

FINAL STATEMENT OF REASONS

The information contained in the Initial Statement of Reasons (ISR) at the time of Public Notice remains unchanged with the exception of the following modifications:

Section 30400(a)(3): Subsection (a)(3) is amended to clarify that the content of an affiliation agreement is found in section 30415.

Section 30400(a)(4): Based on comments and a review of the American Registry of Radiologic Technologists (ARRT) definition of contact hour it was noted that ARRT uses 50 to 60 minutes in calculating one credit. Thus, subsection (a)(4) is amended for consistency with the ARRT standard.

Section 30400(a)(19): Subsection (a)(19) is amended for consistency with those changes made to section 30400(a)(23).

Section 30400(a)(23): Due to comments regarding the proposed definition of indirect oversight, the Department reviewed the Joint Review Committee on Education in Radiologic Technology (JRCERT) definition of indirect supervision for Standard 4.5 (Reference 8, page 52). The proposal is amended so that “indirect oversight” means that a qualified practitioner is physically present adjacent to the room or location where the student is performing the radiographic procedure to maintain consistency with the JRCERT standard.

Section 30403.5(d): The phrase “basis of any the reasons” is replaced with the phrase “basis of any of the reasons” for grammatical accuracy.

Section 30411(e): The word “section” in the last sentence of subsection (e) is replaced with the word “sections” for grammatical accuracy.

Section 30412(a)(3): The word “Technology” is replaced with the word “Technologist” for consistency with the defined term in section 30400(a)(39) and other sections that use that term.

Section 30413(a)(4): This section applies to all school applicants but failed to address fluoroscopy schools. Therefore, section 30423 was added to this subsection.

Section 30413.5(a)(1)(B): The period was changed to a semicolon for grammatical accuracy.

Section 30414(a) and (a)(1): The word “a” was removed from the first sentence of subsection (a) and in subsection (a)(1) the words “to operate” were added. These grammatical changes are made for clarity.

Section 30414(a)(2): The exception regarding approved schools accredited by JRCERT is deleted because JRCERT no longer requires accredited schools to submit the specified information to JRCERT.

Section 30414(a)(2)(C): The published subsection is deleted because, for approving use of the clinical site by the school, the information on the supervising licentiate is not necessary on the application. The licentiates' information will be reviewed and evaluated during onsite inspections. The remaining provisions were redesignated to maintain a coherent structure.

Section 30414 (a)(2)(D): The published subsection is deleted because, for approving use of the clinical site by the school, the actual number of students that will be allowed is not necessary on the application. The calculations will be evaluated during onsite inspections. The remaining provisions were redesignated to maintain a coherent structure.

Section 30414(a)(2)(E): The second sentence in subsection (a)(2)(E) regarding updating the affiliation agreement is deleted. An equivalent statement is placed into new section 30415(a)(4). The remaining provisions were redesignated to maintain a coherent structure.

Section 30414(a)(3): The word "and" is added to the end of the sentence after the semicolon for grammatical accuracy.

Section 30414(c): Due to the deletion of published subsection (a)(2)(D) regarding the total number of students allowed at a clinical site, this subsection is revised to ensure it is clear that the clinical site may not exceed the calculated values as proposed.

Section 30415: The printer directions for section 30415 are deleted and replaced with "Adopt Section 30415 to read as follows" for consistency.

Section 30415(a)(1), (a)(2) and (a)(3)(B): Non-substantial punctuation corrections are made at the end of the specified subsections.

Section 30415(a)(4): Subsection (a)(4) is added to clarify that the affiliation agreement must be updated as changes occur. The content was recodified from section 30414(a)(2)(E).

Section 30416: The printer directions for section 30416 are deleted and replaced with "Adopt Section 30416 to read as follows" for consistency.

Section 30417(a): The phrase "or meets the specified requirement" is deleted and replaced with the phrase "as follows" for clarity. As initially proposed, it implied that subsections (a)(1) and (a)(2) were optional to designating in writing the lead supervising licentiate. It was intended to identify the criteria the designated licentiate must meet. Also, grammatical correction is made by deleting the word "or" found at the end of subsection (a)(1)(B) for consistency with the correction made in subsection (a).

Section 30417(a)(1): This section applies to student supervision at clinical sites for all school types. However, it was noted that as proposed it failed to address radiologic technologist fluoroscopy permit schools. Therefore, subsection (a)(1) was amended to identify the criteria the lead supervising licentiate must meet for purposes of radiologic technologist fluoroscopy permit schools.

Section 30417(b)(1): Non-substantial grammatical corrections are made.

Section 30417(c): Due to comments, the proposed requirement to have the competency determination signed by both the person providing direct oversight and the supervising licentiate is amended so that the determination need only be signed by the person providing direct oversight.

Section 30418(a)(2), (b)(2) and (c)(2): These three subsections were amended to use the acronym FTE for “full-time equivalent” consistently and results in no regulatory effect.

Section 30418(b)(2): Due to comments, the proposal for limited permit X-ray technician schools, if the school had more than 30 students or for every six affiliated clinical sites or fraction thereof to have a full time equivalent clinical coordinator, is amended to require the school to have a full time equivalent clinical coordinator if the school has more than 30 students or six or more affiliated clinical sites. This maintains consistency with the equivalent proposal found in subsection (a)(2) for the radiologic technology certification schools.

Section 30418(c), (d) & (e): This section addresses faculty qualifications for all school types. However, it was noted that it failed to address faculty qualifications for the radiologic technologist fluoroscopy permit schools. Therefore, new subsection (c) specifies the qualifications applicable to faculty within the radiologic technologist fluoroscopy permit schools. This subsection is based on proposed subsection (a) and is structured for consistency with subsections (a) and (b). It is proposed to be adopted for the same reasons as stated in the ISR for subsection (a), except that proposed subsection (c)(1)(A) is proposed to be adopted for the same reasons as specified in the ISR subsection (b)(1)(A). Though RTCC made no recommendations regarding the program director qualifications for overseeing fluoroscopy permit schools, the Department believes that the proposal would ensure personnel have reached an academic level so as to provide strong educational program oversight as found within the radiologic technologist certification schools and limited permit X-ray technician schools. This maintains consistency within all approved schools.

The phrase “Radiologic technologist fluoroscopy schools” is replaced with the phrase “Radiologic technologist fluoroscopy permit schools” for consistency with that term as defined in section 30400(a)(39) and as used throughout the proposal.

The remaining subsections of the proposal are recodified to subsections (d) and (e), respectively, to maintain a coherent structure. Lastly, corrections are made to subsection

references that are being recodified or added to maintain consistency with the applicable citation and newly proposed subsection (c).

Section 30419: The title of the section is amended to clearly indicate to whom the content of the section applies. This results in no regulatory effect.

Section 30421(c): Due to changes to Health and Safety Code Section 106985 (Statutes of 2012, chapter 358), subsection (c) is amended for consistency.

Section 30422(c): Due to changes to Health and Safety Code Section 106985 (Statutes of 2012, chapter 358), subsection (c) is amended for consistency.

Section 30423(b): The word “Subsection” at the beginning of the sentence is replaced with the word “Subject” for accuracy and consistency with other subsections.

Section 30425(a): The existing provision requiring students to complete the supervised clinical education within a consecutive period of 12 months is deleted for consistency with the changes to section 30424(a) for the same reason as discussed in the ISR for section 30424(a).

Section 30435(f): New subsection (f) is proposed to state when the Department must be notified that the school no longer uses a particular affiliated clinical site. As initially proposed, a clinical site would be approved pursuant to section 30412, the initial application process, or section 30414, adding a new clinical site for an already approved school, and remain approved (section 30414(b)) through the revalidation process (section 30413.5). It was noted after further review of the proposal that the proposal was not clear regarding discontinuance of use of an affiliated clinical site. This is necessary because the school would be billed pursuant to section 30409 for the clinical site should the school not inform the Department of discontinuance of the site.

Section 30437(b)(2) and (b)(3): Regarding subsections (b)(2) and (b)(3), it was noted that retaining competency determinations, as proposed in subsection (b)(3), pertains to participation in clinical education, as found in subsection (b)(2), but not to the performance of laboratory procedures, as found in existing subsection (b)(3). Thus, this inconsistency is proposed to be corrected by deleting the existing requirement found in existing subsection (b)(2) and adding the phrase “competency determinations made pursuant to section 30417” for consistency.

Regarding existing subsection (b)(3), though it was not initially intended to be deleted, it is now intended to be amended for consistency with the changes to the curricula found in sections 30421 and 30422. Specifically, the requirement in subsection (b)(3) to maintain documentation of the performance of laboratory procedures pertained to the performance requirements found in existing section 30421(b)(2) through (b)(4) and section 30422(b)(2) through (b)(3). Subsection (b)(3) also pertains to performance of laboratory procedures found

in existing sections 30424, 30425, and 30427.2. However, because sections 30421 and 30422 are proposed to require students to complete the cited curricula found in section 30421(a) and section 30422(b) and that, based on that curricula, schools now have discretion on how to structure and present the curricula to students, the recordkeeping requirement in subsection (b)(3) no longer applies to radiologic technologist (RT) certification schools. Though that recordkeeping requirement no longer applies to the RT certification school curricula, the recordkeeping requirement still applies to the limited permit X-ray technician (XT) schools. Therefore, existing subsection (b)(3) is amended to exempt the RT certification schools for consistency with the changes to sections 30421 and 30422 but to retain the requirement for the XT schools for consistency with section 30424, 30425, and 30427.2.

