safety or the state's environment because they relate strictly to the management of inmates under the jurisdiction of the Department.

The proposed regulations may benefit the health and welfare of California residents by allowing male offenders, and other previously ineligible offenders, to participate in the ACP. This program allows participating inmates to serve their sentences in a community setting rather than a state prison and offers rehabilitative

programming, which may help to reduce overcrowding in state prisons.

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 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 provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this Notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the Department adopts, amends or repeals 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 com-

ments on the modified regulations for at least 15 days after the date on which they are made available.

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code (GC) Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 and 5058.3, in order to implement, interpret and make specific PC section 5054, proposes to amend Sections 3000, 3006, and 3323, of the California Code of Regulations (CCR), Title 15, Division 3, concerning cellular cellphone accessories and/or components and Inmate Discipline.

PUBLIC HEARING

Date and Time: June 3, 2016 from 10:00 a.m. to 11:00 a.m.
 Place: Department of Corrections and Rehabilitation
 Kern Room
 1515 S Street — North Building
 Sacramento, CA 95811
 Purpose: To receive comments about this action.

AUTHORITY AND REFERENCE

PC Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

INFORMATIVE DIGEST

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt revisions to the California Code of Regulations (CCR), Title 15, Division 3, Sections 3000 Definitions, 3006 Contraband, and 3323 Disciplinary Credit Forfeiture Schedule, to clarify regulations pertaining to the classification and level of penalties for the possession of any cellular telephone or wireless communication device accessories and/or components.

The current regulations governing cellular telephone or wireless communication device accessories and components were adopted on December 9, 2011, in accordance with Senate Bill (SB) 26, which added Section 4576 to the Penal Code (PC), and Executive Order B-11-11.

A petition challenging the validity of disciplinary proceedings resulting from the regulations was filed with the Superior Court of California, County of Sacramento. On July 7, 2014, the court requested an informal response from CDCR to determine if a contradiction between the Penal Code and the specific regulations existed. CDCR determined that the original legislative intent was not strong enough to support the inclusion of “components” and “accessories” of wireless communication devices as a misdemeanor offense, which could result in a Division “D” Serious Rules Violation Report with forfeiture of up to 90 days loss of non-restorable credits.

In an effort to conform CDCR’s regulations with PC 4576 and taking the court’s recommendation into consideration, CDCR proposes to make changes to the applicable sections of the CCR, Title 15, Division 3.

The changes will reduce the penalty for possession of accessories and/or components of any cellular telephone or wireless communication device including, but not limited to, a subscriber identity module (SIM) card, memory storage device, cellular phone battery, wired or wireless headset, and cellular phone charger. The offense for possession of these components and accessories will be reclassified as a Division “F” offense resulting in up to 30 days forfeiture of restorable credits, as opposed to the current forfeiture of up to 90 days as a Division “D” offense.

POLICY STATEMENT OVERVIEW

The anticipated benefits of the proposed regulations will bring CDCR in line with PC 4576. The changes will reclassify any cellular telephone or wireless communication device accessories and/or components, as contraband rather than dangerous contraband, and the offense for possession of these components and accessories will be reclassified as a Division “F” offense resulting in up to 30 days forfeiture of restorable credits, as opposed to the current forfeiture of up to 90 days as a Division “D” offense. Eligible inmates will be able to petition for restoration of credits that were forfeited in excess of the 30 days maximum allowed for a Division “F” offense.

Also, the Department’s intent of this proposal is to continue the prevention of inmates possessing cell phones or wireless communication devices that could impact institutional security, lead to prison escape, and deter criminal activity such as harm to staff, inmates

and visitors. Thus, the regulatory action will continue to benefit the protection of public health and safety and worker safety.

**EVALUATION OF
INCONSISTENCY/INCOMPATIBILITY WITH
EXISTING STATE REGULATIONS**

Pursuant to Government Code 11346.5(a)(3)(D), the Department must evaluate whether the proposed regulations are inconsistent or incompatible with existing State regulations. Pursuant to this evaluation, the Department has reviewed existing regulations and determined that these proposed regulations are not inconsistent or incompatible.

LOCAL MANDATES

The Department has determined that these regulations do not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500–17630.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district that is required to be reimbursed: none
- Cost or savings to any state agency: none
- Other nondiscretionary cost or savings imposed on local agencies: none
- Cost or savings in federal funding to the State: none

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT AFFECTING BUSINESSES**

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

**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.

**RESULTS OF ECONOMIC
IMPACT ASSESSMENT**

These regulations are directed at the internal management of State prisons and do not impose any obligations, duties, fees, costs, responsibilities, reporting requirements, etc. on California businesses, large or small. No economic impacts have been brought to the attention of the Department. The Department has therefore concluded that these 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. Regarding benefits, these regulations will protect the health and safety of California residents, worker safety, and the State’s environment by providing a safe environment that will encourage visitation for families, which will have a positive impact on inmates, and increase worker safety.

EFFECT ON SMALL BUSINESSES

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

EFFECT ON HOUSING COSTS

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

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 than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883
Sacramento, CA 94283-0001
Telephone (916) 445-2269

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

Anthony Carter
Regulation and Policy Management Branch
Telephone (916) 445-2220

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

Brent Burkhart
Standardized Procedures Unit
California Department of Corrections and
Rehabilitation
(916) 327-5305

WRITTEN COMMENT PERIOD

The public comment period will close June 3, 2016 at 5:00 p.m. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action (by mail, by fax, or by e-mail) to CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared, and will make available, the text, any documents incorporated by reference, 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, documents incorporated by reference, and Notice of Proposed Regulations will also be made available on the Department's website <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 will be available on the Department's website at <http://www.cdcr.ca.gov>, and may also be obtained from the Department's contact person.

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5 and Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058, proposes to amend sections 3315 and 3375.2 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Serious Rules Violations in regards to Substance Abuse Treatment (SAT) programs and Administrative Determinants.

PUBLIC HEARING

Date and Time: June 8th, 2016 from 10:00 a.m. to 11:00 a.m.
Place: Department of Corrections and Rehabilitation
Kern Room
1515 S Street — North Building
Sacramento, CA 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close **June 8th, 2016 at 5:00p.m.** Any person may submit public comments

in writing (by mail, by fax, or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 324-6075; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883
Sacramento, CA 94283-0001
Telephone (916) 445-2269

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

Jon Struckmann
Regulation and Policy Management Branch
Telephone (916) 445-2276

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

Kelly Medina
Division of Adult Institutions
Department of Corrections and Rehabilitation
(916) 323-2812

AUTHORITY AND REFERENCE

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

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

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

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current laws and regulations provide guidelines on what to do with inmates who violate drug abuse rules and when these inmates should be referred to Substance Abuse Treatment (SAT) programs. As the regulations stand in Title 15, an inmate must meet the rehabilitation program criteria in addition to receiving two or more Rules Violation Reports (RVR), therefore restricting the inmate's ability to attend the programs and get the help they need.

This action:

- Amends section 3315 to remove language that limits inmates from participating in SAT programs.
- Amends subsection 3375.2(b)(22) to add a new Administrative Determinant code that allows inmates more access to SAT programs regardless of their placement score.

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The Department has determined that the proposed regulatory action will help to reduce recidivism and, eventually, to reduce overcrowding in California prisons by having the ability to rehabilitate a greater number of inmates than before. The Department has realized the value of evidence-based substance abuse treatment programs in preparing inmates for transition back into communities. The treatment the inmates will receive will aid them in making better decisions and improving their lives after release from prison.

EVALUATION OF CONSISTENCY/COMPATIBILITY WITH EXISTING REGULATIONS

The Department has researched existing regulations and determined that these proposed regulations are consistent and compatible with existing state laws and regulations.

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 17500-17630.

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.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

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

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. Also, the Department has determined that the proposed regulations will have no effect on the health and welfare of California residents, worker safety, or the state’s environment and none of these are affected by the internal management of CDCR institutions. As described above, the benefits to the health and welfare of California residents includes increased safety to inmates and staff.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

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

EFFECT ON SMALL BUSINESSES

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

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 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. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The Department has prepared, and will make available, the text, Initial Statement of Reasons (ISOR), and any Reports Relied on for 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 a request directed to the Department’s contact person. The proposed text, ISOR, and the Notice of Proposed Regulations will also be made available on the Department’s website:
http://www.cdcr.ca.gov/Regulations/Adult_Operations/index.html.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF CHANGES TO PROPOSED TEXT

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

TITLE 16. ACUPUNCTURE BOARD

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE IS HEREBY GIVEN that the California Acupuncture Board (hereinafter “Board”) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Department of Consumer Affairs
1747 North Market Blvd, 2nd Floor,
Sapphire Room
Sacramento, CA 95834
May 31, 2016 at 9 a.m.**

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than May 30, 2016 or must be received by the Board at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 4928.1 and 4933 of the Business and Professions Code, and Section 11400.20 of the Government Code and to implement, interpret or make specific Sections 315, 315.2, 315.4, 4955, 4955.2 and 4960.5 of the Business and Professions Code, and Sections 11400.20 and 11425.50(e) of the Government Code, the Board is considering changes to Division 13.7 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Board currently regulates 16,894 licensees who are acupuncturists. The Board’s highest priority is protection of the public when exercising its licensing, regulatory, and disciplinary functions. The Board is authorized to investigate the criminal conviction history of applicants and licensees, subsequent arrests, allegations of unprofessional conduct, and unsafe or incom-

petent practice by licensees. The Board is authorized to discipline licensees who may jeopardize the health, safety, and welfare of consumers.

Business and Professions Code (hereafter “BPC”) Section 4928.1 states that protection of the public shall be the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions. BPC Section 4933 authorizes the Board to amend or repeal such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Acupuncture License Act (ALA).

BPC Section 315, established the SACC within the Department and required the SACC to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

BPC Section 315.2, specifies that a healing arts board within the Department is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee’s probation or diversion program. The cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

BPC Section 315.4, authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards amended and authorized under Section 315. The cease practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Government Code Section 11400.20 authorizes an agency to amend regulations to govern an adjudicative proceeding.

Government Code Section 11425.50(e) specifies that a penalty may not be based on a guideline, criterion, bulletin, manual, instruction, and order standard of general application or other rule unless it has been adopted as a regulation.

California Code of Regulations, Title 16, Section 1399.469 specifies that the Board shall consider the disciplinary guidelines entitled *Acupuncture Board Disciplinary Guidelines 1996* in reaching a decision on a disciplinary action under the Administrative Procedures Act.

California Code of Regulations, Title 16, Section 1399.469 incorporates by reference the Board’s 1996 disciplinary guidelines. The disciplinary guidelines are intended to provide guidance to persons setting administrative disciplinary terms and conditions for violation by a licensed acupuncturist of the applicable laws and regulations.

There is not an existing federal regulation or statute comparable to this proposal.

The proposed changes would incorporate by reference revised disciplinary guidelines, Acupuncture Board Disciplinary Guidelines and Conditions of Probation [September 2015], which includes appropriate provisions of the Uniform Standards formulated by the Department of Consumer Affairs Substance Abuse Coordination Committee (SACC) pursuant to BPC section 315. This proposal also sets forth standard language to be used in disciplinary orders and conditions of probation if the licensee is determined to be a substance-abusing licensee.

