Title 2. Administration
Division 1. Administrative Personnel
Chapter 3. Department of Human Resources
Subchapter 1. General Civil Service Rules
Article 29. Substance Abuse
Section 599.963 Testing Process and Standards

NOTICE OF PROPOSED RULEMAKING

The California Department of Human Resources (CalHR) proposes to amend the regulation described below after considering all comments, objections, and recommendations.

I. WRITTEN COMMENT PERIOD

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulatory action to CalHR. Comments may also be submitted by e-mail to raymond.titano@calhr.ca.gov. The written comment period closes at midnight on December 28, 2026. CalHR will only consider comments received at CalHR's office by that time. Submit comments to the following address:

Raymond Titano, Medical Screening Coordinator
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811

II. PUBLIC HEARING

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

III. AUTHORITY AND REFERENCE

Government (GOV) Code Section (§) 19815.4 authorizes CalHR to formulate, adopt, amend, or repeal rules, and regulations affecting the purposes, responsibilities and jurisdiction of the department that are consistent with the law and necessary for administration of its programs. The proposed amendment interprets and makes specific GOV Code § 19261.

IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing California Code of Regulation (CCR) § 599.963 contains a prescribed list of substances for drug and alcohol testing for "sensitive positions'' (as defined in CCR §

599.961) that includes marijuana/cannabinoids (THC). Until very recently, the only available test for marijuana/cannabinoids (THC) was via urinalysis, which only tests for nonpsychoactive cannabis metabolites. GOV Code § 12954 strictly limits the consideration of nonpsychoactive cannabis metabolites in employment decisions. This legal standard conflicts with CCR § 599.963. Additionally, the recently ratified Memorandum of Understand (MOU) for Bargaining Unit (BU) 6 (MOU for BU 6) - California Department of Corrections and Rehabilitation (CDCR) employees providing custody, supervision, and treatment of wards and inmates remanded to state custody-eliminated marijuana from the list of substances allowed under the "random" testing requirement for BU 6 employees. During the bargaining process, both CDCR and the CalHR affirmed the intent to also eliminate marijuana from the list of "random" substances the BU 6 affiliated CDCR Adult Excluded and Exempt (Adult E&E) management positions are subject to. Updating the regulation will resolve this conflict.

The list of substances for "random" and "reasonable suspicion" testing are one and the same; however, while the proposed changes intended to eliminate marijuana/cannabinoids (THC) from "random" testing, it's critical that hiring authorities continue to have the option to test for the presence of psychoactive metabolites of marijuana/cannabinoids (THC) when an employee appears to be impaired. Separating the random from the reasonable suspicion substances, thus creating two lists, and including the option for oral fluid testing in reasonable suspicion, is critical when "reasonable suspicion" of impairment exists. Updating our regulation will resolve this issue and align the testing process to conform with GOV Code § 12954.

V. EVALUATION OF INCONSISTENCY/INCOMPATIBILITY WITH EXISTING STATE REGULATIONS

CalHR evaluated the proposed regulations and determined that they are neither inconsistent nor incompatible with existing state regulations.

VI. ANTICIPATED BENEFITS FROM THIS PROPOSED REGULATION

Amending the regulation shall (1) reconcile the regulation to meet compliance with GOV Code § 12954's prohibition of discrimination based on the use of cannabis off the job and away from the workplace and/or the presence of nonpsychoactive cannabis metabolites identified in employer-required drug screening tests; (2) continue the intended benefit of the current regulation by providing a new option to test for THC that complies with GOV Code § 12954 thereby ensuring peace officers are not under the influence of THC while working, and (3), remove prospects for discrimination by establishing clarification that both rank-and-file and excluded/exempt employees are held to the same standard, as it was the intent of both CDCR and the CalHR that CDCR Adult E&E employees no longer be randomly tested for marijuana, consistent with the MOU for rank-and-file BU 6 employees.

VII. DISCLOSURES REGARDING THE PROPOSED ACTION

CalHR has made the following initial determinations:

1. Mandate on local agencies and school districts: None.
2. Cost or savings to any state agency: The current regulation does not have any fiscal impact on local government or private sector business, which would not change with the proposed assessment. Costs for State agencies will increase minimally and will be absorbable in existing and future budgets.
3. Cost to any local agency or school district, which must be reimbursed in accordance with GOV Code § 17500 through 17630: None.
4. Other nondiscretionary costs or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.
6. Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
7. Cost impacts on representative private person or business: CalHR is not aware of any cost impacts that a representative private person or business would incur in reasonable compliance with the proposed action.
8. Results of the Economic Impact Assessment/Analysis:
   Adoption of these regulations will **not**:

   a. Create or eliminate jobs within California; or
   b. Create new businesses or eliminate existing businesses within California; or
   c. Affect the expansion of businesses currently doing business within California; or
   d. Benefit the state's environment because they do not address environmental matters

   Adoption of these regulations will:

   e. Be expected to maintain existing worker safety and public health and welfare protections by providing an additional option for THC testing in reasonable suspicion situations. The amendments will also align the regulations with Government Code section 12954 and help ensure consistent testing standards for rank-and-file and excluded/exempt employees.

   f. Allow the use of oral fluid testing to identify current THC impairment in employees working in safety sensitive positions will increase the cost to each testing event. This increase will have a minor and absorbable impact on cost for state agencies who are required to test for the presence of THC when following reasonable suspicion testing guidelines and will be limited to occasions when it is necessary to identify if employees are currently under the influence of THC. Any additional expense will be offset by the removal of THC from random substance testing panels.

9. Significant effect on housing costs: None.
10. Small Business Impact: The proposed regulation amendment has no impact on small businesses, as it applies only to State of California government employment operations.

VIII. CONSIDERATION OF ALTERNATIVES

In accordance with GOV Code § 11346.5, subdivision (a) (13), CalHR must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of agency, would be more effective in carrying out the purpose for which the action is proposed; or would be as effective and less burdensome to affected private persons; 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 described in this notice.

CalHR invites interested people to present statements or arguments with respect to alternatives to the proposed regulation at the hearing, if one is requested, or during the written comment period.

IX. CONTACT PERSONS

Inquiries concerning the proposed administrative action may be Directed to:

Raymond Titano, Medical Screening Coordinator
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
Telephone: 916-445-9832
E-mail: raymond.titano@calhr.ca.gov

The backup contact person for these inquiries is:

Michele Villados, Division Chief
Medical and Psychological Screening
California Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
Telephone: 916-909-2801
E-mail: michele.villados@calhr.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) of the regulation, the initial statement of reasons, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Raymond Titano at the above address.

X. AVAILABLITY OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

CalHR will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during normal business hours. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the Initial Statement of Reasons and STD. 399. Please direct requests to inspect or copy the rulemaking file to the contact person listed above.

XI. AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, CalHR may adopt the proposed amendment to the regulation as described in this notice. If CalHR makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) availability to the public and will submit a copy to anyone who has submitted a written comment, for at least 15 days before CalHR adopts the regulation as revised. Please send requests for copies of any modified regulation to the attention of Raymond Titano at the address indicated above. CalHR will accept written comments on the modified regulation for 15 days after the date on which they are made available.

XII. AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, copies of the Final Statement of Reasons may be obtained by contacting Raymond Titano at the above address.

XIII. AVAILABLITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strike out can be accessed through our website at www.calhr.ca.gov.