# Item 14 Attachment: Client-Owned Vehicle Use Regulation Package

**Item Type: Information and Discussion**

**Background:** On December 12, 2022, the DOR issued a notice of emergency rulemaking regarding client owned vehicle use. The proposed change was informed, in part, by the following SRC recommendation:

SRC Recommendation 2022.1: Transportation Regulations

To address consumers’ transportation challenges, DOR should review their transportation regulations to determine what areas should be retained, modified, or removed. Areas for consideration include:

1. Increasing the consumer-owned vehicle usage paid amount of fifteen cents ($0.15) per mile, or at twenty cents ($0.20) for adapted vans
2. Ensuring consumers can financially assume the cost of transportation before closing their record of service
3. Adding ridesharing methods such as Uber or Lyft as a form of reimbursable transportation.

DOR Response: The DOR thanks the SRC for the recommendation to review the transportation regulations in respect to the consumer-owned vehicle usage paid amount, consumer’s responsibility of financially assuming costs of transportation, and adding alternative modes of transportation such as ridesharing. DOR staff will analyze the feasibility and requirements necessary to update these regulations and discuss if, where, and how to implement changes, and the potential impact to consumers and DOR. DOR welcomes future discussions with the SRC about this recommendation, to include updates on the analysis and any actions the DOR will be considering or pursuing regarding regulatory and or policy changes related to participant transportation. DOR appreciates the SRC’s partnership and is looking forward to these future conversations.

On March 9, 2023, during the SRC’s quarterly meeting, representatives from DOR’s Office of Legal Affairs and VR Policy and Resources Division will provide an update on the proposal to amend the California Code of Regulations section 7162 pertaining to client owned vehicles and the mileage rates for DOR clients.

**Attachments**:

[Notice of Proposed Emergency Action](#_NOTICE_OF_PROPOSED)

[Proposed Regulation Text](#_PROPOSED_REGULATION_TEXT)

**DEPARTMENT OF REHABILITATION**

**721 Capitol Mall**

**Sacramento, California 95814**

**EMERGENCY RULEMAKING ACTION**

**ELECTRONIC SUBMISSION OF NOTICE OF PROPOSED ACTION, REGULATORY ACTION, AND CHANGES WITHOUT**

**REGULATORY EFFECT**

## Notice of Proposed Emergency Action

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of a proposed emergency action to the Office of Administrative Law (OAL), the adopting agency shall provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the notice of emergency rulemaking to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

The Department of Rehabilitation (DOR) intends to submit this proposed emergency action for review on December 19,2022. The submitted action will appear on the list of “Emergency Regulations Under Review” on OAL’s website at [oal.ca.gov/emergency\_regulations/emergency\_regulations\_under\_review](https://oal.ca.gov/emergency_regulations/emergency_regulations_under_review/).

Comments must be submitted in writing to OAL at:

Office of Administrative Law

300 Capitol Mall, Suite 1250

Sacramento, CA 95814

Fax: (916) 323-6826

Email: Staff@oal.ca.gov

A copy of the comments must also be submitted in writing to the DOR contact person at:

Department of Rehabilitation

Office of Legal Affairs and Regulations

Attn: Michele Welz

721 Capitol Mall

Sacramento, California 95814

Fax: (916) 558-5806

Email: Legal@dor.ca.gov

**FINDING OF EMERGENCY**

The DOR is the designated state agency providing individualized vocational rehabilitation to Californians with disabilities (clients or consumers) to assist them in preparing for, securing, retaining, advancing in or regaining an employment outcome in accordance with the Rehabilitation Act of 1973, as amended (29 U.S.C. section 701 et seq.). Depending on the need of the individual client and vocational rehabilitation services approved by DOR, DOR may provide funding to a client for fuel (mileage rate) when they must use their personally owned vehicle to participate in their vocational rehabilitation programs. (29 U.S.C. section 723, 34 C.F.R. section 361.48.) Currently, the mileage rate is established in California Code of Regulations, title 9, section 7162 at $0.15 per mile and $0.20 per mile for modified vans.

On January 1, 2022, the online gasoline price tracker at the U.S. Energy Information Administration (<https://www.eia.gov/petroleum/gasdiesel/>) showed that the average weekly retail price per gallon in the State of California was $4.497. On June 13, 2022, the average weekly retail price per gallon in California was as high as $6.271. As mentioned above, DOR currently provides funding to eligible clients at the rate of $0.15 per mile and $.20 per mile for modified vans when clients use their own vehicles to participate in vocational rehabilitation services. This mileage rate for clients was set in 1990; at that time, the average price of gas was approximately $1.245 (<https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMM_EPMRU_PTE_NUS_DPG&f=W>).