The SACC has developed sixteen uniform standards as required by SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008). The Board is proposing to implement Uniform Standards 1-12 in its Disciplinary Guidelines through the regulatory process. Uniform Standards 13, 14, and 15 only apply to Boards with diversion programs and are not incorporated in these guidelines because the Acupuncture Board does not have a diversion program. Uniform Standard 16 is also omitted because it is each Board's reporting criteria to the Department.

Therefore, the Board is proposing the following changes:

Incorporate by reference revised Disciplinary Guidelines and create subdivision (a) within Section 1399.469 of Article 6 of Division 13.7 of Title 16 of the California Code of Regulations:

This proposal would amend the *Acupuncture Board Disciplinary Guidelines 1996* to "*Acupuncture Board Disciplinary Guidelines and Conditions of Probation [September 2015]*." Additionally, this proposal will create a subdivision (a), consisting of what was Section 1399.469 for clarity.

Create subdivision (b) within Section 1399.469 of Article 6 of Chapter 13.7 of Title 16 of the California Code of Regulations. The proposed new subdivision (b) would create a definition of a substance-abusing license for purposes of applying the Uniform Standards. Proposed subdivision (b) will establish that any licensee that has been found to have committed an act or offense involving drugs and/or alcohol shall be presumed to be a substance-abusing licensee. However, language contained in this proposed regulatory action allows for a respondent to rebut the presumption by providing evidence and testimony of his or her behalf. This proposed regulatory action establishes and clarifies that in situations where a licensee or applicant was not successful in refuting the presumption, the Uniform Standards shall apply as written and be used in the order placing the licensee on probation. This proposal would clarify that neither the Board, nor administrative law judge, may impose conditions or terms of probation less restrictive than the Uniform Standards adopted by the Board. Ad-

ditionally, this proposal provides that the Board is not prohibited from imposing additional terms and conditions of probation that would provide greater public protection.

Amend the Department of Consumer Affairs, Acupuncture Committee Disciplinary Guidelines 1996:

1. The face page the document will be amended to reflect Acupuncture Board Disciplinary Guidelines and Conditions of Probation, contain a statement that copies can be obtained by contacting the Board or from its website, and the revised date of September 2015. This will provide current information regarding the document.
2. Throughout the Disciplinary Guidelines and Conditions of Probation Acupuncture Committee and its abbreviation AC will be replaced with Board to reflect the current name contained in BPC 4927 of Acupuncture Board, not committee.
3. The introduction would be amended to reflect the changed name of the document, indicate that it is designed for use by attorneys, administrative law judges, acupuncturists, others involved in the disciplinary process, and the Board and may be revised and shall be distributed to interested parties upon request. This proposal would amend the Board's 1996 Guidelines, which has been incorporated by reference in Section 1399.469. This amended document includes standard language that must be included in every probationary order for substance-abusing licensees. This standard language includes information regarding BPC Section 315 and the standards established by the SACC. The language specifies that Administrative Law Judges, parties and staff are required to use the standard language which has been developed in accordance with the standards developed by the SACC. The language specifies that the probationary terms and conditions within the incorporated document are to be used in every case where the individual is determined to be a substance-abusing licensee. Any reference to the Board also means staff working for the Board or its designee. The document also specifies that the Board's updated Guidelines should still be used in formulating the penalty and in considering additional terms or conditions of probation appropriate for greater public protection. The conditions contained within this document are required to be used in lieu of any similar standard or optional term or condition within the Board's Disciplinary Guidelines.

Amendments to the 1996 Disciplinary Guidelines:

A. In order to comply with SB 1441, the Board proposes to adopt the following standards, which shall be adhered to in all cases involving a substance-abusing licensee:

1. Clinical Diagnostic Evaluations: Requires that if a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years of experience in providing evaluations of health care professionals with substance abuse disorders and is approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator is required to prepare a report with an opinion setting forth whether the licensee has a substance abuse problem, whether the licensee is a threat to himself/herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendation for rehabilitation and safe practice. The proposed language also specifies if the evaluator determines the licensee is a threat, the evaluator shall notify the Board within 24 hours. Evaluators may not have a financial, personal or business relationship with the licensee within the last five years and shall provide an objective, unbiased, and independent evaluation. Reports shall be provided within 10 days and within 30 days if the evaluator requests additional information.

2. Removal from Practice Pending Clinical Diagnostic Evaluation: Requires the Board to order the licensee to cease practice during the clinical diagnostic evaluation and until the Board reviews the results of the evaluation. This standard also requires the licensee to be randomly drug tested at least two (2) times per week while awaiting the results of the clinical diagnostic evaluation. Further, the Board proposes to require that the Board take into consideration certain factors when determining if the licensee is safe to return to either part-time or full-time practice. These factors include license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history and current medical condition, nature of substance abuse and whether a licensee is a threat to himself or herself or the public. A licensee shall not be returned to practice until he or she has at least 30 days of negative drug tests.

3. Board Communication with Probationer's Employer: This standard requires the licensee to notify employers, supervisors, contractors or prospective employers and contractors of the Board's Decision and Accusation. The Board must also be provided the contact information of all employers and supervisors, and re-

quires that the licensee consent to allow the Board to communicate with these persons regarding the licensee.

4. Drug Testing Standards: Requires the Board to randomly test a licensee whose license is placed on probation due to substance abuse randomly 52–104 times per year in the first year of probation, and 36–104 times per year in the second year and each year thereafter up to 5 years. If there are no positive tests in the preceding 5 years of probation, testing is 1 time per month. The Board may increase the number of random tests for any reason, or return to the testing frequency of the first year for a violation of the testing program or a Major Violation pursuant to Uniform Standard 10. The drug testing standard also allows the Board to make exceptions to the testing frequency schedule if certain conditions exist, such as when a licensee is not practicing or has been participating in a treatment program requiring testing.

This standard specifies a set of standards that apply to drug testing, and outlines the following: testing may be required at any time on any day; daily contact to determine if a test is required; vacations, absences or alternative testing sites must be approved by the Board; testing shall be done on a random basis; requirements for specimen collectors and testing locations; collection of specimens must be observed; certification of laboratories by the U.S. Department of Health and Human Services is required; tests must be processed within 7 days; and requiring notification to the Board within one day of a positive result. The Board may also use other testing methods in place of or supplemental to biological fluid testing. The Board may reduce or eliminate the testing standards pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or other statutes regarding reinstatement or reduction of penalty.

The standard provides requirements for the Board to collect and report historical and post implementation data.

5. Participation in Group Support Meetings: Requires the Board to follow criteria to determine the frequency of group meeting attendance and to verify that the meeting facilitator is an experienced, mental health professional. The criteria for determining frequency of meetings include: the recommendation of the clinical diagnostic evaluator; the licensee's history; length of sobriety; scope and pattern of use; treatment history; and nature, duration, and severity of substance abuse. The standard also requires the facilitator of the group support meeting to have certain qualifications, including three years of experience and a license in providing recovery services. The facilitator may not have a relationship with the licensee within the last year, must report unexcused absences, and must provide the Board a

signed document showing information related to the licensee's participation and progress.

6. Determining What Treatment is Necessary: Requires the Board to follow criteria to determine whether inpatient, outpatient, or other type of treatment is necessary. The criteria include the recommendation from the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, licensee's treatment history, licensee's medical history and current medical condition, whether he or she is a threat, and the nature, duration, severity of substance abuse.

7. Worksite Monitor Requirements: Requires the Board to determine if a worksite monitor is necessary for a particular licensee and requires the worksite monitor to meet specified requirements. The monitor may not have a financial, personal, familial, or any other relationship with the licensee that may compromise the ability to render impartial and unbiased reports. The provision that allows the Board to waive this requirement accounts for situations when a licensee only has available a monitor who is their employer; it also restricts an employee from monitoring his or her employer. The monitor must meet specified licensing and practice requirements. The monitor must have face-to-face contact with the licensee in the workplace at least once per week. The monitor is also responsible for reporting to the Board whether patient safety may be at risk and any change in the licensee's behavior that may be cause for suspected substance abuse. The reporting criteria identifies a timeline for reporting to the Board of suspected substance abuse by the licensee, and what information must be included in the monitor report. Monitors also must submit a monthly report to the Board. Also, included in the standard is the language to require the licensee and monitor to sign and submit the required consent forms and agreement for the Board to communicate with the monitor.

8. Procedure for Positive Testing: This standard requires the Board to suspend a licensee's license if he or she tests positive for a banned substance and requires certain notifications as specified.

9. Procedures for a Confirmed Ingested Banned Substance: This standard specifies that if the Board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation and the Board shall impose consequences as specified in Standard 10, Major and Minor Violations & Consequences.

10. Major and Minor Violations & Consequences: This standard defines major and minor violations and the consequences for each. If a licensee commits a major violation, the Board is required to automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the

Board. If a licensee commits a minor violation, the Board is required to determine what action is appropriate.

11. Petition for Return to Practice: This standard provides a definition of petition and sets out the criteria to be met before submitting the petition to the Board. The criteria are sustained compliance with his or her recovery program, ability to practice safely as evidenced by work site reports, and six (6) months of negative drug tests.

12. Petition for Reinstatement: This condition provides a definition of petition and sets out the criteria to be met before submitting the petition to the Board for an unrestricted license. The criteria are sustained compliance with the terms of the disciplinary order, consistent and sustained participation in activities that support recovery, and continuous sobriety of at least 3 to 5 years.

B. A new category of probation conditions that only pertain to cases involving substance-abusing licensees:

1. Substance-Abusing Condition 1 — Clinical Diagnostic Evaluation: In order to comply with the SB 1441 Uniform Standards, the Board proposes a new condition that requires that the licensee undergo a clinical diagnostic evaluation within 20 days of the effective date of the Board's Decision and at any time upon order of the Board. When licensee is ordered to undergo a clinical diagnostic evaluation, licensee shall cease practice pending the results and review of the results by the Board. During this time, licensee shall submit to random drug testing at least 2 times per week and not be returned to practice until he or she has 30 days of negative drug tests.

Licensee is required to provide the evaluator with the Board's decision prior to the evaluation and cause the evaluator to submit a report to the Board within a specific timeframe. The costs of the evaluation shall be paid by licensee. Additionally, the Board proposes to require compliance with the requirements of Uniform Standard 1 which includes that a Clinical Diagnostic Evaluation report be prepared and contain at least the evaluator's opinion, whether the licensee has a substance abuse problem and recommendations for substance abuse treatment, practice restrictions, or other recommendations. The evaluator must (1) hold a valid, unrestricted license, which includes a scope of practice to conduct a clinical diagnostic evaluation; (2) have three years' experience in providing evaluations of health professionals with substance abuse disorders; and (3) be approved by the Board. The evaluator shall not have a financial, personal, business, or other relationship with the licensee within the last five years, which would prevent the

evaluator from having an unbiased opinion or create a conflict of interest.

It is proposed that the final written report is to be provided to the Board no later than 10 days from the date the evaluation was completed unless the evaluator requests an extension, not to exceed 30 days. If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the Board within 24 hours of such a determination. Licensee must comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation. Licensee may return to full time work after at least 30 days of negative drug tests and the Board determines that licensee is safe to practice upon review of the report and specified criteria. The criteria include license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history and current medical condition, nature of substance abuse, and whether a licensee is a threat to himself or herself or the public.