The word “technologist” in subsection (b)(3) is replaced with “technology” for consistency with the identified school as defined in section 30400(a)(38) and its use throughout the proposal.

Section 30440: As initially proposed, the provisions found in subsections (b) and (c) were intended to be provisions of subsection (a). However, as published, subsections (b) and (c) were independent of subsection (a) making the provision’s relationship to subsection (a) unclear. Therefore, subsections (b) and (c) were redesignated to subsections (a)(2) and (a)(3) for clarity and subsection (d) was redesignated to subsection (b) to maintain a coherent structure. These changes also maintain consistency with other sections addressing issuance of authorizing documents (e.g. section 30444, 30451, 30455.1, & 30466). Further, the reference to “(a)(1)(D)2” in both provisions was corrected to read “(a)(1)(C)2” for accuracy because as initially proposed it incorrectly cited the fee requirement instead of the examination requirement. These changes result in no regulatory effect.

Section 30440(a)(1)(A): The word “identify” found in the last sentence is corrected to “identity” for grammatical purposes. This is a change without regulatory effect.

Section 30440(b): The word “of” was inserted between the words “any” and “the” for grammatical accuracy.

Section 30440(a)(1)(C)&(D): Subsection (a)(1)(C)2 was amended to delete the documentation option regarding being an ARRT registrant. That provision was inadvertently left in from an early draft of the proposal that would have set limits on when a person had passed the cited examination. However, as amended during the second 15-day comment period regarding the deleted option, the phrase “as appropriate” was not deleted. That phrase is now deleted for clarity and results in no regulatory change. Punctuation corrections were made at the end of subsection (a)(1)(C)2 and subsection (a)(1)(D). These changes result in no regulatory effect.

Section 30442: As proposed, subsections (i) and (j) were proposed to be (g) and (h), respectively. However, subsections (g) and (h) were recodified to maintain alphabetical order resulting in no regulatory effect.

Section 30443: The printer directions for section 30443 are deleted and replaced with “Amend Section 30443 to read as follows” for consistency.

Section 30444(a)(1)(A): The word “identify” found in the last sentence is corrected to “identity” for grammatical purposes. This is a change without regulatory effect.

Section 30451(a)(2)(A): The word “identify” found in the last sentence is corrected to “identity” for grammatical purposes. This is a change without regulatory effect.

Section 30455.1(a)(2)(A): The word “identify” found in the last sentence is corrected to “identity” for grammatical purposes. This is a change without regulatory effect.

Section 30455.1(a)(2)(D): The provision found at subsection(a)(2)(D)2 is deleted. That provision was inadvertently left in from an early draft of the proposal that would have set limits on when a person had passed the cited examination. That initial consideration was rejected. However, the published proposal retained a portion of that early draft. Therefore, the verbiage is deleted and subparagraph (D) is amended to maintain a coherent structure.

Section 30455.1(b): As initially proposed, the provision found in subsection (b) was intended to be a provision of subsection (a). However, as published, subsection (b) is independent of subsection (a) making the provision’s relationship to subsection (a) unclear. Therefore, subsection (b) was redesignated to subsection (a)(3) for clarity and subsection (c) was redesignated to subsection (b) to maintain a coherent structure. These changes also maintain consistency with other sections addressing issuance of authorizing documents (e.g. section 30444, 30451, 30455.1, & 30466).

Section 30456.6(b): This section is added to make a reference correction in subsection (b) that results in no regulatory change.

Section 30461(e)(1) and (e)(2): The section number “30469” was corrected to read section “30467” for accuracy. Section 30469 does not exist. The correct reference is to section 30467.

Section 30466(a)(1)(A): The word “identify” found in the last sentence is corrected to “identity” for grammatical purposes. This is a change without regulatory effect.

Section 30466(a)(4): The period was changed to a semicolon for grammatical accuracy.

Section 30466(a)(5)(C)5: The period was changed to a semicolon and the word “and” was added after the semicolon for grammatical accuracy.

Section 30466(a)(6)(A): The word “one” was deleted and the word “either” was added to this section for grammatical accuracy.

Section 30466(b): The word “of” was inserted between the words “any” and “the” for grammatical accuracy.

ISR Section 30400(a)(29) & (a)(30), page 13: The citation to “H&S Code 114985(n) & (o)” is replaced with the citation “H&S Code 114850(k) & (l).” The terms Mammogram and Mammography are verbatim in both citations except that section 114850 is contained in the RT Act whereas section 114985 is contained in the Radiation Control Law. Because the ISR is speaking to the RT Act and its implementing regulations, the correct reference is to section 114850.

ISR Section 30462, page 60: The following phrase is inserted at the end of the quoted material from the original rulemaking file as discussed in the ISR: “(Reference 19, for section 30480 which was adopted as section 30460.)”

Incorporation by Reference: The documents incorporated by reference in sections 30421, 30422, and 30423 contain extensive curriculum outlines and objectives for imparting knowledge about the safe use of X-ray equipment for medical purposes making it cumbersome, unduly expensive and impractical to publish the documents in the California Code of Regulations. Further, the documents have been available to the public since the Notice of Proposed Rulemaking was published on November 16, 2012. Lastly, the documents are readily available from internet sources at:

- www.arrt.org; and
- www.asrt.org/content/educators/educatorsstudents.aspx

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD AND TWO ADDITIONAL 15-DAY COMMENT PERIODS

Following is the list of persons who commented on the initial proposed regulations (DPH-10-014) during the 45-day public comment (PC) period beginning on November 16, 2012 and ending at the conclusion of the public hearing held on January 3, 2013. A request to hold a public hearing was received and the hearing was held on January 3, 2013. A 15-day written PC was conducted that began on March 13, 2013 and ended at 5:00 p.m. on April 4, 2013. The Department received two letters of comment as identified below. A second 15-day PC was conducted that began May 3, 2013 and ended at 5:00 p.m. on May 24, 2013. The Department received one letter of comment as identified below.

List of Commenters during Initial 45-day Proceeding held from November 16, 2012 through January 3, 2013.

(Written testimony)

1. The Doctors Center (Kim Marta, MD and Donald Blythe, MD), Fair Oaks, CA
- 1a. The Doctors Center (Kim Marta, MD and Donald Blythe, MD), Fair Oaks, CA
2. Kenneth Moore, MD

3. Mark Dye
4. Christopher Hall, Urology Technician (retired), San Diego, CA
5. Jay Haischer
- 5a. Jay Haischer – *(objection to procedural action)*
6. Gary Cutter, MD, Chief of Anesthesia, Marshall Medical Center
7. Rodger Orman, MD
8. Hector Bitolas, Career Care Institute, Lancaster, CA
9. Mark S. Kach, Radiology Manager, Corcoran District Hospital, Corcoran, CA
- 9a. Mark S. Kach - *(objection to procedural action)*
10. K. Judy Rose, Radiography Program Director, Merced College, Merced, CA
11. Marilyn Cantrell
12. Bonny Wheeler, Director, Radiologic Technology Program, Foothill College
- 12a. Bonny Wheeler, Director, Radiologic Technology Program, Foothill College
13. Rich Lehrer, Program Director, Santa Rosa Junior College Radiologic Technology
14. Diane Przepiorski, Executive Director, California Orthopaedic Association
15. John Shero
16. Christine J. Coppess, San Diego, CA
17. Ronald Valmonte, San Juan Capistrano, CA
- 17a. Ronald Valmonte, San Juan Capistrano, CA
- 17b. Ronald Valmonte, San Juan Capistrano, CA
18. Anita Slechta, Professor and Chair – Health Services Department, CSU Northridge
- 18a. Anita Slechta, Professor and Chair – Health Services Department, CSU Northridge
- 18b. Anita Slechta - *(objection to procedural action)*
19. Chris Mazzarella, Co-Director of Certification Services, The American Board of Radiology
- 19a. Chris Mazzarella, Co-Director of Certification Services, The American Board of Radiology
20. Nancy J. Perkins, Director, Radiologic Technology Program Bakersfield College
- 20a. Nancy J. Perkins, Director, Radiologic Technology Program Bakersfield College
21. Radiola12@aol.com
22. Mr. Stephen Edwin Longaker, Winnetka, CA
- 22a. Mr. Stephen Edwin Longaker, Winnetka, CA
23. Cande L. Sridhar, MD, Department of Radiology, Olive View-UCLA Medical Center, Sylmar, CA
24. Joseph W. Baumler
25. Zoe Wallace
26. Diane Garcia, Clinical Coordinator, Radiologic Sciences Department, San Francisco, CA
- 26b. Diane Garcia - *(objection to procedural action)*
27. Dr. John Miller, President, ACRRT, Seattle, WA
28. American Board of Radiology (Gary J. Becker, MD and Jennifer L. Bosma, MD), Tucson, AZ
29. Margaret Turano
30. Lorenza Clausen, Technologist/President CSRT, Sacramento, CA

- 30a. Lorenza Clausen - *(objection to procedural action)*
- 31. Angela Willson, Program Director School of Radiology, Yuba College
- 35. Mary Hart - *(objection to procedural action)*
- 36. Fred Castillo - *(objection to procedural action)*
- 37. David Poon, President Elect CSRT - *(objection to procedural action)*
- 38. Leavon Spires - *(objection to procedural action)*
- 39. John Radtke, Program Director, LA City College - *(objection to procedural action)*

List of Commenters during the Public Hearing held on January 3, 2013.

