

FINAL STATEMENT OF REASONS
FORENSIC ALCOHOL TESTING LABORATORIES
CALIFORNIA CODE OF REGULATIONS, TITLE 17

SUMMARY OF PROPOSAL

Senate Bill 1623, Chapter 337 (statutes of 2004), created section 100703 of the California Health and Safety Code, which removed the State Department of Public Health's (the Department's) authority to license forensic alcohol testing laboratories. The legislation required the Department to establish a review committee (the Forensic Alcohol Review Committee; FARC) to evaluate Group 8 (commencing with section 1215) of subchapter 1 of Chapter 2 of Division 1 of Title 17 of the California Code of Regulations.

FARC has the mandate to revise those regulations to ensure the competence of laboratories that perform forensic alcohol testing. The revisions to the regulations must ensure the proper performance of the employees in testing, analyzing, and reporting the results of the tests and ensure those laboratories and employees comply with applicable laws.

The purpose of this proposal is to amend the regulations governing the requirements laboratories are held to when performing forensic alcohol testing. Those laboratories provide key information used in prosecutions for driving under the influence of alcohol, particularly when there have been traffic accidents.

The amendments update the regulations to reflect changes in the Health and Safety Code. The 1986 regulations are outdated and inconsistent with California law, current health advisories, and modern instrumentation and technology. Therefore, the regulations needed to be reviewed in their entirety and re-written where applicable.

FINAL CHANGES: Final regulation text is denoted in single underline to indicate additions to the California Code of Regulations and single strikeout to indicate deletions from the California Code of Regulations.

DESCRIPTION OF FINAL CHANGES TO TEXT (POST 4th -15-DAY COMMENT PERIOD)

The final regulation text is denoted in single underline to accurately indicate additions to, and single strikeout to accurately indicate deletions from the California Code of Regulations. The prior rulemaking submitted to the Department of Administrative Law on May 16, 2016, was disapproved on July 5, 2016, because the Department did not meet APA procedural requirements due to failure to accurately indicate changes to the regulations pursuant to Government sections 11346 and 11346.8, and California Code of Regulations, Title 1, sections 8 and 46. The 4th 15-day public availability period provided an opportunity to clearly denote the final changes to the California Code of Regulations. Comments were received and the proceeding reflects non-substantive revisions that were made based on the comments received.

Section 1215 (l): Text shown in new section with strikeout is omitted and reads: “NIST” is an abbreviation for the National Institute of Standards and Technology.

Section 1215 (n): Text shown in new section with strikeout is omitted and reads: “NIST Standard Reference Material (SRM)” means a CRM issued by NIST that also meets additional NIST-specific certification criteria and is issued with a certificate or certificate of analysis that reports the results of its characterizations and provides information regarding the appropriate use(s) of the material”.

Section 1215(o): Text shown in new section with strikeout is omitted and reads: “NIST Traceable” means a commercially produced reference material with a well-defined traceability linkage to existing NIST standards for chemical measurements.

Section 1215 (p): Text shown in new section with strikeout is omitted and reads: “Precautionary Checklist” means a guide to assist in the operation of a breath instrument.

Section 1215 (q): Text shown in new section with strikeout is omitted and reads: “Proficiency Test” means a test to evaluate the continuing competence of analysts and the performance of a laboratory.

Section 1215 (s): Text shown in new section with strikeout is omitted and reads: “Set” means a group of samples analyzed in a continuous time span.

Title 17 Division 1: Division name was and should remain “State Department of Health Services”.

Section 1216.1: Title with underline reads: Qualifications for Licensing to Perform Forensic Alcohol Analysis.

Section 1216.1 (b)(2)(F): The word “trainee’s” is included in the text, and reads: Practical laboratory demonstration of the ~~student’s~~ trainee’s ability to successfully perform forensic alcohol analysis;

Section 1216.1(b)(3)(E): The letter “a” is deleted from the text, and the % sign after plus or minus 5 is replaced with the word “percent”, and reads: Results must fall within plus or minus 5 percent of the known value if the value is at 0.100% or higher. If the value is lower than 0.100%, the result must be within plus or minus 0.005.

Section 1217.1 The word “of” was added to the strikeout text.

Section 1220.1(a)(2): The text is shown without any strikeout or underline and reads: The method shall be capable of the analysis of ethyl alcohol with a specificity which is adequate and appropriate for traffic law enforcement.

Section 1220.1(a)(4): The word “ethyl” was included in the text and reads: Blood alcohol results on post-mortem samples shall not be reported unless specifically identified as the oxidizable substance is identified as ethyl alcohol by qualitative test; and

Section 1220.2 (a)(1)(A): A comma is added before and after the word “which.”

Section 1220.2(a)(4): Text shown without repetition of the original text and with proper punctuation and reads: All samples shall minimally be analyzed in duplicate. Alcohols or other volatile organic solvents shall not be used to wash or rinse glassware and instruments used for alcohol analysis; If volatile organic solvents are employed in the maintenance of equipment, the solvents must be thoroughly removed.”

Section 1221.1(a): The letter “a” is shown without strikeout and the word “accessories” is not underlined.

Section 1221.1(b)(3): This new section was numbered as 1221.1(b)(3), however should be numbered 1221.1(b)(1) and read: 1221.1(b)(1)The breath sample shall be collected only after fifteen continuous minutes during which time the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten, or smoked.”

Section 1222: The word “represent” is added as struck out text.

Section 1221.1(b)(1): The suffix “testing” is omitted from the struck out text.

Section 1221.1(b)(2): The suffix “testing” is omitted from the struck out text.

Section 1222.2(a): The following text is added with strikeout: ~~testing instruments which are under its jurisdiction:~~

ALTERNATIVES DETERMINATION

In accordance with Government Code Section 11346.9(a)(4), the Department has determined that no alternatives would be more effective in carrying out the purpose for which the regulation is proposed nor less burdensome to affected private persons than the adopted regulations. Further, there are no more cost effective alternatives for affected private persons that would be equally effective in implementing the statutory policy.

LOCAL MANDATE DETERMINATION

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

IMPACT ON BUSINESS DETERMINATION

The Department has determined that the 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.