2. Substance–Abusing Condition 2 — Notice to Employer. In order to comply with SB 1441 Uniform Standards, the Board proposes to add a Notice to Employer condition. The condition specifies that the licensee must provide to the Board contact information related to all employers and supervisors, as well as provide written permission allowing the Board to have continuous contact with the employers for the entire probationary period regarding work status, performance, and monitoring, including conduct that may violate a probationary condition. Licensee is required to provide current and future employers, supervisors, directors or contractors with the Board's Decision and Accusation within 14 calendar days of beginning or changing employers or supervisors. Licensee is required to ensure that the Board receives written confirmation directly from the employer that licensee has complied with the requirement to provide the Board's Decision and Accusation. Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance–abusing licensee. A source was added to reference Uniform Standard #3 from which condition is derived.

3. Substance–Abusing Condition 3 — Abstain from Alcohol, Controlled Substances, and Dangerous Drugs: In order to comply with SB 1441 Uniform Standards, the Board is proposing a new condition that sets forth: the substances licensees are prohibited from using or possessing; the conditions for lawfully prescribed medications; the requirements for a coordinating physician and surgeon in charge of monitoring licensee's prescriptions; and the terms regarding licensee ceasing the practice of acupuncture if there is a positive drug screen for any substance not legally authorized.

The new condition specifies that licensee shall completely abstain from the use of alcoholic beverages and shall abstain completely from the personal use, possession, injection, consumption by any route, including inhalation, of all controlled substances and dangerous drugs, and any drugs requiring a prescription. Specifying each route of use or possession covers all methods of abuse so licensee clearly understands that there is no tolerance for any substance use or possession. An absolute prohibition also allows licensee to more effectively distance him or herself from the substance involved in the underlying cause for action.

The condition provides an exception allowing licensees to take prescription drugs that are lawfully prescribed by a licensed practitioner for a bona fide illness. Adding such an exception allows licensees to keep taking any medically necessary prescription drugs and provides transparency between the licensee and the Board so there are no false positive biological fluid tests. Licensee is required to notify the Board in writing within 15 days of receiving a lawful prescription for a controlled substance. A list of current prescribed medication with specified information shall be provided to the Board on a quarterly report. When a licensee is legally prescribed medication, this condition requires that a single coordinating physician and surgeon will coordinate and monitor prescriptions for licensee. The physician and surgeon is also required to report to the Board on a quarterly basis regarding the licensee's compliance with this condition.

The condition outlines that any positive drug screen for a substance not legally authorized will result in the licensee being ordered to cease the practice of acupuncture until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, licensee shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. The consequences provided are contained in SB 1441 Uniform Standards and provide more public protection when a violation of probation of such gravity occurs. Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance–abusing licensee. A source was added to reference Uniform Standards #4 and #8 from which condition is derived.

4. Substance–Abusing Condition 4 — Alcohol and Drug Testing: This condition is being added to implement the Uniform Standards applicable to substance–abusing licensees, related to alcohol and drug testing. The condition sets forth that licensee is required to pay for any random and directed biological fluid, hair sample, breath alcohol, or any other mode of testing required by the Board. Licensee must comply with alco-

hol and drug testing, including the fiscal responsibility of procuring the necessary tests. The condition sets forth the frequency of testing that licensee will be ordered to test on a random basis required by SB 1441's Uniform Standard #4. However, the condition provides a set of criteria allowing the Board to lessen the frequency of ordered tests, which includes: licensee previously underwent testing during the completion of a treatment or monitoring program; the basis for probation or discipline was a single incident or conviction involving drugs or alcohol, or two incidents or convictions involving drugs or alcohol that were at least seven (7) years apart that did not occur at work on the way to or from work; licensee is not employed in any health care field; licensee has demonstrated a period of sobriety and/or non-use; and testing may be suspended during any period licensee's probationary period is tolled. Licensees are allowed to request modifications to the testing frequency in writing to the Board. There may be certain cases where such a strict testing frequency is not appropriate.

The condition also specifies that the licensee is required to make daily contact as directed by the Board to determine when he or she is required to submit to a drug test. The condition further details the mechanics of how the testing works and how positive results are dealt with. If a licensee tests positive for a banned substance, he or she shall be contacted and instructed to leave work and ordered to cease practice of acupuncture. Practice cannot be resumed until notified by the Board. Lastly, the condition indicates that alternative drug testing sites must be approved by the Board prior to any vacation or travel. Licensee will still be responsible for daily contact and testing even while away from their residence or place of business to ensure sobriety. Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee. A source was added to reference Uniform Standards #4, #8 and #9 from which condition is derived.

5. Substance–Abusing Condition 5 — Facilitated Support Group Meetings: This condition implements the requirements of the Uniform Standards related to facilitated support group methods. The condition includes a requirement that in determining the type of frequency of meetings the Board will consider: the licensee's history, length of sobriety, recommendation of the clinical diagnostic evaluator; the scope and pattern of use, licensee's treatment history, and the nature, duration, and severity of substance abuse. The condition also requires licensee to submit the name or names of meeting facilitators for the Board's approval within 15 days of the effective date of the Board's decision and requires that the licensee participate in facilitated group

support meetings within 15 days after the Board's approval.

The condition requires the facilitator of the group support meeting to have certain qualifications including three years of experience and a license in providing recovery services. The facilitator may not have a relationship with the licensee within the last year, must report unexcused absences, and must provide the Board a signed document showing information related to the licensee's participation and progress. Verified documentation of attendance is required to be submitted to the Board on a quarterly basis. Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the Licensee is not a substance-abusing licensee. A source was added to reference Uniform Standard #5 from which condition is derived.

6. Substance–Abusing Condition 6 — Treatment Program for Cases Involving Substance–Abusing Licensees: In order to comply with the SB 1441 Uniform Standards, the Board proposes the following new condition which sets forth the procedures to follow when a licensee is required to enter a treatment program, whether it be inpatient, outpatient or any other type. Additionally, the condition, outlines the factors the Board should consider when determining what type of treatment program the licensee must enter. The factors to consider include the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration, and severity of substance abuse and whether the licensee is a threat to himself or herself or others. These considerations derive from SB 1441's Uniform Standard #6. The condition indicates that the costs associated with the treatment program are the licensee's full responsibility so the Licensee is aware that although the requirement is ordered by the Board, the costs are not covered by the Board.

The condition requires that the program director, psychiatrist, or psychologist confirm licensee's compliance with the requirements of the Board's Decision and he or she is required to notify the Board immediately if he or she believes licensee cannot practice safely. To facilitate the implementation of this responsibility, the condition requires the licensee to sign a release authorizing the treatment program to report all aspects of participation in the treatment program as requested by the Board or its designee, and requires that the licensee is required to enter treatment within 30 days of the effective date of the Board's decision. There is a clause that explains that if licensee fails to comply with the requirements of the treatment program or no longer participates in the program for whatever reason, it is con-

sidered a violation of probation and licensee is immediately suspended from the practice of acupuncture. Non-compliance with the treatment program calls for the licensee to cease the practice of acupuncture to ensure public safety. Additionally, the condition states that the licensee's probation is automatically extended if he or she hasn't successfully completed his or her treatment program. Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee. A source was added to reference Uniform Standards #6 from which condition is derived.

7. Substance-Abusing Condition 7 — Worksite Monitor: The Board proposes a new condition to implement the worksite monitor Uniform Standard. The condition requires the licensee to have a worksite monitor with no current or former financial, personal, familial or other relationship with the licensee that could compromise impartiality. A provision allows the Board to waive this requirement when it is impracticable for anyone other than the employer to serve as monitor. It also prohibits a worksite monitor employed by the licensee.

The monitor is required to be an acupuncturist, or another licensed healthcare professional in certain circumstances, with an active unrestricted license with no disciplinary action in the last 5 years. The licensee is required to submit to the Board the name of the proposed monitor within 20 days of the effective date of the Board's Decision. The monitor must affirm in writing that he or she has reviewed the Board's Decision and agrees to monitor the licensee as set forth by the Board. The licensee must consent in writing that the worksite monitor may communicate with the Board. Once the worksite monitor is approved, the licensee may not practice unless that person is present at the worksite. The worksite monitor must have frequent face-to-face contact with the licensee at a minimum of once per week, interview staff in the office in regard to the licensee's behavior, and review the licensee's attendance at work.

The monitor is required to verbally report to the Board and the licensee's employer any suspected substance abuse within one business day of the occurrence. A written report of such an occurrence shall be submitted to the Board within 48 hours. The worksite monitor must submit a written report to the Board monthly or as directed. The report shall include: licensee's name, license number, worksite monitor's name and signature, worksite monitor's license number, worksite locations, dates licensee had face-to-face contact with the monitor, staff interviewed, attendance report, any change in behavior or habits, and any indicators that can lead to suspected substance abuse. Optional language is

provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee. A source was added to reference Uniform Standard #7 from which the condition is derived.

8. Substance-Abusing Condition 8 — Major Violations: The requirements for this condition implements the Uniform Standard related to what are considered major violations by the Board. The condition states that if the licensee commits a major violation, he or she shall immediately cease practice upon notification from the Board. Licensee is prohibited from practicing acupuncture until otherwise notified in writing by the Board. Optional language is provided indicating that the condition may be waived or modified by the Board upon a written finding by the evaluator that the licensee is not a substance-abusing licensee. A source was added to reference Uniform Standards #9 and #10 from which the condition is derived.

C. The following terms and conditions have been re-numbered:

- 13. Obey All Laws is now Standard 1 (pg. 20)
- 14. Quarterly Reports is now Standard 2 (pg. 20)
- 15. Surveillance Program is now Standard 3 (pg. 20)
- 16. Interview with the Board or Its Designee is now Standard 4 (pg. 20)
- 17. Changes of Employment is now Standard 5 (pg. 20)
- 18. Tolling for Out-of-State Practice or Residence is now Standard 6 (pg. 20)
- 19. Employment and Supervision of Trainees is now Standard 7 (pg. 20)
- 20. Cost Recovery is now Standard 8 (pg. 21)
- 21. Violation of Probation is now Standard 9 (pg. 21)
- 22. Completion of Probation is now Standard 10 (pg. 21)

D. Amended Optional Probation Conditions. Optional 9:

Abstain from Drugs and Alcohol and Submit to Tests and Samples (pg. 19) has been renumbered from #9 to Optional 9. The word "completely" is added to the condition to emphasize total abstention from personal use or possession of controlled substances, and to move the reference to alcohol into the same sentence as controlled substance and prohibit possession, while removing the last sentence referencing only alcohol. An exception allowing respondents to take prescription drugs that are lawfully prescribed by a licensed practitioner as specified.

Policy Statement Overview/Anticipated Benefit:

The proposed changes amend the Disciplinary Guidelines 1996 to add the language required to implement SB 1441 by including the Uniform Standards and

substance-abusing terms and conditions of probation imposing to those standards. The anticipated benefit will be to provide maximum protection to California consumers from licensees who may be a danger to, or lack competence to treat, patients due to substance abuse. The proposed adoption of the standards and additional probation conditions will ensure that individuals who have been determined to be substance-abusing licensees will be effectively disciplined in a manner that will protect the public and will provide greater public protection through consistent standards for health care professionals. Additionally, the benefit of defining a substance-abusing licensee will provide greater protection to the public by providing clear direction as to when the standards and conditions apply.