(Oral testimony)

- 13a. Rich Lehrer, Program Director, Santa Rosa Junior College Radiologic Technology [ORAL]
- 26a. Diane Garcia, Clinical Coordinator, Radiologic Sciences Department, San Francisco, CA [ORAL]
- 31a. Angela Willson, Program Director School of Radiology, Yuba College [ORAL]
- 32. Colleen Dawson, UC Davis Medical Center [ORAL]

List of Commenters during First 15-day Comment Period held from March 13, 2013 through April 4, 2013

(Written testimony)

- 27a. Dr. John Miller, President, ACRRT, Seattle, WA
- 33. The American Board of Radiology (Gary J. Becker, MD), Tucson, AZ

List of Commenters during Second 15-day Comment Period held from May 3, 2013 through May 24, 2013

(Written testimony)

- 34. Susan Shannon, MS, RT, Dean of Radiology, Modern Technology School, Fountain Valley, CA

Summary of comments and responses

Note: The digit or digit and letter before the decimal point designation identifies the Commenter as listed above. The digit(s) after the decimal point indicate the identified comment from that commenter.

- 1.1 **Proposed section 30462 allows radiology supervisor and operator certification only to practicing radiologists or radiation oncologists, excluding urgent care physicians. It is not specified if those who already have this certification are allowed to continue to take radiographs.**

Response: The proposed change to section 30462 would not prevent those who have the specified certificate from continuing to take radiographs. It appears the commenter is unaware of the licentiate certification and permitting structure. This is discussed in the ISR for section 30462 and in the response to comment 14.1. If a physician who does not practice as a radiologist or radiation oncologist currently holds a certificate, no action to modify that authorization will occur for purposes of this proposal. Therefore, no change to this proposal is made based on this comment.

1.2 The “Fiscal Impact on Private Persons or Businesses Directly Affected” section does not address the overly burdensome cost required to maintain a business’ current level of patient service.

Response: This proposal does not create a cost to maintain the commenter’s current level of patient service because it does not require the facility to hire additional personnel with other types of authorizations nor would it require the commenters to obtain a different authorization. It appears that both commenters hold radiography supervisor and operator permits appropriate for their business operations and would not need to hire personnel with other types of authorization or obtain a different authorization. Therefore, there is no impact or cost on their business or cost of providing the current level of patient service.

Therefore, no changes to proposal were made.

1.3 “The creation of new businesses or the elimination of existing businesses within the State of California” section only considers the creation of business, as opposed to current businesses. No mention is made of any potential elimination or negative impact.

Response: As discussed regarding the response to 1.2, there is no impact on businesses. Therefore, there was nothing to mention regarding any potential elimination or negative impact.

No changes to proposal were made.

1a.1 Questions if the proposed regulation restricts the ability of non-radiologist physicians to gain radiography or fluoroscopy supervisors and operators certification.

Response: This proposal would not restrict the non-radiologist physician from obtaining the radiography supervisor and operator permit or the fluoroscopy supervisor and operator permit. As discussed in the ISR regarding section 30462 the proposal is merely clarifying the original intent of the Radiologic Technology Certification Committee (RTCC) to only issue the radiology supervisor and operator certificate to radiologists or radiologist oncologists (page 60).

2.1 Disagrees with the proposed recommendation to change the continuing education (CE) requirements. Adding 4 credits in radiation safety and 4 credits for digital radiography is unnecessary and will increase the burden for physicians who use fluoroscopy.

Response: RTCC recommended that individuals (licentiates and non-licentiates) who are authorized to use fluoroscopy X-ray equipment should complete CE training that focuses on radiation safety while using that equipment. The Department agrees with RTCC because such equipment emits a much higher radiation dose for purposes of viewing dynamic X-ray studies. Because of the higher radiation doses present during such studies, operators must be highly vigilant to protect themselves and others from unnecessary radiation exposures. Fluoroscopy studies generally require the operator to be very close to the radiation source and the patient, to wear protective aprons, and sometimes gloves, since the radiation level in the room, due to scattering of X-rays off any matter being hit, increases. Thus, radiation safety and protection awareness is a constant issue.

RTCC also recommended that individuals using digital radiography equipment should devote four CE credits to the area of digital radiography. The Department agrees with RTCC because there are different imaging issues (computerized vs. film-screen image processing (chemical)) that operators must account for. As specified in Health & Safety (H&S) Code 114870(b)(2) and (c)(3), the Department is to provide for this requirement upon RTCC's recommendation. Therefore, the recommendation is rejected.

3.1 The commenter expresses his concern as to why he received the public notice. Commenter further expresses his opinion generally.

Response: As indicated by the commenter, the commenter used to hold an X-ray permit of some type. Thus, the commenter received the public notice because the permit is still valid. However, the comments are irrelevant to the adoption of the proposed regulations.

4.1 Feels the statute should be changed so that limited permit X-ray technicians (XT) can be allowed to take the schooling for a fluoroscopy license. This requirement requires XTs to go back to school and get full certification as a radiologic technologist so that they can obtain the fluoroscopy license. Not changing the requirement results in eliminating available jobs to the XT.

Response: Though the commenter states that the requirement is in statute the requirement is found in regulations. The Radiologic Technology (RT) Act regulations were initially adopted in 1970 and prohibited X-ray technicians from using fluoroscopic X-ray equipment. When those regulations were amended in 1985, the RTCC

maintained and continued its recommendation prohibiting such equipment use by XTs. As discussed in the ISR regarding RTCCs establishment of subcommittees in 2007 to review and provide advice on school curricula, RTCC again maintained and continued its recommendation that XTs be prohibited from using fluoroscopic X-ray equipment. This prohibition is specified in section 30447. The commenter is correct in that the XT, if wishing to obtain the fluoroscopy permit, would have to obtain full certification. Regarding possible elimination of jobs to the XT, because the proposal makes no changes to the current requirement there is no elimination of jobs. The recommendation is rejected because the industry through its representatives on the RTCC believes such use by XTs is beyond the XT's training curricula and scope of practice.

5.1 Indicates support for adoption of the proposed regulations. The commenter also provided a copy of the practice standards/scope of practice document published by the American Society of Radiologic Technologists (ASRT).

Response: The Department appreciates the indication of support for adoption of the proposed regulations. The Department reviewed the ASRT document and appreciates the submittal. Please note the commenter's acronym XRMO refers to the ASRT's limited X-ray machine operator (LXMO as used by ASRT).

6.1 Requests that a brief summary of the contents of the Proposed Rulemaking packet be made available.

Response: The commenter makes no objection or recommendation regarding the proposed regulations. Thus, the comment is irrelevant. However, the Department will consider the recommendation as it refines its regulation development activities.

7.1 Requests that the new regulations include a provision to abolish the requirement that physicians have a separate fluoroscopy and radiography license.

Response: The recommendation is rejected because the physician representatives of the RTCC maintain and continue the recommendation to issue separate permits for use of radiography equipment and fluoroscopy equipment.

8.1 Recommends proposed section 30418(b)(2) be changed to require a clinical coordinator only if the limited permit X-ray technician schools has more than 30 students. The proposal places a hardship on schools due to the fact that they will need 25 affiliated clinical sites and 4 full time equivalents (FTE) for the same 30 students. This cost will be placed on the students.

Response: The Department accepts the recommendation. The proposal was amended to require the school to have a full time equivalent clinical coordinator if the

school has more than 30 students or six or more affiliated clinical sites. This maintains consistency with the equivalent proposal found in subsection (a)(2) for the radiologic technology certification schools.

9.1 Proposed section 30403 will complicate things by having two additional categories of continuing education (CE) to track. Job generation is highly unlikely since current companies already have these types of CE courses available. Current technologists will have to pay to have these classes.

Response: It appears the commenter recommends no change to section 30403. The commenter believes the proposal is not necessary because the industry already addresses the proposal. As discussed in the ISR, the proposal (page 16) addresses RTCC's recommendation and fulfills the Department's mandate from the Legislature as stated in H&S Code 114870(b)(2) and (c)(3). Therefore, the recommendation is rejected.

10 Commenter provided an attachment with comments highlighted. The individual comments listed below are the same but more in depth so we are responding below to avoid duplicative answers. Comments from commenter #10 are summarized or verbatim. Responses are provided in full.

