

## **SECOND SUPPLEMENTAL STATEMENT OF REASONS**

### **FORENSIC ALCOHOL LABORATORIES**

#### **CALIFORNIA CODE OF REGULATIONS, TITLE 17**

#### **SUMMARY OF PROPOSAL**

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

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

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

The amendments update the regulations to reflect changes in Health and Safety Code. The 1986 regulations are outdated and inconsistent with California law, current health advisories, and modern instrumentation and technology. Therefore, the regulations needed to be reviewed in their entirety, and re-written where applicable. This third round of proposed changes provides further clean up in response to public comment and committee discussion.

New additions and deletions are double underlined or double struckout and are highlighted in yellow. The justifications for each are listed below.

#### **AUTHORITY**

The authority for this rulemaking action is Health and Safety Code section 100703. The regulations implement and make specific the Health and Safety Code section governing the operation of forensic alcohol testing laboratories in California at Health and Safety Code section 100700 *et seq.*

## **DETAILED DISCUSSION OF EACH REGULATION**

### **California Code of Regulations, Title 17, Sections 1215 to 1222.2**

#### **Article 1. General**

##### **Section 1215**

Subsection (b): In response to public comment, the committee reverted back to “refers to” because “alveolar” is an adjective, not a noun.

Subsection (g): “Breath” was removed because “Breath Alcohol Testing” defines the analysis done on breath, whereas “Forensic Alcohol Analysis” was meant to define the analysis done on everything else. “Breath” was therefore removed.

Subsection (n): To ensure accuracy, the committee decided it was best to revise the definition of “NIST Standard Reference Material (SRM)” to exactly match the definition as it appears on the NIST website.

##### **Section 1216.1**

Subsection (b)(3)(E): The committee revised this subsection to set narrower limits for the accuracy of competency test samples between 0.08 and 0.10 grams %. This was to correct for the previous wider limits unintentionally set during the previous rounds of revisions.

Subsection (b)(5): The committee here seeks to grandfather in those who met the training requirements as set out in regulation prior to amendment of the Group 8 regulations. Those who were qualified under the previous Group 8 regulations as forensic alcohol analysts will continue to be so after the adoption of these amendments.

Subsection (c)(1): In response to public comment, the committee seeks to amend this subsection to clarify that documentation regarding the qualification of newly hired forensic alcohol analysts must be submitted to the department.

Subsection (c)(5): The amendment here is meant to clarify that it is the training as described in section 1216.1(b)(4) that must be successfully completed, with documentation of such completion being sent to the Department.

**Section 1217**

Subsection (a): With this amendment, the committee seeks to clarify which regulations must be followed, because it may not have been clear previously.

**Section 1219.2**

Reference section: An erroneous section was removed.

**Section 1220.2**

Subsection (a)(4): With this additional language, the committee seeks to make clear what substances may or may not be used to clean glassware used for alcohol analysis. Volatile organic compounds may affect results, so the regulation is written to ensure VOCs are thoroughly removed from any instrumentation and that alcohols are not used to clean the glassware.

**Section 1220.4**

Subsection (a): Deleted an extraneous word.

Subsection (b): Reworded the sentence to ensure it is clear that when reporting to the second decimal place, one arrives at this number by simply removing the digit at the third decimal.

Subsection (e): Reworded slightly for clarity.

**Section 1221.2**

Subsection (b): Deleted an errant "the."