The proposed changes to the guidelines not related to SB 1441 will provide the anticipated benefits of conforming with current law and providing greater clarity within the disciplinary guidelines as to the types of conditions and when they apply. Additionally, further benefit is gained by amending the condition related to alcohol and controlled substances used for non-substance-abusing licensees to provide greater clarity and to create an exception for medical prescriptions.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

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

INCORPORATION BY REFERENCE

- Acupuncture Board Disciplinary Guidelines and Conditions of Probation [September 2015]

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Cost Impacts on Representative Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily

incur in reasonable compliance with the proposed action.

Business Impact/Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete:

The Board has made an initial determination that the proposed regulation may have a significant, statewide adverse economic impact directly affecting business, including the inability of California businesses to compete with businesses in other states.

The following types of businesses would be affected:

- Businesses owned by licensees of the Board who face disciplinary action due to substance abuse; and
- Businesses that employ licensees of the Board who face disciplinary action due to substance abuse.

A license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Probationers are responsible for paying all costs during their probation, including, but not limited to the clinical diagnostic evaluations, biological testing, treatment program, and facilitated group support meetings. The average salary of a practicing acupuncturist in California is approximately \$35,000 per year.

A licensee on probation (probationer) will not incur any significant fiscal impact associated with paying for costs associated with the following proposed conditions of probation:

Probation Condition (Substance–Abusing 2) Notice to Employer

Probation Condition (Substance–Abusing 3) Abstain from Alcohol, Controlled Substances, and Dangerous Drugs

The costs to the probationer associated with Condition (Substance–Abusing 2) Notice to Employer would be minor and absorbable. Probationers may incur nominal costs associated with providing notification to the employer of the Decision or Accusation. Additionally,

the probationer may incur nominal costs associated with providing the names, physical addresses; mailing addresses, and telephone numbers of all employers and supervisors, or contractors, as well as the facility or facilities where the probationer practices. This regulation does not specifically state the manner of how a probationer is to provide the specified information. Licensees may choose from a variety of methods to notify the Board, including email, or mailing a letter. A licensee may incur nominal costs associated with mailing their letter to the Board.

The costs to the probationer associated with Condition (Substance–Abusing 3) Abstain from Alcohol, Controlled Substances, and Dangerous Drugs would be minor and absorbable. There is no cost associated with abstaining from the use of alcohol, drugs, controlled substances, and dangerous drugs. Probationers may incur nominal costs associated with providing the Board with specified information regarding lawful prescription medications lawfully prescribed by a physician and surgeon or nurse practitioner for a bona fide illness or condition. This regulation does not specifically state the manner of how a probationer is to provide the specified information. Licensees may choose from a variety of methods to notify the Board, including email, or mailing a letter. A licensee may incur nominal costs associated with mailing their letter to the Board. The licensee may also incur minimal costs associated with regularly reporting to his or her single coordinating physician and surgeon depending upon their health insurance coverage and the frequency necessitated by their condition. For purposes of this analysis, the Board estimates that if a probationer has a \$15 co-pay for visits with his or her coordinating physician and surgeon and makes monthly visits, then the probationer could incur \$180 in doctor’s fees annually.

The probationer will incur significant fiscal impact associated with paying for costs associated with the following proposed conditions of probation:

Probation Condition (Substance–Abusing 1) Clinical Diagnostic Evaluation;

Probation Condition (Substance–Abusing 4) Alcohol and Drug Testing;

Probation Condition (Substance–Abusing 5) Facilitated Support Group Meetings;

Probation Condition (Substance–Abusing 6) Treatment Program for Cases Involving Substance–Abusing Licensees;

Probation Condition (Substance–Abusing 7) Work-site Monitor;

and Probation Condition (Substance–Abusing 8) Major Violations.

Probation Condition (Substance–Abusing 1) Clinical Diagnostic Evaluation specifies that all costs associated

with such evaluation shall be paid by the probationer. The costs associated with clinical diagnostic evaluation may vary from \$3,000 to \$10,000 based upon the provider and the extent of the evaluation. There can be a significant difference in cost between a 3–day evaluation and a 10–day evaluation. For the purposes of this analysis, the Board estimates the probationer will incur a cost of \$5,000 per evaluation. Additionally, when a probationer is ordered to undergo a clinical diagnostic evaluation, the probationer is also required to cease practice for a minimum of 30 days. Probationers will incur lost wages as a result of a cease practice order. The Board estimates an Acupuncturist will lose approximately \$2,917 in wages (\$35,000/12 months) for every 30–day cease practice order.

Probation Condition (Substance–Abusing 4) Alcohol and Drug Testing specifies that all costs of the testing shall be paid by the probationer. The rate associated with the drug test and collection fee varies based on the rate charged by the collection company. The Board would contract with a specific drug testing collection agency. The probationer would be required to submit to testing through the Board–contracted agency. The Board estimates that the probationer would be charged an estimated fee of \$100 per drug test. This would include the average fee for urine analysis (\$50) and average collection fee (\$50). The proposed regulation specifies that the probationer would be tested at least 52 times during the first year of probation; at least 36 times during the second through fifth years of probation; and at least once per month after the fifth year as long as there have not been any positive results during the previous five years. The Board estimates the probationer would incur a cost of \$433.33 per month for the first year of probation, \$300 per month for years two through five, and \$100 per month for years six through seven. This would equate to an approximate cost of \$5,200 for the first year, \$3,600 per year for the second through fifth year, and \$1,200 per year for the sixth through seventh year. The probationer would pay approximately \$19,600 to comply with this condition over the course of a 5–year probation term and approximately \$22,000 to comply with this condition over the course of a 7–year probation term.

Probation Condition (Substance–Abusing 5) Facilitated Support Group Meetings specifies that all costs incurred are with facilitated meetings and shall be paid by the probationer. The rate associated with support meetings varies based on the support group facilitator and frequency. The charge to attend meetings may vary from \$50 to \$160 per week. For the purposes of this analysis, the Board estimates the probationer will incur a cost of \$100 per week to attend facilitated group support meetings twice a week. This cost would translate to

approximately \$433.33 per month or \$5,200 annually. A probationer would pay approximately \$26,000 over the course of a 5-year probation term, and \$36,400 over the course of a 7-year probation term.

Probation Condition (Substance–Abusing 6) Treatment Program for Cases Involving Substance–Abusing Licensees specifies that all costs associated with the completion of such program shall be paid by the probationer. The costs associated with completing a drug or alcohol abuse treatment program may vary from \$10,000 to \$35,000 depending on the treatment program, facility, insurance, and length of program. However, county facilities and The Salvation Army offer treatment programs on a sliding scale or at no cost. For the purposes of this analysis, the Board estimates the probationer will incur a cost of \$20,000 per treatment.

Probation Condition (Substance–Abusing 7) Work-site Monitor specifies that all costs of supervision shall be paid by the probationer. The fee a supervisor may charge a licensee can vary. The Board estimates a supervisor may charge a probationer a fee of \$0 to \$200 per month for services. For the purposes of this analysis, the Board estimates a probationer will incur a cost of \$100 per month for supervised practice. This cost would translate to \$1,200 annually or \$6,000 over the course

of a 5-year probation term, and \$8,400 over the course of a 7-year probation term.

Probation Condition (Substance–Abusing 8) Major Violations specifies that if a licensee commits a major violation, he or she shall immediately cease practice until notified otherwise by the Board. During the time the probationer is not practicing he or she is not earning any income. For the purposes of this analysis, the Board estimates a probationer would be ordered to not practice acupuncture for a period of at least 30 days to undergo another Clinical Diagnostic Evaluation and demonstrate 30 days of negative tests. Based upon an average annual salary of \$35,000 for an acupuncturist, the probationer would lose an estimated \$2,916.67 of income for the year if he or she committed a major violation once during a year of their probation term.

For the purposes of this analysis, the estimated fiscal and economic impact of the proposed conditions of probation will be based on five (5) and seven (7) year terms of probation. The following table (Table: Estimated Costs of Each Proposed Probation Condition Incurred by Probationer) delineates the estimated monthly and annual cost of each condition of probation as well as the average cost over the course of a 5-year probation term and a 7-year probation term:

Table: Estimated Costs of Each Proposed and Amended Probation Condition Incurred By Probationer

	Avg. Monthly Cost	Avg. Annual Cost	Avg. Cost for 5 Yrs Probation	Avg. Cost for 7 Yrs Probation
(Substance-Abusing 1) Clinical Diagnostic Evaluation	Varies Depending on Level of Evaluation Est. \$5,000 per Evaluation			
(Substance-Abusing 2) Notice to Employers	\$0	\$0	\$0	\$0
(Substance-Abusing 3) Abstain from Alcohol, Controlled Substances, and Dangerous Drugs	Varies Est. \$15	\$180	\$900	\$1,260
(Substance-Abusing 4) Alcohol and Drug Testing	Est. \$100 per test Year 1: \$433.33 Year 2-5: \$300 Year 6-7: \$100	Year 1: \$5,200 Year 2-5: \$3,600 Year 6-7: \$1,200	\$19,600	\$22,000
(Substance-Abusing 5) Facilitated Support Group Meetings	Varies Est. \$100 per week Est. \$433.33 per month	\$5,200	\$26,000	\$36,400
(Substance-Abusing 6) Treatment Program for Cases Involving Substance-Abusing Licensees	Varies Depending on Treatment Program, Facility, Insurance, and Length of Treatment –Est. \$20,000 per Treatment *County Facilities and Salvation Army typically have a sliding scale or offer treatment at no cost.			
(Substance-Abusing 7) Worksite Monitor	Varies Est. \$100	Varies Est. \$1,200	Varies Est. \$6,000	Varies Est. \$8,400
(Substance-Abusing 8) Major Violations	Varies depending on whether probationer commits a major violation during his or her probation.			
Total Est. Cost of Probation Conditions	Varies			

*Assumes One Clinical Diagnostic Evaluation Completed During Year 1

Assuming that the probationer is only ordered to undergo one clinical diagnostic evaluation and one drug and alcohol abuse treatment program during the first year or probation, the Board estimated a probationer will pay approximately \$36,600 during the first year of probation, \$10,000 each year for the second through fifth year of probation, and \$7,600 each year for the sixth through seventh year of probation to comply with the terms of probation. This would equate to an approximate total cost to the probationer of \$76,600 to comply with a 5-year probation term and \$91,800 to comply

with a 7-year probation term. Over the course of a 5-year probation term an Acupuncturist earning \$35,000 per year would pay approximately 44% of their total income towards the costs of complying with the proposed conditions of probation. Over the course of a 7-year probation term an Acupuncturist earning \$35,000 per year would pay approximately 37% of their total income towards the costs of complying with the proposed conditions of probation.

Acupuncturist \$35,000 Earned Annually x 5 Years = \$175,000

\$76,600 Total Probation Costs / \$175,000 Earned over 5 Years = Approx. 44%

Acupuncturist \$35,000 Earned Annually x 7 Years = \$245,000

\$91,800 Total Probation Costs / \$245,000 Earned over 7 Years = Approx. 37%

Additionally, probationers are required to provide specified information to the Board as required by each term and condition of probation. Probationers may choose from a variety of methods to transmit required information to the Board, including email, or mailing a letter. A probationer may incur nominal costs associated with mailing their letter to the Board.