10.1 Questions if the Department should generate the request for the Annual Report as well as the Annual Report document listing all of the information needed as listed in proposed section 30413.5 (a). Are programs required to remember to send this in?

Response: It appears the commenter wants the Department to send them an Annual Report template that contains all the proposed content of the Annual Report. Then the school will need only to sign and send the report back. If this is the commenter's intent it effectively places the responsibility on the Department to perform duties that are the school's responsibilities. However, it is the Department's intent that the schools be responsible for determining whether the school is in compliance with applicable requirements. The Department believes the proposal clearly states that it is the school's responsibility to submit the proposed report on an annual basis and when it must be submitted. Lastly, the ISR clearly discussed the reason for programs to submit this report (page 25). Therefore, no change to the proposal is made.

10.2 Section 30417(c). As written, RT students will be required to have the supervising licentiate provide DIRECT OVERSIGHT and a SIGNATURE on REPEATS. This is unrealistic to ask that the supervising licentiate provide the direct oversight, when it should really be the supervising technologist. Also, it would be too time intensive to ask that the supervising technologist to actually sign-off on each repeat. It would work better if students were required to login in each repeat, indicating which technologist supervised the repeat.

Response: The comments from the commenter are provided verbatim because the commenter misstates Section 30417(c). The proposal requires the student to be under direct oversight of a “qualified practitioner.” That term is defined in 30400(a)(35) and would allow the student to be supervised by other appropriate individuals. Thus, the commenter’s concern is already addressed in the proposal. Also, the proposal does not require the qualified practitioner to sign off on each repeat. The proposal requires the qualified practitioner to directly oversee the students’ performance of the repeat procedure. It is within the discretion of the school and clinical site to determine how that oversight is documented. Therefore, no change to the proposal is made.

10.3 Suggests “and as amended or revised” should be added to proposed section 30421(a) to keep it current.

Response: The commenter’s suggestion would result in a prospective incorporation of the documents incorporated by reference in section 30421(a). Because prospective incorporation would violate Title 1, California Code of Regulations (CCR), section 20(c)(4) and the Legislature has not granted the Department such authority the commenter’s suggestion is rejected. Therefore, no change to the proposal is made.

10.4 Suggests “and as amended or revised” should be added to proposed section 30423 (f)(1) to keep it current.

Response: See the response to comment 10.3.

10.5 Suggests one check-off document for a fixed unit and one for a portable fluoroscopy device per assigned facility in proposed section 30423(g).

Response: The Department believes that use of the orientation check-off list is not difficult because many facilities have multiple units that are the same. For example, a facility may have a number of portable units of the same model. The checklist could be based on the model. If a person knows how to use that model and all the other units that they use are the same model then the list need only identify the unit model. This type of consolidation can also be used for fixed units, reducing the time burden. Therefore, no change to the proposal is made.

10.6 Suggests documentation include name of procedure, date performed, facility name and name/initials of person (certificate/permit holder) observing and verifying performance (not their signature) in proposed section 30423(g).

Response: A review of the proposed requirement indicates that a signature is not required and the physical location is of the facility. Thus, it appears that the proposal does what the commenter suggests. Therefore, no change to the regulation is made.

- 10.7 Questions if dental radiography permit holders should be allowed to take X-rays of skulls, hands, and wrists with this limited permit in proposed section 30443(b). Claims that it should be strictly limited to dental radiography. If skull X-rays means “panoramic” views of the intra-oral cavity, the commenter suggests that the provision should include the word “panoramic.”**

Response: The scope of the dental X-ray laboratory radiography permit as specified in section 30443(b) was originally adopted in 1985 as recommended by RTCC. As discussed in the ISR regarding the establishment of subcommittees, a subcommittee for dental X-ray laboratory radiography was also established. That subcommittee reviewed the current curriculum and made no recommendation or had concerns regarding the performance of skull, hands and wrists procedures. Further, the initially adopted regulations from 1970 also included the performance of cephalometrics in a dental X-ray laboratory, which includes imaging of the mandible and maxilla. Lastly, the commenter fails to provide a reasonable rationale as to why this practice should be so limited. Therefore, no changes are made to the existing regulation. See also the response to comment 30.6.

- 10.8 Suggests proposed section 30451(a)(2)(A) should say social security number or taxpayer identification number (TIN). Claims the Joint Review Committee on Education in Radiologic Technology (JRCERT) said as long as the person has a TIN, he or she would be eligible to sit for an exam.**

Response: The Department rejects the recommendation because the TIN would not fulfill the mandate specified in Family Code section 17520. The Department is confused regarding the reference to JRCERT and the eligibility to sit for an exam. JRCERT accredits schools and the American Registry of Radiologic Technologists (AART) administers examinations of certification for individuals. Therefore, no change is made to the proposed regulation.

- 11.1 Commenter recommends that section 30403(a)(2) regarding the requirement to have 4 CEs related to fluoroscopy be deleted because it is a burdensome and unreasonable request.**

Response: See the response to comment 2.1.

- 11.2 Commenter states that regarding the digital radiography CE requirement there are plenty of CT (computerized tomography) articles in the ASRT magazine but if the applicant doesn't perform CT, it really isn't relevant.**

Response: The commenter is referring to section 30403(a) but makes no explicit recommendation. Based on all of the comments from this commenter, it appears the commenter is recommending that the digital radiography CE requirement be deleted because it is irrelevant if one does not perform CT. The Department disagrees with

the comment for the reasons stated in the ISR. Therefore, no change is made to the proposal.

11.3 Requests a little more latitude for what can be considered appropriate for CE, such as ethics, organization skills, effects of the profession on techs, etc.

Response: The commenter is referring to the definition which specifies the criteria of what is an approved continuing education credit in proposed section 30400(a)(4). The comment is rejected because those topics could be included if the specific entities have evaluated the topic and it is related to the application of X-ray. The individual renewing their authorization is responsible for determining if the topic meets the criteria. The Department audits those submittals at a later time to ensure the criteria are met.

12.1 Questions if the annual report will be in the form of a template or checklist proposed by Radiologic Health Branch (RHB) in proposed section 30413.5.

Response: See response to comment 10.1.

12.2 Questions if schools must pay for the Department's staff hotel and transportation as they do for JRCERT.

Response: Though this comment is irrelevant to the proposed regulations and the commenter makes no objection or recommendation, the Department believes an understanding regarding the relationship between JRCERT and the Department is helpful to the regulated community.

JRCERT, a private organization, does require schools to cover its staff hotel costs. Schools have the discretion to be accredited by JRCERT so it is a voluntary decision that is independent of the Department's requirements. The Department's costs are covered by those current fees specified in proposed section 30409. No change to this proposal is made based on this comment.

12.3 Commenter thought the Department would be moving away from the 1,850 hours once the Department recognized the JRCERT format of schools being competency based and not hourly based in proposed section 30421(b).

Response: As discussed in the ISR, RTCC recommended that the number of clinical hours remain at 1,850 hours of supervised clinical education. However, the retention of the number of hours applies only to those schools that are not accredited by JRCERT. As proposed in section 30411(e), JRCERT accredited programs would be considered to be in compliance with section 30421 and not subject to the 1,850 hours. Therefore, no change to the regulation is made because the concern has been addressed in the proposal.

12.4 The RT Act still mentions venipuncture in an upper extremity of a human being. Commenter questions if this will be updated to reflect the new regulation stating prosthetic arms are OK in proposed section 30421.

Response: It appears the commenter is aware of the recent legislation change in Senate Bill 1199 (Statutes of 2012, Chapter 358). Sections 30421(c) and 30422(c) were revised to address those changes as recommended.

12.5 Questions how schools should document the 40 hours of fluoroscopy for each student in proposed section 30423.

Response: The Department does not have a specific template as to how to document the 40 hours of fluoroscopy for each student. Therefore, each school should use whatever documentation the school deems appropriate. No change to this proposal is made based on this comment.

12.6 Questions whether compliance with proposed section 30423(g) involves two forms, a check-off document for each room/portable and a log sheet that includes the procedure, date, facility name, name and certificate number of person verifying.

Response: Section 30423(g) does involve two separate forms: 1) a check-off document for each room/portable and 2) a document such as a log sheet that includes the procedure, date, facility name, name and certificate number of person verifying. No change to this proposal is made based on this comment.

12.7 Recommends deleting the requirement for a person to write or identify their permit number on the clinical performance log sheet specified in section 30423(g).

Response: The recommendation is rejected because the permit number allows the Department to determine if the person providing direct oversight has the appropriate authorization (i.e. the person is a qualified individual).

12a.1 Commenter wants to confirm that section 30417(c) states having a licentiate signature on a competency form only applies to limited license schools and not RT certification schools.

Response: Based on additional comments (comment 18.5), section 30417(c) was amended to only require signature of the person providing direct oversight. As amended, the requirement no longer requires the supervising licentiate's signature.

13.1 Commenter references section 30443(b) and questions whether the training should continue to allow images of the hand and wrist. The commenter also wonders if Title 16, California Code of Regulations, section 1656 (16 CCR 1656) should be amended so that dental assistants would also be allowed to take radiographs of the hand and wrist.