The Board has made an initial determination that the proposed regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Board has not considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation may affect small businesses. The Board only regulates activities that appear to affect small businesses as defined in California Government Code Section 14837. A license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the small business where the licensee worked depending on the nature and severity of the violation. A small business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a small business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary

action cannot be projected. Small businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

This regulatory proposal will have the following effects:

Creation or Elimination of Jobs within the State of California

This proposal may create or eliminate jobs within the State of California because a license that has been revoked, suspended, reprimanded, or placed on probation may cause a licensee to lose their job depending on the nature and severity of the violation. An individual who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board, on average, suspends or revokes, or places practice restrictions on less than 1% of licensees per year.

Creation of New or Elimination of Existing Businesses Within the State of California:

This proposal may not create new business or may eliminate existing businesses within the State of California because a license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Expansion of Businesses or Elimination of Existing Businesses Within the State of California:

This proposal may affect the expansion of businesses currently doing business within the State of California. An individual's license that has been revoked, suspended, reprimanded, or placed on probation may cause a significant fiscal impact on the business where the licensee worked depending on the nature and severity of the violation. A business owned by a licensee who faces disciplinary action may incur a significant fiscal impact depending on the nature and severity of the violation. The Board does not maintain data relating to the number

or percentage of licensees who own a business; therefore, the number or percentage of businesses that may be impacted cannot be predicted. The Board only has authority to take administrative action against a licensee and not a business. Accordingly, the initial or ongoing costs for a small business owned by a licensee who is the subject of disciplinary action cannot be projected. Businesses operated by licensees who are in compliance with the law will not incur any fiscal impact.

Benefits for the Health and Welfare of California Residents:

The Board has determined that this regulatory proposal benefits the health and welfare of California residents by providing maximum protection to the California consumers against licensees who are found to be in violation of the law or who do not demonstrate the competency necessary to perform their duties due to substance abuse. These benefits are a direct result of the Board's statutorily mandated priority (BPC Section 4928.1). The protection of the public is the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. The proposed amendments of these additional probation conditions will ensure that individuals who have been determined to be substance-abusing licensees will be effectively disciplined in a manner that will protect the public. Additionally, these probation conditions provide the Board with an effective tool to discipline substance-abusing licensees who are in violation of the Acupuncture License Act.

Benefits for Worker's Safety:

This regulatory proposal benefits worker safety because providing maximum protection to the California consumers against licensees who are found to be in violation of the law or who do not demonstrate the competency necessary to perform their duties due to substance abuse is in the public's interest. These benefits are a direct result of the Board's statutorily mandated priority (BPC Section 4928.1). The protection of the public is the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions. The proposed amendments of these additional probation conditions will ensure that individuals who have been determined to be substance-abusing licensees will be effectively disciplined in a manner that will protect the public. Additionally, these probation conditions provide the Board with an effective tool to discipline substance-abusing licensees who are in violation of the Acupuncture License Act.

Benefits for the State's Environment:

This regulatory proposal does not affect the state's environment because the focus is on the disciplinary guidelines used for individuals, not the environment.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulation would be either 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 or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed regulations.

One alternative is to not adopt the regulations. This alternative was rejected. The Board is directed by statute to adopt the Uniform Standards. Failure to adopt the regulatory proposal also limits the Board's tools to deal with substance-abusing licensees, does not add clarity to the guidelines, and does not allow for an exception in other cases for a licensee to use medically prescribed substances.

The alternative to adopt this regulatory proposal was selected by the Board. This regulatory proposal will provide the Board with additional tools, the standards and conditions based on the standards, to discipline and monitor substance-abusing licensees. This also allows for consistent standards to be applied to health care professionals, thus, providing greater public protection. Further, this proposal provides a definition of substance-abusing licensee so that there is a standard for when the Uniform Standards and implementing conditions apply. This definition allows the licensee to rebut the presumption that he or she is a substance-abusing licensee, which ensures that a person is only deemed a substance-abusing licensee when appropriate. The regulatory proposal also provides updated information for clarity in the disciplinary guidelines and allows for a medical exception to the condition related to substance use in non-substance-abusing licensee cases. Adopting this regulatory proposal allows the Board to most effectively fulfill its regulatory mandate of consumer protection.

INITIAL STATEMENT OF REASONS
AND INFORMATION

The Board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Acupuncture Board at 1747 N. Market Blvd, Suite 180, Sacramento, CA 95834, or

by accessing the Board’s website at www.acupuncture.ca.gov.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name: Marc Johnson, Policy Coordinator
Address: 1747 North Market Blvd, Suite 180
Sacramento, CA 95834

Telephone No.: 916-515-5200
Fax No.: 916-928-2204
E-Mail Address: acupuncture@dca.ca.gov

The backup contact person is:

Name: Ben Bodea
Acting Executive Officer
Address: 1747 North Market Blvd, Suite 180
Sacramento, CA 95834

Telephone No.: 916-515-5200
Fax No.: 916-928-2204
E-Mail Address: acupuncture@dca.ca.gov

Website Access: Materials regarding this proposal can be found at http://www.acupuncture.ca.gov/about_us/dpopp.shtml,

TITLE 16. BOARD OF PODIATRIC MEDICINE

NOTICE IS HEREBY GIVEN that the Board of Podiatric Medicine is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at 2005 Evergreen St., Sacramento, California, at 10:00 a.m. on May 31, 2016. Written comments, in-

cluding those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board of Podiatric Medicine at its office not later than 5:00 p.m. on May 31, 2016 or must be received by Contact Person in this Notice, on May 31, 2016, at the hearing. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 2470 of the Business and Professions Code, and to implement, interpret or make specific Sections 1399.730, 1399.731, and 1399.732 of said Code, the Board of Podiatric Medicine is considering changes to Division 13.9 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST

A. Informative Digest

This rulemaking action seeks to amend Division 13.9 of Title 16 of the California Code of Regulations (CCR) by adopting Article 13, sections 1399.730, 1399.731, and 1399.732, to provide provisions for the conduct of oral argument following the non-adoption of a proposed decision as required by section 2336 of the California Business and Professions Code. Additionally, the addition of regulations relating to amicus briefs, and the written argument submitted in response to an order of non-adoption or reconsideration will provide needed guidance to future stakeholders presenting evidentiary matters before the Board of Podiatric Medicine. The Medical Board of California has enacted regulations to comply with section 2336 by adopting 16 CCR sections 1364.30, 1364.31, and 1364.32. The Board of Podiatric Medicine has tracked the language used by the Medical Board with the only changes consisting of the use of proper numbering, and changing the words “panel” to “board” and “panel members” to “board members.”

B. Policy Statement Overview/Anticipated Benefits of Proposal

In cases where the Board of Podiatric Medicine elects to non-adopt the Administrative Law Judge’s decision, there are no procedural rules regarding the delivery of oral argument for the stakeholders to follow. Regulatory language governing the conduct of oral argument fol-

lowing the non-adoption of an ALJ decision to permit such argument has been taken from existing law from the Medical Board of California. By adopting these proposed regulations, the Board of Podiatric Medicine will achieve compliance with the requirements of section 2336, which mandates that such regulations be enacted. Additionally, stakeholders will have procedural rules to follow and this will result in orderly presentations to the Board of Podiatric Medicine regarding matters coming before it for resolution.

Additional outcomes include benefits to the health and safety of the public and general welfare of California by assuring clear procedural rules for the conduct of oral arguments, amicus briefs, and written argument submitted in response to an order of nonadoption or reconsideration. Additionally, the proposed regulations will likely increase assurances of due process, fairness and transparency.

C. Consistency and Compatibility with Existing State Regulations

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

FISCAL IMPACT ESTIMATES

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

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

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

Business Impact:

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

If no cost impacts are known to you:

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

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Board of Podiatric Medicine has determined that the proposed regulations would not affect small businesses because this regulatory change applies to individual licensees and not businesses.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Board of Podiatric Medicine has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Board of Podiatric Medicine has determined that this regulatory proposal will have the following benefits to health and welfare of California residents, worker safety, and state's environment:

This regulation benefits the Board of Podiatric Medicine and all stakeholders by publishing clear rules and procedures for the conduct of oral argument after the board has issued an order of nonadoption of a proposed decision, and after the granting of a petition for reconsideration.

Additional outcomes include benefits to the health and safety of the public and general welfare of California by assuring clear procedural rules for the conduct of oral arguments, amicus briefs, and written argument submitted in response to an order of nonadoption or reconsideration. Additionally, the proposed regulations will likely increase assurances of due process, fairness and transparency.

CONSIDERATION OF ALTERNATIVES

The Board of Podiatric Medicine must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

**INITIAL STATEMENT OF REASONS
AND INFORMATION**

The Board of Podiatric Medicine has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Podiatric Medicine, 2005 Evergreen Street, Suite 1300, Sacramento, CA 95815.

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

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

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

Name: Kathleen Cooper
 Address: 2005 Evergreen St. #1300
 Sacramento, CA 95815
 Telephone
 No.: 916-263-0315
 Fax No.: 916-263-2651
 E-Mail
 Address: kathleen.cooper@dca.ca.gov

The backup contact person is:

Name: Jason Campbell
 Address: 2005 Evergreen St. #1300
 Sacramento, CA 95815
 Telephone
 No.: 916-263-2650
 Fax No.: 916-263-2651
 E-Mail
 Address: jason.campbell@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.bpm.ca.gov.

**TITLE 22. DEPARTMENT OF HEALTH
CARE SERVICES**

**NOTICE OF RULEMAKING AFTER
EMERGENCY ADOPTION**

**SUBJECT: Drug Medi-Cal Rates (2013-2014),
DHCS-14-013E**

NOTICE IS HEREBY GIVEN that the Department of Health Care Services (Department) has adopted the regulations in California Code of Regulations (CCR), Title 22, Division 3, Subdivision 1, Chapter 3, Article 7, Section 51516.1 on an emergency basis. These emergency regulations became effective on March 29, 2016, and will remain in effect for a period of 180 days. The purpose of this rulemaking is to adopt the emergency regulations on a permanent basis.

WRITTEN COMMENT PERIOD

Any interested person or his or her duly authorized representative may submit written comments to the Department relevant to the regulatory action described in this notice.

Please label any comments as pertaining to Drug Medi-Cal Rates (2013-2014), DHCS-14-013E and submit using any of the following methods:

Mail

Delivery: Department of Health Care
 Services
 Office of Regulations, MS 0015
 P.O. Box 997413
 Sacramento, CA 95899-7413

Hand

Delivery: Department of Health Care
 Services
 Office of Regulations
 1501 Capitol Avenue, Suite 5084
 Sacramento, CA 95814

FAX:

(916) 440-5748

Email:

regulations@dhcs.ca.gov

The written comment period closes at **5:00 p.m. on May 30, 2016**. Any written comments, regardless of the method of transmittal must be received by the Office of Regulations by **5:00 p.m.** on this date, for consideration.

Written comments should include the author's contact information so the Department can provide notification of any further changes to the regulation proposal.

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hear-

ing 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.

The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

AUTHORITY AND REFERENCE

These regulations are being proposed under the following authorities:

Welfare and Institutions Code (WIC) Sections 10725, 14021.5, 14021.6, 14021.30, 14105, and 14124.5; and Health and Safety Code (HSC) Section 20.

These regulations implement, interpret, or make specific the following:

WIC Sections 14021.5, 14021.51, 14021.6, 14021.9, 14021.30, 14121.24, and 14132.90; and HSC Section 11818.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This regulatory action amends Title 22, CCR, Section 51516.1, by updating Medi-Cal reimbursement rates for Drug Medi-Cal (DMC) substance use disorder services for Fiscal Year (FY) 2013–2014. This action implements, interprets, and makes specific the provisions of WIC Sections 14021.5, 14021.51, 14021.6, 14021.9, and 14124.24. These provisions require the Department, to establish rates for DMC substance use disorder services, and establish a per capita uniform statewide reimbursement (USR) rate for ancillary services.

Assembly Bill 106 (Chapter 32, Statutes of 2011) transferred California's DMC substance use disorder program from the Department of Alcohol and Drug Programs (ADP) to the Department, effective July 1, 2012. Senate Bill 1014 (Chapter 36, Statutes of 2012) facilitated the transfer by providing the statutory authority necessary for the Department to administer the program.

Anticipated Benefits or Goals of the Regulations

This regulatory action benefits DMC substance use disorder service providers through the provision of the recent FY 2013–2014 reimbursement rates, which in turn facilitates the continued delivery of these services. These regulations not only meet the goals of the authorizing statutes, as specified above, but the regulations ensure the proper and efficient administration of the Medi-Cal Program, in accordance with the federal and

state laws that govern the program's rules of participation and funding.

Consistency and Compatibility with Existing State Regulations

The Department has conducted an evaluation of the related existing state regulations in CCR, Title 22, Division 3 and Title 9, Division 4 and has determined that the regulations are consistent and compatible with those regulations. An automated search of Title 22, Division 3 and Title 9, Division 4 using the following keywords "Drug Medi-Cal", "Substance Use Disorder Services", and "rates" was conducted via Westlaw and yielded no conflicting state regulations.

This regulatory action is necessary to implement WIC Sections 14021.5, 14021.51, 14021.6, 14021.9 and 14121.24, as specified below.

- WIC Section 14021.5(e) specifies that rates for DMC substance use disorder services shall be effective July 1 through June 30 of the fiscal year in which the rates are established.
- WIC Sections 14021.51 and 14021.6 specify how the Department shall determine rates for DMC substance use disorder services.
- WIC Section 14021.51 requires the Department to establish rates for the use of the narcotic replacement drugs Methadone and LAAM.
- WIC Section 14124.24(a) specifies DMC substance use disorder services that are reimbursable through the Medi-Cal program.
- WIC Section 14021.9(c) states that for FY 2012–2013 and each fiscal year thereafter, rates for DMC substance use disorder services shall be the lower of the following:
 1. The rates developed pursuant to WIC Sections 14021.35, 14021.51, and 14021.6; or
 2. The rates applicable in FY 2009–2010 pursuant to subdivision (a), adjusted for the cumulative growth in the Implicit Price Deflator for the Costs of Goods and Services to Governmental Agencies, as reported by the Department of Finance.

Proposed changes to Section 51516.1 include the following:

- Adding the statewide maximum allowances for DMC substance use disorder services for FY 2013–2014.
- Adding the per capita uniform statewide reimbursement rates for narcotic treatment program services for FY 2013–2014.
- Making non-substantive changes for grammar and clarification purposes.

- Relocating and re-designating subsections within Section 51516.1 to accommodate new amendments.
- Adding USR rate information for narcotic treatment program Individual Counseling and Group Counseling services.
- Adding a new exception to counseling limitations based on medical necessity.

DISCLOSURES REGARDING
THE RULEMAKING

The Department has made the following initial determinations:

Fiscal Impact Statement

- A. Costs to any Local Agency or School District that are not reimbursable by the State: The fiscal impact of updating DMC rates to FY 2013–2014 has no current impact. The costs related to this regulation update have already been accounted for in prior years.

Costs to any Local Agency or School District that is required to be reimbursed under Part 7 (commencing with Section 17500), Division 4 of the Government Code: The fiscal impact of updating DMC rates to FY 2013–2014 has no current impact. The costs related to this regulation update have already been accounted for in prior years.

- B. Costs or Savings to any State Agency: None.
- C. Costs or Savings in Federal Funding to the State: The fiscal impact of updating DMC rates to FY 2013–2014 has no current impact. The costs related to this regulation update have already been accounted for in prior years.
- D. Other Nondiscretionary Costs or Savings Including Revenue Changes Imposed on State or Local Governments: None.

All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Mandates on Local Agencies or School Districts

The Department has determined that the regulations will not impose a mandate on local agencies or school districts, nor are there any costs for which reimburse-

ment is required by Government Code, Division 4, Part 7, (commencing with Section 17500).

Significant Statewide Adverse Economic Impact Affecting Businesses

The Department has made an initial determination that the 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. Of the fourteen Medi-Cal reimbursement rates for DMC substance use disorder services for FY 2013–2014, eight are higher than the rates for the prior fiscal year. Therefore, DMC substance use disorder service providers will benefit from the increase in payment.

Results of the Economic Impact Assessment (Analysis)

In accordance with Government Code Section 11346.3(b)(1), the Department has made the following assessments and has determined that the proposed regulations would not significantly affect the following:

1. The creation or elimination of jobs in California.
2. The creation or elimination of businesses in California.
3. The expansion of businesses currently doing business in California.

Impact on Jobs and Businesses

These regulations affect DMC substance use disorder service providers and beneficiaries who receive these services through Medi-Cal. These providers will benefit from the increased rates for FY 2013–2014. However, it is not anticipated that this rate increase would have an impact on the creation or elimination of jobs, the creation of new business, the elimination of existing business or the expansion of businesses in California.

Benefits of the Proposed Regulation

The Department has determined that the regulations would not affect worker safety or the state’s environment. However, the regulations will benefit the health and welfare of California residents by maintaining the continuity of substance use disorder services in the DMC Program and implementing the FY 2013–2014 reimbursement rates for these services. Furthermore, these regulations ensure the proper and efficient administration of the Medi-Cal Program, in accordance with the federal and state laws that govern the Program’s rules of participation and funding.

Effect on Small Businesses

The Department has determined that the regulations would only affect small businesses that voluntarily provide Drug Medi-Cal services.

Housing Costs Determination

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

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 this regulatory action was taken, would be as effective and less burdensome to affected private persons than the regulatory 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 Department is required, pursuant to WIC Section 14021.5, to establish reimbursement rates for substance use disorder services under the Medi-Cal Program. Including these reimbursement rates in regulation is not only necessary for statutory compliance, but it provides DMC service providers with convenient access to these rates of reimbursement.

ASSISTIVE SERVICES

For individuals with disabilities, the Department can 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 takers, reading or writing assistance. To request these assistive services, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email — regulations@dhcs.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 received less than ten business days prior to a public hearing.

The Department shall provide, upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication in a manner that allows for accurate translation by reading software used by the visually impaired. Providing this description may require extending the period of public comment for the proposed action pursuant to Government Code Section 11346.6.

CONTACT PERSONS

Inquiries regarding the regulations described in this notice may be directed to Maurilio Mendez of the Substance Use Disorder Prevention, Treatment & Recovery Services Division at (916) 327-2621.

All other inquiries concerning the regulatory action described in this notice may be directed to Kenneisha

Moore of the Office of Regulations, at (916) 440-7695, or to the designated backup contact person, Lori Manieri, at (916) 650-6825.

AVAILABILITY OF TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Department has prepared and has available for public review an initial statement of reasons for the regulations, all the information upon which the regulations are based, and the text of the 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 regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

The full text of any regulation which is changed or modified from the express terms of the emergency 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.

Materials regarding the regulatory action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) are posted to the Department's Internet site at:

<http://www.dhcs.ca.gov/formsandpubs/laws/Pages/ProposedRegulations.aspx>.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711 or 1-800-735-2929), email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above.

GENERAL PUBLIC INTEREST

DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF EXTENSION OF WRITTEN PUBLIC COMMENT PERIOD

NOTICE IS HEREBY GIVEN that the California Department of Corrections and Rehabilitation has **extended the written public comment period** regarding proposed amendments to California Code of Regulations, Title 15, Division 3, Sections 3349, 3349.1, 3349.2, 3349.3, 3349.4, 3349.5, 3349.6, 3349.7, 3349.8, and 3349.9 regarding the administration of the death penalty by lethal injection. The Notice was origi-

nally published on November 6, 2015, in the Office of Administrative Law Notice Register 2015, No. 45-Z.

Written comments sent by mail, fax, or e-mail to the addresses listed under Contact Person in this Notice must be received by the close of the public comment period on **May 15, 2016, at 5:00 p.m.**

CONTACT PERSON

Comments or inquiries should be directed to Timothy M. Lockwood, Chief, Regulation and Policy Management Branch, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, California 94283-0001, by telephone at (916) 445-2269, fax at (916) 324-6075, or by e-mail at LI.comments@cdcr.ca.gov. In the event the contact person is unavailable, inquiries should be directed to Joshua Jugum at (916) 445-2228.

DEPARTMENT OF HEALTH CARE SERVICES

DEPARTMENT OF HEALTH CARE SERVICES TO CHANGE REIMBURSEMENT RATE METHODOLOGY AND INCREASE RATES FOR INTERMEDIATE CARE FACILITIES FOR THE DEVELOPMENTALLY DISABLED (INCLUDING HABILITATIVE AND NURSING)

The Department of Health Care Services (DHCS) will change the reimbursement methodology and increase the rates for Intermediate Care Facilities for the Developmentally Disabled (ICF/DD), ICF/DD-Habilitative, and ICF/DD-Nursing.

Pursuant to Section 14105.075 added to the Welfare and Institutions Code per ABX2 1, DHCS shall reimburse facilities based on the 2008-09 rate year increased by 3.7 percent.

The effective date of the rate change will be August 1, 2016, or any other date as approved by the Centers for Medicare and Medicaid.

PUBLIC REVIEW AND COMMENTS

The California statutes mentioned above are available for public review at Welfare offices in every county of the State. Written comments (or requests for copies of the statutes) may be submitted to:

Mr. Grant Gassman, Chief
Long Term Care Section
Department of Health Care Services
1501 Capitol Avenue, Suite 71.3.3054
MS 4600
P.O. Box 997417
Sacramento, CA 95899-7417

DECISION NOT TO PROCEED

BOARD OF PODIATRIC MEDICINE

Pursuant to Government Code Section 11347, the California Board of Podiatric Medicine hereby gives notice that it has decided not to proceed with the rule-making action published in the California Regulatory Notice Register on December 25, 2015, Register 2015 No. 52-Z. The proposed rulemaking concerned Oral Arguments. (OAL Notice Z2015-1211-03.) If you have any questions regarding this notice or any related matter, please contact Kathleen Cooper, 2005 Evergreen St. #1300, Sacramento, CA 95815 Tel: 916-263-0315, Fax: 916-263-2651, Email: kathleen.cooper@dca.ca.gov.

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# 2016-0301-01

BOARD OF BARBERING AND COSMETOLOGY
Schedule of Administrative Fines

This action amends the schedule of administrative fees for violations of the Barbering and Cosmetology Act and related regulations.

Title 16

AMEND: 974

Filed 04/04/2016

Effective 07/01/2016

Agency Contact: Kevin Flanagan (916) 575-7104

File# 2016-0328-02
 BOARD OF FORESTRY AND FIRE PROTECTION
 Drought Mortality Amendments, 2015

The Board of Forestry and Fire Protection (BOFFP) submitted this second emergency readopt action to maintain the regulations adopted in OAL File No. 2015-0701-02E and re-adopted in 2015-1221-01EE. The emergency rulemaking action amended sections 1038 and 1052.1 in title 14 of the California Code of Regulations, to add drought as a condition that constitutes an emergency, as well as regulations applicable to the harvesting of dead and dying trees in response to drought related stress. This action only readopts the amendments made to section 1038, relating to the harvesting of dead and dying trees.