Response: It appears the commenter is unaware that both the Board of Dental Examiners (for dentists, dental assistants, and dental hygienists) and the Department (for all other human uses of X-ray) regulate the application of X-ray to humans. As specified in the RT Act (H&S Code 106965(a)), all individuals applying X-ray to humans must meet certain criteria, one being that they must be certified or permitted pursuant to the RT Act. However, H&S Code 106975(e) exempts dentists, dental assistants, and dental hygienists from section 106965 provided the individual meets Business & Professions (B&P) Code 1656. Thus, authorization to apply X-ray to humans for diagnosis is regulated by both the Board of Dental Examiners (for dentists, dental assistants, and dental hygienists) and the Department (for all other human uses). A person holding the dental X-ray laboratory radiography permit category as found in section 30443(b) is permitted under the RT Act, not B&P Code 1656, to take radiographs of the hand and wrist. The commenter appears to misconstrue that the legal authorizations of the RT Act can augment the authorizations of the Dental Practice Act, and vice versa. Currently, for an individual to take radiographs of the hand and wrist, the individual must be properly certified or permitted under the RT Act. See also the responses to comments 10.7 and 30.6. No change to the proposal was made based on this comment.

13a.1 Commenter has some objections regarding limited license dental professionals performing hand and wrist radiography and why. Questions if it will be addressed in the dental regulations, Title 16, California Code of Regulations.

Response: See responses to comments 10.7, 13.1, and 30.6.

14.1 Questions if section 30462 will change a physician's ability to supervise a limited permitted X-ray technician or a radiologic technologist.

Response: The proposed changes to section 30462 would not change the supervisory ability of the physician. As discussed in the ISR, the practice of limiting the certificate has historically been limited to licentiates who practice radiology as intended by RTCC. Further, it appears that the commenter does not understand the difference between the certificate discussed in section 30462 and the permits identified in section 30461. Under the regulations, a certificate is a broad authorization and a permit is a more narrow authorization. Thus, as discussed in the ISR the certificate is issued to physicians who use radiation as their primary tool in the practice of medicine and a permit is issued to those who use X-rays as an adjunct to their practice. Therefore, no changes are made to the proposal.

14.2 Asks for purpose of section 30462.

Response: The purpose of the proposed changes to section 30462, as discussed in the ISR, was to clarify to whom and when the certificate is issued. No recommendations were suggested; therefore, no changes are made to the proposal.

14.3 Questions which section allows other physicians to also hold the supervisor's certificate.

Response: Existing section 30466(d) is the provision that states how a licentiate can obtain the certificate. That provision provides that any licentiate who passes the examinations in radiography and fluoroscopy could obtain the certificate. The provision also provides an exemption from the examination for those individuals meeting existing section 30467. The result of proposed sections 30462 and 30466(d) limits to whom the certificate is issued as discussed in the ISR. Therefore, no changes are made to the proposal.

14.4 Questions if section 30462 should reference the other related sections.

Response: The Department believes that the section is clear and a cross reference to other sections is not necessary. Section 30462 is only speaking to the issued certificate, not the issued permits. Again, it appears the commenter did not understand the difference between a certificate and a permit as discussed in the response to comment 14.1. Therefore, no changes are made to the proposal.

15.1 Commenter requests that all X-ray technologist schools be closed down for the next four to six years to get the market leveled back out.

Response: The recommendation is outside of the scope of this proposal. Therefore, no changes are made to the proposal.

15.2 Commenter suggests the fluoroscopy permit be eliminated.

Response: The recommendation is rejected because the need for additional training in the use of fluoroscopy X-ray equipment continues to exist and the commenter provides no supporting evidence to the contrary. Further, the RTCC made no recommendations to eliminate the fluoroscopy permit.

15.3 Commenter advocates lowering the renewal permit fees.

Response: No change is made to accommodate this advocacy for the reason that the proposed regulations do not involve fees. Therefore, no changes are made to the proposal.

16.1 Commenter references sections 30403.5 and 30403.8. Commenter claims to have lost a day of work and received a level 3 disciplinary action because the State did not issue her licenses after her CEUs were submitted and her check was cashed. Commenter feels the Public Health Department Personnel misled her.

Response: The comment is outside the scope of this proposal. The concern was forwarded to the appropriate Department staff. Therefore, no changes are made to the proposal.

17.1 Requests a public hearing to be held on the proposed regulations.

Response: In response to this request, the Department conducted a public hearing on January 3, 2013.

17a.1 Believes State agencies must consider recommendations and objections from the public before it adopts or changes any regulations.

Response: Based on all the comments from this commenter it appears the commenter believes that the proposal has already been adopted. As mandated under the Administrative Procedures Act, the Department has considered all recommendations and objections submitted to the Department prior to adopting or amending the regulations.

17a.2 Requests to be given opportunity for participating in preliminary activities before rulemaking process.

Response: As indicated in the ISR, the RTCC serves as the Department's advisory committee on the administration of the Radiologic Technology Act. Meetings of the RTCC are public and those agendas are posted on the Department's website and have occurred nearly twice a year since 1970. As indicated in the ISR, the RTCC met numerous times over the last ten years so as to provide the industry opportunity as requested. Additionally, the drafts of the proposal were posted on the Internet so that individuals who did not attend RTCC meetings could provide comments prior to the official rulemaking process. Further, the Notice of Proposed Rulemaking Action was mailed to over 52,000 individuals so that the industry could participate in the Department's consideration of the proposal. Thus, the commenter has been provided numerous opportunities to participate in preliminary activities and in the official rulemaking process. No changes to the proposal were made due to this comment.

17a.3 Commenter believes that the proposal is of a complex nature as indicated in the notice's problem statement.

Response: The Department agrees that the proposal was complex and therefore, as indicated in the response to comment 17a.2, the public was provided numerous opportunities to participate in preliminary activities as specified in Government Code section 11346.45. (It is noted that the commenter references Government Code section 11346.46 and the Department believes the reference is properly section 11346.45.)

17a.4 Recommends postponing all proposals.

Response: The Department rejects postponement of completing the rulemaking process for this proposal because the public has been provided numerous opportunities to attend meetings of the RTCC and opportunities to review and comment on draft proposals.

17b.1 Requests postponing all proposed changes identified in DPH-10-014.

Response: See response to comment 17a.4.

18.1 Requests section 30400(a)(4) read as follows:

“Approved continuing education credit’ means 50 minutes for one hour of instruction received in subjects related to the application of X-ray to the human body and accepted for purposes of credentialing, assigning professional status, or certification by the:...”

Response: The Department accepts the recommendation and amended the proposal to clarify that an approved continuing education credit means 50 to 60 minutes of instruction.

18.2 Requests section 30400(a)(23) read as follows:

“Indirect oversight’ means that a qualified practitioner is ~~physically present~~ within the facility within yelling distance while the student is performing the procedure.”

Response: The Department agrees with the commenter and reviewed the JRCERT standard for indirect supervision (Standard 4.5, Reference 8, p. 52). The proposal was amended so that “indirect oversight” means that a qualified practitioner is physically present adjacent to the room or location where the student is performing the radiographic procedure for consistency with the JRCERT standard.

18.3 Recommends section 30400(a)(35)(B) be amended to only allow Certified Radiologic Technologists (CRT) to act as qualified practitioners for CRT students and only allow XTs to act as qualified practitioners for XT students.

Commenter states that national accreditation would not allow an XT to act as a qualified practitioner for a CRT student.

Response: A review of the JRCERT Standard 6.3 (Reference 8, p.68) indicates that clinical staff may hold other credentials or supervising students in specialty areas. However, that standard does not address the legal structure that may exist within a given state. The State of California has a legal structure that allows for and provides limited permits in the performance of radiologic technology (H&S Code 114850(e) & 114870(c)). Individuals holding a limited permit as identified in 17 CCR 30442 are qualified to perform radiologic technology limited to the permit holder's scope of practice. The commenter's recommendation would prevent a qualified person from providing training oversight to an unqualified person (i.e. a student) and appears to be contrary to the legislative intent. The Department believes the commenter's concern regarding the scope of practice is addressed in the definition of qualified practitioner in that an individual is a qualified practitioner only within the scope of the identified authorization. Thus, an XT would not be able to provide oversight of a CRT student if the student is performing a procedure that is not within the XT's permit scope. Therefore, the recommendation is rejected and no change is made to the proposal.

18.4 Recommends that in section 30411(a) "radiologic technology" be replaced with "radiography" as per definition in section 30400(a)(36).

Response: Use of the phrase "radiologic technology" is appropriate because the term includes both diagnostic and therapeutic application of X-ray to humans (H&S Code 114850(c)). Radiography as defined in the proposal means the procedure for creating an X-ray image (e.g., diagnostic) and using it in section 30411(a) would exclude radiologic technology for purposes of therapy. Therefore, the comment is rejected and no change is made to the proposal.

18.5 Requests section 30417(c) read as follows:

"The competency determination shall be written, dated, and printed and signed by both the person providing direct oversight and the supervising licensee."