Title 14
 AMEND: 1038
 Filed 04/06/2016
 Effective 04/12/2016
 Agency Contact: Matt Dias (916) 653-8007

File# 2016-0307-01
 CALIFORNIA ENERGY COMMISSION
 Conflict-of-Interest Code

This is a Conflict-of-Interest Code that has been approved by the Fair Political Commission and is being submitted for filing with the Secretary of State and printing only.

Title 20
 AMEND: 2401, 2402
 Filed 04/06/2016
 Effective 05/06/2016
 Agency Contact:
 Jennifer Martin-Gallardo (916) 651-3748

File# 2016-0324-03
 CALIFORNIA PRISON INDUSTRY AUTHORITY
 CALPIA Inmate Recruitment and Hiring Processes

This resubmittal action, referencing OAL Matter No. 2016-0122-01, amends information CalPIA requires of offenders in connection with inmate recruitment and hiring processes.

Title 15
 AMEND: 8004.2
 Filed 03/30/2016
 Effective 04/01/2016
 Agency Contact: Dawn Eger (916) 358-1612

File# 2016-0218-01
 DEPARTMENT OF CHILD SUPPORT SERVICES
 Repeal of MPP Chapter 12-200

This action by the Department of Child Support Services is a change without regulatory effect repealing

chapter 12-200 of the Manual of Policies and Procedures (MPP). This chapter, which includes various performance review procedures and incentive programs for district attorneys, is no longer supported by statutory authority.

Title MPP

REPEAL: 12-201, 12-202, 12-202.1, 12-202.1.11, 12-202.1.11.111, 12-202.2, 12-202.2.21, 12-202.2.21.211, 12-202.2.21.212, 12-202.2.22, 12-202.2.23, 12-202.2.24, 12-202.3, 12-202.3.31, 12-202.3.31.311, 12-202.3.31.312, 12-202.3.31.313, 12-202.3.32, 12-202.3.33, 12-202.3.33.331, 12-202.4, 12-202.4.41, 12-202.5, 12-202.5.51, 12-202.5.52, 12-202.5.53, 12-202.5.54, 12-202.6, 12-202.6.61, 12-202.6.61.611, 12-202.6.61.612, 12-202.6.61.613, 12-202.6.62, 12-202.7, 12-202.8, 12-202.8.81, 12-202.8.82, 12-202.8.83, 12-202.8.84, 12-202.8.84.841, 12-202.8.84.842, 12-202.8.85, 12-202.8.85.851, 12-203, 12-203.1, 12-203.1.11, 12-203.1.11.111, 12-203.1.11.112, 12-203.1.11.113, 12-203.1.11.113(a), 12-203.1.11.113(b), 12-203.1.11.113(c), 12-203.1.11.114, 12-203.1.11.114(a), 12-203.1.11.114(b), 12-203.1.11.114(c), 12-203.1.11.115, 12-203.2, 12-203.2.21, 12-203.2.22, 12-203.2.23, 12-203.3, 12-203.3.31, 12-203.3.32, 12-203.3.32.321, 12-203.3.32.322, 12-203.3.33, 12-203.4, 12-203.4.41, 12-203.4.42, 12-203.5, 12-203.6, 12-203.7, 12-203.7.71, 12-203.7.71.711, 12-203.7.71.712, 12-203.7.71.713, 12-203.7.72, 12-203.7.72.721, 12-203.7.73, 12-203.8, 12-204, 12-204.1, 12-204.1.11, 12-204.1.11.111, 12-204.1.11.112, 12-204.1.11.113, 12-204.1.11.114, 12-204.1.12, 12-204.1.13, 12-204.2, 12-204.3, 12-204.3.31, 12-204.3.31.311, 12-204.3.31.312, 12-204.3.31.313, 12-204.3.31.314, 12-204.3.31.315, 12-204.3.31.316, 12-205, 12-205.1, 12-205.1.11, 12-205.1.12, 12-205.1.13, 12-205.1.14, 12-205.1.15, 12-205.1.16, 12-205.1.17, 12-205.2, 12-205.2.21, 12-205.2.22, 12-205.2.23, 12-205.3, 12-205.3.31, 12-205.3.32, 12-205.4, 12-205.5, 12-205.5.51, 12-205.5.52, 12-205.5.53, 12-205.5.54, 12-205.5.55, 12-205.5.55.551, 12-205.5.55.552, 12-205.6, 12-205.6.61, 12-205.6.62, 12-205.6.62.621, 12-205.6.63, 12-205.6.63.631, 12-205.6.64, 12-205.6.65, 12-205.7, 12-206, 12-206.1, 12-206.2, 12-206.3, 12-206.3.31, 12-206.4, 12-206.4.41, 12-206.4.41.411, 12-206.4.41.412, 12-206.4.41.412(a), 12-206.4.41.413, 12-206.4.41.413(a), 12-206.4.41.413(b),

12-206.4.41.413(c), 12-206.4.41.414,
 12-206.4.41.415, 12-206.4.41.415(a),
 12-206.4.41.416, 12-206.5, 12-207, 12-207.1,
 12-207.1.11, 12-207.1.11.111, 12-207.1.11.112,
 12-207.1.11.113, 12-207.2, 12-207.3,
 12-207.3.31, 12-207.3.31.311, 12-207.3.31.312,
 12-207.3.31.312(a), 12-207.3.31.312(b),
 12-207.3.31.312(c), 12-207.3.32,
 12-207.3.32.321, 12-207.3.32.322,
 12-207.3.32.322(a), 12-207.3.32.322(b),
 12-207.3.32.322(c), 12-207.4, 12-207.4.41,
 12-207.4.42, 12-207.5, 12-207.5.51, 12-207.5.52,
 12-207.5.53, 12-207.5.53.531, 12-207.5.53.532,
 12-207.5.53.533, 12-207.6, 12-207.6.61,
 12-207.6.62, 12-207.6.63, 12-207.7, 12-207.7.71,
 12-207.7.71.711, 12-207.7.71.711(a),
 12-207.7.71.711(b), 12-207.8, 12-207.8.81,
 12-207.8.82, 12-210, 12-210.1, 12-210.1.11,
 12-211, 12-211.1, 12-211.2, 12-222, 12-222.1,
 12-222.1.11, 12-222.1.11.111, 12-222.1.12,
 12-224, 12-224.1, 12.224.1.11, 12.224.1.12,
 12.224.1.13, 12-224.2, 12.224.2.21, 12-224.2.22,
 12-224.2.23, 12-225, 12-225.1, 12-225.2,
 12-225.2.21, 12-228, 12-228.1, 12-228.1.11,
 12-228.1.12, 12-228.1.13, 12-228.1.13.131,
 12-228.1.13.132, 12-228.1.13.133,
 12-228.1.13.134, 12-228.1.14, 12-228.2,
 12-228.2.21, 12-228.2.21.211, 12-228.2.21.212,
 12-228.2.22, 12-228.3, 12-228.4, 12-228.5,
 12-228.6, 12-228.6.61, 12-228.6.62, 12-228.6.63,
 12-228.6.64
 Filed 03/30/2016
 Agency Contact: Janelle Brown (916) 464-6855

File# 2016-0302-02
 DEPARTMENT OF CORRECTIONS AND
 REHABILITATION
 Pilot Program — Institutional Use of Force Reviews
 This change without regulatory effect filing by the Department of Corrections and Rehabilitation repeals section 3999.16 of title 15 of the California Code of Regulations, which contains the pilot program for institutional use of force reviews. Pursuant to Penal Code section 5058.1, pilot programs remain in effect for two years. This pilot program was adopted in 2014 in OAL File No. 2014-0122-02FP and lapsed by operation of law on February 11, 2016.

Title 15
 REPEAL: 3999.16
 Filed 03/30/2016
 Agency Contact: Anthony Carter (916) 445-2220

File# 2016-0329-01
 DEPARTMENT OF FOOD AND AGRICULTURE
 Japanese Beetle Eradication Area
 This emergency regulatory action establishes Santa Clara County as an area of eradication for the Japanese beetle (*Popillia japonica*). The effect of the amendment provides authority for the state to perform eradication activities against the Japanese beetle within Santa Clara County. At this time, the other counties also proclaimed to be eradication areas are El Dorado, Los Angeles, Merced, Orange, Placer, Riverside, Sacramento, San Bernardino and San Diego.
 Title 3
 AMEND: 3589
 Filed 04/05/2016
 Effective 04/05/2016
 Agency Contact: Sara Khalid (916) 403-6625

File# 2016-0328-05
 DEPARTMENT OF JUSTICE
 Department of Justice Bond Form
 This file and print action adopts section 28.5 in the title 11 listing of approved surety bonds and is the Department of Justice's approval and printing of the adopted Performance Bond form for the Attorney General.
 Title 11
 ADOPT: 28.5
 Filed 04/06/2016
 Effective 04/06/2016
 Agency Contact: Karen W. Yiu (510) 622-2131

File# 2016-0328-06
 DEPARTMENT OF JUSTICE
 Department of Justice Bond Form
 This file and print action adopts section 28.6 in the title 11 listing of approved surety bonds and is the Department of Justice's approval and printing of the adopted Payment Bond to Accompany Construction Contract form for the Attorney General.
 Title 11
 ADOPT: 28.6
 Filed 04/06/2016
 Effective 04/06/2016
 Agency Contact: Karen W. Yiu (510) 622-2131

File# 2016-0223-01
 DEPARTMENT OF MOTOR VEHICLES
 Multiple County Use of Vehicle
 This rulemaking by the California Department of Motor Vehicles (department) provides a form for registered owners of vehicles to notify the department of ve-

hicle usage information deemed relevant pursuant to Vehicle Code section 4004.5. This code allows drivers to voluntarily report multi-county use of their vehicles. This information allows the department to consider this information when it tracks and counts the number of vehicles registered within each county or district. This information is used to collect and apportion funds to counties or county air pollution control districts based on the number of cars registered.

Title 13
 ADOPT: 150.10
 Filed 04/06/2016
 Effective 07/01/2016
 Agency Contact: Tracy Brazil (916) 657-8919

File# 2016-0323-02
 DEPARTMENT OF PUBLIC HEALTH
 Newborn Screening

This emergency rulemaking by the Department of Public Health (the "Department") adopts, amends, and repeals several sections in title 17 of the California Code of Regulations. Specifically, these regulatory changes revise Newborn Screening Program requirements for newborns' physicians, midwives, perinatal health facilities/hospitals, and other out-of-hospital newborn screening providers. These regulations also update the scope of testing to accommodate the expanded list of disorders for which testing is done, as well as update definitions, optimal timing, specific details regarding specimen collection, and follow-up requirements to accommodate practice and technology changes in newborn screening.