Response: The Department agrees with the commenter's suggestion and amended the proposed regulation.

18a.1 Requests section 30420(a)(6) read as follows:

"Verify that each clinical site that is not within the Department's jurisdiction used by the school has an RPP as required by section 20.1101 of 10 CFR 20, as incorporated by reference in section 30253."

Response: The recommendation is rejected because a clinical site that is not within the Department's jurisdiction is not subject to the cited regulation. Further, such sites may or may not have an equivalent requirement placed on them by the federal or tribal government. Additionally, though the Department verifies a clinical site, or for that matter any site that uses X-ray equipment, has a Radiation Protection Program (RPP), the school is still responsible to ensure its students perform procedures in a site that has an RPP. The Department's inspection, during which an RPP is verified and reviewed for adequacy, occurs every three to five years whereas a school's students are at a clinical site much more frequently. Thus, in addition to the reasons as stated in the ISR, the proposal provides a new line of defense in protecting the public, workers and students from unnecessary radiation exposures at sites that may not have an RPP. If a school discovers a site without an RPP, the school can inform the Department.

19.1 Recommends section 30466(a)(6)(B)1 be changed to read “diagnostic radiology oral examination.”

Response: It appears the commenter misunderstands the specified provision. The proposal is not addressing those who have passed their oral certifying examination conducted by the American Board of Radiology (ABR). It is addressing those who have passed the specified ABR written examinations. Further, as discussed in the ISR the cited examinations are for purposes of issuing the radiology supervisor and operator (S&O) certificate only. Therefore, no change is made to the proposal. See also the response to comment 19.2.

19.2 Recommends adding the phrase “board eligible” to apply broadly to examinations specified in section 30466(a)(6)(B).

Response: As discussed in the ISR the cited examinations are for purposes of issuing the radiology S&O certificate only, not for purposes of establishing board eligibility with the ABR. The ABR is a private organization and the Department and ABR have no contractual or legal relationship. The cited examinations serve as acceptable examinations for issuance of the Department's radiology S&O certificate in lieu of updating the Department's current examinations or developing new examinations. Therefore, no change is made to the proposal.

19.3 Commenter provides information regarding an individual's documentation of exams taken for purposes of complying with the requirements of the ABR. Further provides information regarding publicly releasing information in the future.

Response: The Department thanks the commenter for the specific information. However, the Department would not submit requests to ABR regarding which exams an individual has passed. Individuals applying for the certificate would need to provide

documentary evidence, regardless of how the individual obtained it, to the Department as part of the application process. Since no recommendation is made, no changes were made to the proposal.

19a.1 The commenter indicates that applicants would have to provide screenshots of their personal database (PDB) which would indicate the exams the applicants have passed, as the ABR does not currently share candidates' exam information nor does the ABR currently have a means to report on the candidates' exam status externally beyond the personal online accounts provided to each candidate.

Response: See response to comment 19.3.

20.1 Requests section 30417(c) read as follows:

"The competency determination shall be written, dated, and printed and signed by ~~both~~ either the person providing direct oversight ~~and~~ or the supervising licentiate."

Response: See response to comment 18.5.

20.2 Requests section 30423(g) read as follows:

Subject to subsection (h), documentation of clinical training as specified in subsection (f)(2) shall include an orientation check-off ~~of each~~ for one fluoroscopic room ~~or~~ and one portable fluoroscopy device prior to initial use.

Documentation of procedures performed shall include the name of the procedure, the date the procedure was performed, the facility name, including the physical location, where performed, and the name ~~and certificate or permit number~~ or initials of the person observing and verifying performance.

Response: Regarding the training documentation, see the response to comment 10.5. Regarding the need for the permit/certificate number, that number is necessary to verify that the individual providing oversight is qualified as discussed in the ISR. The comment is rejected and no change is made to the proposal.

20a.1 Requests section 30400(a)(4) read as follows:

"'Approved continuing education credit' means 50 minutes for one hour of instruction received in subjects related to the application of X-ray to the human body and accepted for purposes of credentialing, assigning professional status, or certification by the:..."

Response: See response to comment 18.1.

20a.2 Requests section 30400(a)(23) read as follows:

“‘Indirect oversight’ means that a qualified practitioner is ~~physically present~~ within the facility within yelling distance while the student is performing the procedure.”

Response: See response to comment 18.2.

20a.3 Requests section 30420(a)(6) read as follows:

“Verify that each clinical site that is not within the Department’s jurisdiction used by the school has an RPP as required by section 20.1101 of 10 CFR 20, as incorporated by reference in section 30253.”

Response: See response to comment 18a.1.

20a.4 Recommends section 30400(a)(35)(B) be amended to only allow CRTs to act as qualified practitioners for CRT students and only allow XTs to act as qualified practitioners for XT students. Commenter states that national accreditation would not allow an XT to act as a qualified practitioner for a CRT student.

Response: See response to comment 18.3.

21.1 Expresses his or her opinion generally regarding his or her displeasure of government.

Response: The comments are irrelevant to the adoption of the proposed regulations.

22.1 Requests a public hearing to be held on the proposed regulations.

Response: It appears the commenter is confused as to what the public notice was relaying and therefore, requested a public hearing. In response to a duplicative request by commenter 17, the Department conducted a public hearing on January 3, 2013.

22.2 Completed continuing education credits and questions why there is a delay/problem.

Response: Continuing education is required, in part, to renew certificates and permits issued pursuant to the Radiologic Technology Act. Thus, this comment is outside the scope of this proposal because it addresses existing renewal processes.

22.3 Sent in fees on December 19, 2012 with no response.

Response: Fees are required, in part, to renew certificates and permits issued pursuant to the Radiologic Technology Act. Thus, this comment is outside the scope of this proposal because it addresses existing renewal processes and the proposal is not addressing fees.

22.4 Questions if the Notice of Proposed Rulemaking, Title 17, California Code of Regulations, Radiologic Technology Act Regulations, DPH, 10-014, is a result of the commenter's Social Security disability status. Requests additional information so he knows what he is up against.

Response: The Notice of Proposed Rulemaking informed the commenter of the opportunity to publicly participate in reviewing proposed regulations with which the commenter may be required to comply. Additional information was not provided; however, the commenter was contacted to allay the commenter's concerns.

22a. Received duplicative comments from commenter #22 via U. S. postal mail.

Response: See responses to comments 22.1, 22.2, 22.3 and 22.4.

23.1 Radiology MDs are required to maintain credits and credentials on an ongoing basis to operate X-ray equipment on human beings or to supervise State authorized radiologic technologists, X-ray technicians and students. Claims the requirement to maintain an additional permit as an X-ray Supervisor and Operator is redundant. Requests Radiology MDs be exempt from such requirement.

Response: It appears the commenter is unaware of the differences between a radiology supervisor and operator (S&O) certificate and a radiography S&O permit. This proposal clarifies to whom the radiology S&O certificate is issued as specified in section 30462. Radiologists do not need to obtain an additional S&O permit. Thus, the commenter's recommendation is already addressed in regulation.

24.1 Questions if commenter needs to take additional classes for continuing education and whether they need to obtain a digital license.

Response: The proposal would require radiologic technologists who hold the fluoroscopy permit (17 CCR 30403(a)(2)) to reallocate four of the 24 continuing education credits to radiation safety for the clinical uses of fluoroscopy. The proposal would also require the technologist to allocate four of the 24 credits to digital radiography. However, the technologist would not need to obtain a digital authorization because the digital authorization applies only to limited permit X-ray technicians. No changes are made to the proposal based on the comments.

25.1 States that the notice regarding section 30442 does not state which limited permit categories are proposed to be discontinued.

Response: It appears the commenter believes the notice is inadequate regarding section 30442. The notice stated that section 30442 was being amended to “both address the problems and realize the benefits as stated above regarding this regulatory action, to address the RTCC’s recommendations to discontinue certain limited permit categories, and to make nonsubstantial changes to the title of the section and the authority and reference note.” Though the notice does not state which permit categories would be discontinued the Department believes that the statement provided enough information so that the individual could review the complete text of the proposed regulation with the statement of the reasons and the commenter was provided opportunity to comment on the proposed regulation. The ISR provides the specific discussion of which permit categories were proposed to be discontinued and why they would be discontinued. It appears the commenter did not review the proposed text or review the ISR which explains and details the complete proposal. Thus, the Department believes the commenter was provided with enough information so they could properly participate in the Department’s rulemaking action.

25.2 Believes the amendment to section 30462 is short-sighted in that it limits the supervision of radiologic technology to radiologists and radiation oncologists.

Response: See responses to comments 1.1 and 14.1.

26.1 Believes the Department should generate the request for the Annual Report as well as the Annual Report document listing all of the information needed as listed in proposed section 30413.5 (a). Why are programs required to remember to send this in?

Response: See response to comment 10.1.

26.2 Believes that in section 30417(c) requiring RT students to have the supervising licentiate provide direct oversight and a signature on repeats is inappropriate since the supervising licentiate is not readily available at most clinical sites for this type of oversight.

Response: See responses to comments 10.2 and 18.5.

26.3 Requests section 30420(a)(6) read as follows:

“Verify that each clinical site that is not within the Department’s jurisdiction used by the school has an RPP as required by section 20.1101 of 10 CFR 20, as incorporated by reference in section 30253.”

Response: See response to comment 18a.1.

- 26.4 Suggests “and as amended or revised” should be added to proposed section 30421(a) to keep it current.**

Response: See response to comment 10.3.

- 26.5 Suggests “and as amended or revised” should be added to proposed section 30423 (f)(1) to keep it current.**

Response: See response to comment 10.3.

- 26.6 Suggests one check-off document for a fixed unit and one for a portable fluoroscopy device per assigned facility in proposed section 30423(g).**

Response: See response to comment 10.5.

- 26.7. Suggests documentation include name of procedure, date performed, facility name and initials of person (certificate/permit holder) observing and verifying performance in proposed section 30423(g) but not the permit number and the physical location.**

Response: Regarding the permit number, see the response to comment 12.7. Regarding the physical location, it is needed because there are often facilities with the same facility name and the physical location allows evaluation of the appropriate facility. Therefore, no change to the proposal is made based on this comment.

- 26.8 Questions if dental radiography permit holders should be allowed to take x-rays of skulls, hands, and wrists with this limited permit in proposed section 30443(b). Claims that it should be strictly limited to dental radiography.**

Response: See response to comment 10.7.

- 26.9 Suggests proposed section 30451(a)(2)(A) should say social security number or taxpayer identification number (TIN).**

Response: The Department rejects the recommendation because the TIN would not fulfill the mandate specified in Family Code section 17520.

- 26a.1 Questions who called for the public hearing.**

Response: The commenter was informed that the individual’s name would be identified in the document Final Statement of Reasons.

26a.2 Questions what happens to the comments that are made at the public hearing and the written comments.

Response: The commenter was informed that all comments received at the public hearing and all written comments received during the public proceeding are summarized and addressed within the Final Statement of Reasons. The comments will be available on the Internet at the link provided in the Notice of Proposed Regulatory Action.

26a.3 Questions if the comments make changes to the RT Act, do the commenters have a chance to make additional comments after that.

Response: The commenter was informed that when a public hearing is held, whether it is the initial 45-day comment period or any additional 15-day comment period, additional comments can be submitted during those periods of time. Those who have commented in the public hearing and during the initial 45-day comment period would be notified of any additional 15-day comment periods that may occur due to changes based on comments or at the Department's discretion.

26a.4 Questions if everyone is notified of any additional 15-day comment periods or only those who submitted comments.

Response: The commenter was informed that for the additional 15-day comment period, only those who have requested to be notified of additional changes or have submitted comments during the initial period would receive the notice of the 15-day comment period.

27.1` Recommends creation of a new limited permit category within the scope of the chiropractic profession and provides general information regarding the American Chiropractic Registry of Radiologic Technologists (ACRRT).

Response: The commenter provides supporting information to create a new limited permit category within California. The Department believes such consideration should be reviewed by the RTCC because the RTCC serves as the Department's consultants for purposes of establishing training and education for persons who use X-rays on human beings (H&S Code 114840 & 114855). The recommendation will be forwarded to RTCC for its review and consideration at its next public meeting. Therefore, the recommendation is rejected and no change to the proposal is made.

27a.1 Recommends creation of a new limited permit category within the scope of the chiropractic profession.

Response: See response to comment 27.1.

27a.2 Recommends deletion of subsection (b) in Section 30424 as it relates to limiting the number of procedures performed for chiropractic purposes.

Response: The recommendation is rejected. As discussed in the ISR, there are many procedures performed only for medical purposes and not for chiropractic purposes and vice versa. Training is broad in nature so as to encompass both medical and chiropractic purposes.

27a.3 Recommends adding the ACRRT to subsection (a)(4) of Section 30400.

Response: The Department reviewed the information found on the ACRRT's website but was unable to determine the methodologies used to approve and evaluate continuing education providers. As discussed in the response to comment 27.1, the Department is forwarding this recommendation to the RTCC for consideration and RTCC's recommendation. Therefore, the recommendation is rejected and no change is made to the proposal.

28.1 Recommends section 30466(a)(6)(B)1 be changed to read "diagnostic radiology oral examination."

Response: See response to comment 19.1.

28.2 Recommends adding the phrase board eligible to apply broadly to examinations specified in section 30466(a)(6)(B).

Response: See response to comment 19.2.

28.3 Provided ABR's Board Eligibility Policy for support of its comments.

Response: The Department thanks the commenter for the information. Since no recommendation is made, no changes were made to the proposal.

29.1 Believes the requirement in section 30403 that RTs must reallocate four CEs in digital and fluoroscopy is redundant and unnecessary because the RTs are already familiar with radiation safety and digital radiography.

Response: See response to comment 2.1.

30.1 In section 30403(a), states "earn 24 approved continuing education credits" does not specify the subject matter accepted (i.e. pathology, positioning, quality control, anatomy, etc.). This used to say "subjects related to the application of ionizing radiation to the human body."

Response: It appears the commenter is recalling the definition of approved continuing education credit as found in proposed section 30400(a)(4) (redesignated from 30400.5). Thus, the criteria are specified in the definition of what a credit is. No change to the proposal is made based on this comment because the proposal only carries forward the existing requirement. See also the response to comment 30.2.

30.2 In section 30403(a), states “earn 24 approved continuing education credits” does not specify mammography subject matter accepted (i.e. pathology, positioning, breast anatomy or quality control).

Response: The Department initially adopted this requirement in 2001. As indicated at that time, which is a current requirement under federal requirements implementing Mammography Quality Standards Act (MQSA), the provision parallels those federal requirements (Title 21, Code of Federal Regulations, Section 900.12(a)(2)(iii)). The provision intentionally does not specify mammography subject matter because the entities cited in section 30400(a)(4)(A) through (C) would also have to review and accept that subject matter. The examples the commenter provides are all related mammography subject matter. Therefore, the comment is rejected and no change is made to the proposal.

30.3 In section 30403(a)(2), states “four of the required 24 credits shall be in radiation safety for the clinical uses of fluoroscopy” does not specify if procedures performed with fluoroscopy are also accepted or if it must be exclusively on subject matter requiring safety within and during the procedure.

Response: The Department believes that the proposal clearly requires the credit to be in radiation safety within and during any procedure because of the phrase “radiation safety for the clinical uses of fluoroscopy.” It is noted that RTCC and the subcommittee addressing fluoroscopy use did not consider performance of fluoroscopy procedure as an adequate activity for purposes of radiation safety. Therefore, no change to the proposal is made based on this comment.

30.4 In section 30403(a), requests granting 4-6 units of the required 24 credits in subject matter related to the applicant’s work area (i.e. US, MRI, NMT, etc.).

Response: The Department, on recommendation of the RTCC, adopted the continuing education requirement in 2001. As presented in that rulemaking, the acceptable subject matter is limited to those subjects related to the application of X-rays to humans because the Department-issued certificates and permits authorize those individuals to expose humans to radiation for diagnostic, therapeutic, and mammographic purposes. Ultrasound, magnetic resonance imaging, and nuclear medicine technology (NMT) are not related to the application of X-ray to humans as addressed under the RT Act. Though NMT involves the use of ionizing radiation, it is

specific to the use of radioactive material but not X-ray equipment. Therefore, the comment is rejected and no change to the proposal is made.

30.5 In section 30403.5(b), questions whether renewal procedures will require the actual certificates sent in or will a tracking list suffice.

Response: As proposed, the renewal document would need to provide specific information, one of which is a description of the instruction. The description needs to be specific enough to determine whether the instruction meets the definition of an approved continuing education credit as defined in section 30400(a)(4). Actual certificates, as indicated in section 30403.8, would need to be submitted if requested. No change is made to the regulation based on this comment.

30.6 In section 30443(b), recommends not allowing dental X-ray radiography permit holders to take hand and wrist X-rays.

Response: The commenter's written comments were unclear. The Department contacted the commenter and clarified the recommendation which is the summarized comment. The scope of dental X-ray laboratory radiography initially adopted in 1970 only allowed performance of dental and oral radiography and cephalometrics in a dental X-ray laboratory. In 1985 the scope was amended to include taking X-rays of the hand and wrist for dental age purposes. This expansion was appropriate because maturation of an individual can impact dental treatment. For example, adolescence is the most advantageous period for orthodontic treatment, for it is a time when nature assists correction rather than hindering it. Skeletal age is a significant measure of bodily maturation whereas chronologic age reveals nothing about a person's level of maturity. Radiologic examination allows the dentist to determine how far the skeleton has progressed toward the adult condition since maturation does not proceed at a steady rate. Radiologic (skeletal) age is only one factor in a general examination of the patient. It should be correlated with the dental age. Thus, the scope of dental laboratory radiography includes the taking of hand and wrist X-ray images that dentists use for bone age determination and dental treatment planning. The training components are as specified in section 30425(a)(2)(C) and (a)(4)(G). Further, RTCC subcommittee reviewed that curriculum and made only one recommendation to RTCC which is found in section 30425(a)(4)(E) as proposed. Thus, the RTCC was aware of the scope of dental radiography and made no additional recommendations to prohibit performance of hand and wrist X-rays for dental purposes. Therefore, the recommendation is rejected based on RTCC's awareness and that the scope has included such procedures since 1985 and students are trained on how to perform them.