Title 17
 ADOPT: 6500.03, 6500.05, 6500.9, 6500.21, 6500.33, 6500.43, 6500.50, 6500.51, 6500.55, 6500.58, 6500.71, 6500.78, 6501.5 AMEND: 6500.35, 6500.39, 6500.45, 6501, 6505, 6506, 6506.6, 6506.8, 6506.10 REPEAL: 6500.65, 6500.67
 Filed 04/04/2016
 Effective 04/04/2016
 Agency Contact: Charlet Archuleta (916) 445-9403

File# 2016-0321-02
 STATE WATER RESOURCES CONTROL BOARD
 Drinking Water Point of Use and Point of Entry Treatment

This action by the State Water Resources Control Board (Board) was submitted to OAL as an emergency file and print pursuant to Health and Safety Code section 116380(b). These emergency regulations govern the use of point-of-use (POU) treatment devices and point-of-entry (POE) treatment devices by a public

water system (PWS), in lieu of centralized treatment. Pursuant to section 116380(d), these regulations are exempt from the rulemaking provisions of the Administrative Procedure Act (APA) and OAL review. Section 116380(d) also provides that the regulations are to go into effect upon filing with the Secretary of State and are to remain in effect until the earlier of January 1, 2018, or the effective date of the regulations adopted by the Board in accordance with the APA.

Title 22
 AMEND: 64417, 64418, 64418.1, 64418.2, 64418.3, 64418.4, 64418.5, 64418.6, 64418.7, 64419, 64420, 64420.1, 64420.2, 64420.3, 64420.4, 64420.5, 64420.6, 64420.7
 Filed 04/01/2016
 Effective 04/01/2016
 Agency Contact:
 Conny Mitterhofer (916) 341-5254

File# 2016-0321-03
 STATE WATER RESOURCES CONTROL BOARD
 Emergency Actions Due to Insufficient Flow for Specific Fisheries in Tributaries to the Russian River

The State Water Resources Control Board submitted this emergency readopt action to maintain the regulations adopted in OAL File No. 2015-0624-01E. The emergency rulemaking action adopted section 876 in title 23 of the California Code of Regulations, regarding enhanced water conservation and additional reporting requirements for the protection of specific fisheries in tributaries to the Russian River as an emergency regulation. Pursuant to Water Code section 1058.5, the finding of emergency is not subject to review by the Office of Administrative Law.

Title 23
 ADOPT: 876
 Filed 03/30/2016
 Effective 03/30/2016
 Agency Contact: David Rose (916) 341-5196

**CCR CHANGES FILED
 WITH THE SECRETARY OF STATE
 WITHIN November 4, 2015 TO
 April 6, 2016**

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

Title 2

03/22/16 AMEND: 18215.3, 18247.5, 18404, 18405, 18422, 18425, 18427.1, 18450.4, 18531.5, 18531.62 REPEAL: 18402.5

03/22/16 AMEND: 18406, 18530.4, 18530.45, 18992

02/22/16 ADOPT: 61000, 61001, 61002, 61003, 61004, 61005, 61006, 61007, 61008, 61009, 61010, 61011, 61012, 61013, 61014, 61015, 61016, 61017, 61018, 61019, 61020, 61021, 61022, 61023, 61024

02/22/16 ADOPT: 59800

02/11/16 AMEND: 57200

02/10/16 AMEND: 57200

02/04/16 ADOPT: 555.5

02/04/16 AMEND: 18351

02/04/16 AMEND: 18616

01/14/16 AMEND: 18944.1

01/14/16 AMEND: 18996

01/06/16 AMEND: 48000

12/30/15 AMEND: 53900

12/23/15 AMEND: 1859.2, 1859.107, 1859.164.2, 1859.195, 1859.198

12/23/15 AMEND: 1859.70.4, 1859.93, 1859.93.1, 1859.190

12/22/15 AMEND: 51000

12/21/15 AMEND: 58200

12/21/15 AMEND: 59100

12/21/15 AMEND: 1859.76

12/15/15 ADOPT: 18360 AMEND: 18362 REPEAL: 18360

12/15/15 AMEND: 57500

12/15/15 REPEAL: 18413

12/14/15 ADOPT: 5.1, 5.2, 90, 248, 548.2, 548.5 REPEAL: 548.77

12/09/15 ADOPT: 11023 AMEND: 11005.1 (renumbered to 10500), 11006, 11008, 11009, 11019, 11023 (renumbered to 11024), 11028, 11029, 11030, 11031, 11034, 11035, 11036, 11039, 11040, 11041, 11042, 11043, 11044, 11045, 11046, 11047, 11049, 11050, 11051, 11059, 11060, 11062, 11064, 11065, 11066, 11067, 11068, 11070, 11071, 11075, 11100, 11101, 11103, 11104, 11105, 11111, 11113, 11114, 11121, 11122, 11123, 11128, 11131, 11132, 11133 (renumbered to 10250), 11134 (renumbered to 10251), 11135 (renumbered to 10252), 11136 (renumbered to 10253), 11137 (renumbered to 10254), 11138 (renumbered to 10255), 11139 (renumbered to 10256), 11140

(renumbered to 10257), 11141 (renumbered to 10258) REPEAL: 11024

12/08/15 ADOPT: 59790

12/03/15 REPEAL: 28010

12/02/15 ADOPT: 25, 26

12/02/15 ADOPT: 11, 12, 12.1, 155, 156, 157, 158, 159 AMEND: 547.52

11/19/15 ADOPT: 59550

11/09/15 AMEND: 18225.7 REPEAL: 18550.1

11/04/15 AMEND: 37000

Title 3

04/05/16 AMEND: 3589

03/29/16 AMEND: 3435(b)

03/21/16 AMEND: 3435

03/10/16 AMEND: 3435(b)

03/09/16 AMEND: 3435(b)

03/08/16 AMEND: 3435(b)

02/17/16 AMEND: 6000, 6445, 6447, 6447.2, 6447.3, 6448.1, 6449.1, 6450.1, 6452, 6452.2, 6784

02/17/16 AMEND: 3439(b)

02/09/16 AMEND: 3435(b)

02/02/16 ADOPT: 3442

01/27/16 ADOPT: 3591.26

01/21/16 AMEND: 3435(b)

01/20/16 AMEND: 3435(b)

01/14/16 AMEND: 3435(b)

01/06/16 AMEND: 3435(b)

01/05/16 AMEND: 3435(b)

12/30/15 AMEND: 3435(b)

12/23/15 ADOPT: 3441

12/21/15 AMEND: 3435(b)

12/16/15 AMEND: 3435(b)

12/15/15 AMEND: 3435(b)

12/14/15 AMEND: 3435

12/07/15 AMEND: 3435(b)

12/02/15 AMEND: 6170.5, 6723, 6724, 6761

11/24/15 AMEND: 3435(b)

11/24/15 AMEND: 3435(b)

11/18/15 AMEND: 6260, 6262, 6264, 6266

11/13/15 AMEND: 3435(b)

11/12/15 AMEND: 3435(b)

11/09/15 AMEND: 1358.4

11/04/15 AMEND: 6000, 6188, 6742, 6746, 6793

Title 4

03/28/16 AMEND: 10176(d), 10181

03/23/16 ADOPT: 12465 AMEND: 12460, 12461, 12462, 12463, 12464, 12466

03/10/16 ADOPT: 5258, 5271, 5273 AMEND: 5033, 5052, 5100, 5102 (renumbered to 5101), 5103 (renumbered to 5102), 5104 (renumbered to 5103), 5105 (renumbered to 5104), 5106 (renumbered to 5105), 5107 (renumbered to 5106), 5132, 5170,

CALIFORNIA REGULATORY NOTICE REGISTER 2016, VOLUME NO. 16-Z

	5190, 5191, 5192, 5200, 5205, 5210, 5230, 5232, 5250, 5255, 5260, 5267 REPEAL: 5101	11/23/15	ADOPT: 71105, 71105.5, 71410, 71471, 71775, 71775.5, 74240, 74250, 75140 AMEND: 70000, 71400, 71650, 75150
03/08/16	AMEND: 1658	11/23/15	ADOPT: 851.5, 853.6, 853.8 AMEND: 850, 851, 853, 853.5, 853.7, 855, 857, 858, 859, 860, 861, 862, 862.5, 863, 864
03/03/16	AMEND: 10176, 10179, 10180, 10181	11/18/15	ADOPT: 80002 AMEND: 80001
02/04/16	AMEND: 5000, 5033, 5052, 5144, 5205, 5220, 5221, 5230	Title 8	
02/01/16	ADOPT: 7210, 7213, 7214, 7215, 7216, 7217, 7218, 7219, 7220, 7221, 7222, 7223, 7224, 7225, 7225.1, 7226, 7227, 7228, 7229	03/23/16	AMEND: 9789.12.2, 9789.12.6, 9789.12.8, 9789.12.13, 9789.13.1, 9789.15.4, 9789.16.1, 9789.16.2, 9789.17.1, 9789.19
01/26/16	ADOPT: 1866.1 AMEND: 1844	03/14/16	AMEND: 9789.21, 9789.25
01/25/16	AMEND: 10170.2, 10170.3, 10170.4, 10170.5, 10170.6, 10170.7, 10170.8, 10170.9, 10170.10, 10170.11	03/14/16	AMEND: 333, 336
01/04/16	AMEND: 130	03/07/16	AMEND: 4307
12/29/15	AMEND: 1887	03/07/16	AMEND: 4412
12/24/15	AMEND: 10302, 10315, 10317, 10320, 10322, 10325, 10326, 10327, 10328, 10337	03/04/16	AMEND: 9785.4.1
12/10/15	AMEND: 1632	02/25/16	AMEND: 3328
12/03/15	ADOPT: 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	01/06/16	AMEND: 5194(c)
11/30/15	ADOPT: 7125.1 AMEND: 7113, 7116, 7118, 7119, 7125, 7127	12/30/15	ADOPT: 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962
11/17/15	AMEND: 2000	11/23/15	AMEND: 10133.32
11/09/15	ADOPT: 5258, 5271, 5273 AMEND: 5033, 5052, 5100, 5102 (renumbered to 5101), 5103 (renumbered to 5102), 5104 (renumbered to 5103), 5105 (renumbered to 5104), 5106 (renumbered to 5105), 5107 (renumbered to 5106), 5132, 5170, 5190, 5191, 5192, 5200, 5205, 5210, 5230, 5232, 5250, 5255, 5260, 5267 REPEAL: 5101	11/05/15	AMEND: 333, 336
Title 5		Title 9	
03/28/16	ADOPT: 1700	11/05/15	AMEND: 4210
03/22/16	ADOPT: 9526	Title 10	
03/21/16	AMEND: 80057.5, 80089.2	03/22/16	AMEND: 2544, 2544.1, 2544.2, 2544.3, 2544.4, 2544.5, 2544.6
03/03/16	AMEND: 19810	03/08/16	ADOPT: 2240.15, 2240.16, 2240.6, 2240.7 AMEND: 2240, 2240.1, 2240.2, 2240.3, 2240.4, 2240.5
02/26/16	AMEND: 27007	02/04/16	AMEND: 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218
02/24/16	AMEND: 80499	02/02/16	ADOPT: 2269 AMEND: 2218, 2250, 2251, 2252, 2253, 2254, 2256, 2257, 2258, 2259, 2260, 2266, 2267, 2268 REPEAL: 2218.1, 2255, 2261, 2262, 2263, 2264, 2265, 2269.1, 2269.4, 2269.7, 2269.10, 2269.11, 2269.13, 2269.14
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02/18/16	ADOPT: 40106	12/23/15	ADOPT: 6650, 6652, 6656, 6657, 6658, 6660, 6662, 6664, 6666, 6668, 6670
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