31.1 Requests section 30400(a)(4) read as follows:

"Approved continuing education credit' means 50 minutes for one hour of instruction received in subjects related to the application of X-ray to the human body and accepted for purposes of credentialing, assigning professional status, or certification by the:..."

Response: See response to comment 18.1.

31.2 Requests section 30400(a)(23) read as follows:

"Indirect oversight' means that a qualified practitioner is ~~physically present~~ within the facility within yelling distance while the student is performing the procedure."

Response: See response to comment 18.2.

31.3 Recommends section 30400(a)(35)(B) be amended to only allow CRTs to act as qualified practitioners for CRT students and only allow XTs to act as qualified practitioners for XT students. Commenter states that national accreditation would not allow an XT to act as a qualified practitioner for a CRT student.

Response: See response to comment 18.3.

31.4 Requests section 30417(c) read as follows:

"The competency determination shall be written, dated, and printed and signed by ~~both~~ only the person providing direct oversight (licentiate or CRT) ~~and the supervising licentiate.~~"

Response: See response to comment 18.5.

31.5 Requests section 30420(a)(6) read as follows:

"Verify that each clinical site that is not within the Department's jurisdiction used by the school has an RPP as required by section 20.1101 of 10 CFR 20, as incorporated by reference in section 30253."

Response: See response to comment 18a.1.

31a.1 Questions specifics of public hearing procedures on commenting such as time limitations.

Response: The commenter was informed of the time limitation of five minutes but more than once was acceptable.

31a.2 Questions for those of us who sent comments by email, is there any way to know that the Department has received them.

Response: The commenter was informed that each comment is addressed in the Final Statement of Reasons but no automatic reply to comments occurs.

31a.3 Suggests the Department utilize an automatic reply so that when an email comes in, a response informs the commenter the email has been received.

Response: The Department will consider the commenter's suggestion for future rulemakings.

31a.4 References section 30400(a)(4) and a credit of education being one hour of instruction. States that many colleges follow a Carnegie hour which is 50 minutes.

Response: See response to comment 18.1.

31a.5 Recommends that section 30400(a)(23) be amended so that indirect supervision means the person doing the supervision is onsite. JRCERT regulations regarding indirect supervision requires somebody to be within yelling distance, in case there is an emergency, for patient safety.

Response: See response to comment 18.2.

31a.6 Recommends that section 30400(a)(35)(B) be amended to remove an XT from the definition of qualified practitioner. JRCERT does not allow a CRT or student potential Rad Tech student to be supervised for competency by XT or a limited license tech.

Response: See response to comment 18.3.

31a.7 References section 30417(c) which states that "the competency determination shall be written, dated, and printed and signed by both the person providing direct oversight and the supervising licentiate." It is the commenter's impression that when this regulation was written, XTs or limited techs can be signed off by a licentiate. Believes it is not practical to have a physician or someone to be able to sign off. If the initial intention was for limited, commenter believes it should be separated out, one for limited and one for the CRT.

Response: See response to comment 18.5.

31a.8 References section 30420(a)(6) under the RPP which means each of the commenter's clinical sites needs to have a radiation protection policy to be

submitted to the Department. States it is the responsibility of the Department to make sure that all of the facilities are in compliance for the safety of the facility's patients and the subjects of the State of California.

Response: It appears the commenter recommends section 30420(a)(6) be deleted because the Department verifies on inspection a facility using X-ray equipment has an RPP. The recommendation is rejected because the commenter misconstrues the nature of the Department's inspection of a facility and determining that the facility's RPP is adequate and protective of the public and workers within the facility versus what is proposed in section 30420(a)(6). This proposal is not requiring a school to evaluate the facility's RPP as to the adequacy and the compliance of the facility with its own plan. The proposal merely requires the school to verify that an RPP exists at the clinical sites where the school's students will perform procedures. Thus, the school need only verify the existence of the RPP.

31a.9 Assumes that because the Department requires schools to submit an annual report which is nowhere in current regulations that the annual report requirement will no longer be required.

Response: The Department is aware that current regulations do not require an annual report. Therefore, the Department proposed section 30413.5 to require an annual report for the reasons as discussed in the ISR. Once this proposal is adopted, the regulations will require submittal of an annual report.

31a.10. Informs the Department that many other allied health professionals are trying to enter the X-ray imaging industry to provide ionizing radiation for patients. Feels this is an inappropriate move since it will dilute the training of radiation protection for patients and the citizens of the State of California.

Response: This proposal and existing regulations and laws specify the training requirements for people to apply X-ray to human beings. Other allied health professionals who wish to use X-ray on humans must meet these requirements. No changes to the proposal were made based on this comment.

32.1 Questions what section 30451 means after reading the Public Notice.

Response: The commenter was informed during the public hearing that the public notice informs the public of the opportunity to review and comment on proposed regulations. No changes to the proposal were made based on this comment.

32.2 Questions when the public hearing comments and responses and the dictation of the proceedings will be published on the Internet, emailed, mailed out.

Response: The commenter was informed that all comments, a response to all the comments, including the names of individuals who have submitted comments, will be available in what is called the Final Statement of Reasons (FSR). The FSR comes at the very end of the rule-making process, and is submitted to the Office of Administrative Law (OAL) with all the required documents for getting the proposed regulations approved as adopted regulations. The adopted regulations are posted on the Internet when they are approved by the Office of Administrative Law or can be obtained by contacting the Department's Office of Regulations (OOR). OOR's phone number is found in the public notice.

The Department evaluates the comments and determines whether or not changes need to be made based on those comments or if the Department has determined other changes are needed. If those changes are made and they are substantial changes to the proposal, as opposed to non-substantial changes, those who have commented at the public hearing and during the initial 45-day comment period, and who have requested to be notified of any additional changes, the Department would go out for an additional 15-day comment period. The Department would have to do that until all substantial changes have been addressed. The Department has until November of this year to submit all the required documents to the OAL for review and verification that the Department has complied with all Administrative Procedures Act requirements and the legal standards have been met. So the commenter may be included in an additional 15-day comment period. Those will be mailed out, and the commenter will be given an additional comment period at that time to submit any additional comments on the changes to the proposed regulations.

32.3 Questions if the deadline is November 2013.

Response: November 16, 2013 is the deadline for the Department to submit the rulemaking file to OAL. If the Department fails to submit its required documentation to the OAL for review by November 16, 2013, the proposed adoption would be ineffective and the Department would have to reinstate the adoption process. The regulations would be effective sometime in 2014. An exact date cannot be estimated because that depends on how soon the Department can get all the documents together and submitted to OAL and if OAL approves those regulations, and when they file those with the Secretary of State.

33.1 Recommends adding the phrase "board eligible" to apply broadly to examinations specified in section 30466(a)(6)(B).

Response: See response to comment 19.2.

33.2 Recommends section 30466(a)(6)(B)1 be changed to read "diagnostic radiology oral examination."

Response: See response to comment 19.1.

34.1 Recommends section 30439(a)(3) be deleted because it is burdensome to maintain proof of the student's performance of laboratory procedures, due to the number of students that perform those procedures each year, and the costs for storage of the X-ray film documenting performance of those procedures.

Response: The commenter's letter includes a copy of the section the commenter is referring to. However, the regulation being referred to is section 30437 and the commenter apparently incorrectly refers to section 30439 which does not exist nor is proposed. Therefore, the Department believes the commenter is making a recommendation regarding section 30437.

The recommendation is rejected because the proposed change merely carries forward a requirement that was placed on schools in 2001. Also, that provision does not specify that proof of performance of laboratory procedures must be the X-ray film on which the procedures are performed. The Department has on a case-by-case basis required an individual school to maintain that X-ray film based on inspection findings indicating poor record keeping practices and the school's inability to show that students actually perform these laboratory procedures. A school needs to provide proof that students complete those laboratory procedures and such proof can include maintaining X-ray film, worksheets indicating the results and calculations of procedures and log sheets of when procedures were performed and who evaluated the ability of the student to internalize the concepts being taught during the procedures. Therefore, the school need not document performance via X-ray film only but needs to provide evidence that gives the Department confidence that students have actually performed the required laboratory procedures.

**5a.1, 9a.1, 18b.1, 26b.1, 30a.1, 35.1, 36.1, 37.1, 38.1, 39.1
Objection to the Department's scheduling of a public hearing.**

Response: The commenters made no objection or recommendation regarding the proposed regulations but objected to a procedural action. Thus, the comments are irrelevant. However, the Department will consider the recommendation as it refines its regulation processes.

ALTERNATIVES DETERMINATION: In accordance with Government Code Section 11346.9(a)(4), the Department has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

IMPOSITION OF LOCAL MANDATE

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

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