The high gas price fluctuations create financial hardships and barriers for DOR clients who are preparing for, securing, retaining, advancing in or regaining employment and must use their own vehicles to participate in their vocational rehabilitation programs. Because the fluctuating gasoline prices since January 2022 dramatically affected members of the public that are being provided vocational rehabilitation support by DOR, it is an emergent issue that DOR makes the necessary regulatory changes to the mileage rate and appropriate payments to provide DOR clients with financial relief, thereby removing barriers to them participating in their vocational rehabilitation programs. To amend the regulations through regular rulemaking, which takes more than 100 days, would pose further economic hardship and potential economic harm to vocational rehabilitation clients and would be inconsistent with the public interest.

The regulation currently allows $0.15 per mile for cars and $0.20 per mile for modified vans and that does not waiver based upon the current market price of gasoline (California Code Regulations, title 9, section 7162). For a car that averages 25 miles to the gallon, it will cost clients 5 to 10 cents more per gallon than what DOR can currently pay while the prices remain as they are. The mileage rate in the current regulation does not allow for the support necessary to pay for fuel so clients can drive to jobs, job interviews, appointments or classes, which creates barriers to achieving employment goals and interferes with DOR’s mission to assist job seekers with disabilities obtain competitive integrated employment.

The DOR provides services statewide to thousands of Californians with disabilities through its 80 offices and in partnership with state and local education and behavioral health agencies, regional centers, community resource programs, and other partners and travel may be necessary. The DOR works in collaboration with each client to develop an individualized plan for employment to identify the vocational rehabilitation services necessary for the client to achieve their identified employment outcome. To be competitive, the client must be able to travel to and from work or training, be on-time, and consistent. As a result, where determined necessary, DOR will assist with paying for transportation, including fuel, in connection with the provision of any vocational rehabilitation service if it is in the individualized plan for employment (34 C.F.R. sections 361.45, 361.46, 361.48; Cal. Code Regs., tit. 9, sections 7128 through 7131).

In light of the ongoing high fluctuations in fuel prices, and the needs demonstrated by DOR clients who are struggling to pay for fuel, as well as the employment goal of the vocational rehabilitation program, this rulemaking has risen to the emergency standard. Under section 11342.545 of the Government Code, DOR proposes to immediately adopt this emergency regulation to avoid serious harm to the health, safety, and general welfare of Californians with disabilities who are receiving vocational rehabilitation services from DOR to obtain, gain, retain, and advance in employment to live independently and provide for themselves and their families.

**AUTHORITY**

Welfare and Institutions Code sections 19006 and 19016.

**REFERENCE**

Welfare and Institutions Code section 19150; 29 U.S.C. section 723; 34 Code of Federal Regulations sections 361.5, 361.42, 361.44, 361.46, and 361.48.

**INFORMATIVE DIGEST**

Government Code section 11340.5 requires agencies to adopt regulations pursuant to the Administrative Procedures Act unless there is an express statutory exemption. Welfare and Institutions Code section 19006 authorizes DOR to adopt, amend or repeal, rules and regulations as may be reasonably necessary to enable it to carry out its duties and powers. Welfare and Institutions Code section 19016 authorizes DOR to prepare and promulgate regulations as are found necessary to carry out the purposes of the vocational rehabilitation program. The federal law and regulations that discuss the need to provide transportation services as part of the vocational rehabilitation program are in title 29 United States Code section 723 and title 34 Code of Federal Regulations sections 361.46 and 361.48.

This is a proposal to amend a regulation, California Code of Regulations section 7162, which pertains to client owned vehicles and the mileage rates for DOR clients. The last substantive change to this regulation was in 1990. The current mileage rate is set in regulation at $0.15 per mile for cars, and $0.20 cents per mile for modified vans. It is currently stagnant and does not meet the clients’ needs during these times of high, fluctuating fuel prices. The proposed mileage formula would allow the rates to fluctuate with the market and would be more effective in providing funding to the client relative to what is taking place in the economy at the time to support their participation in their vocational rehabilitation program. The proposed changes are not inconsistent or incompatible with existing state regulations.

**LOCAL MANDATE DETERMINATION**

The DOR has determined that the proposed change does not impose a mandate on local agencies or school districts.

**COST ESTIMATES**

The DOR’s Vocational Rehabilitation Program is funded 78.7 percent with a federal grant and 21.3 percent from the State General Fund. The DOR estimates the additional total costs to DOR for the proposed regulation would range from $435,000 to $580,000 for the current State Fiscal Year. Of this amount, DOR estimates that the total fiscal effect of the proposed regulation on federal funding of the vocational rehabilitation program would range from costs of $343,000 to $457,000 and $92,000 to $123,000 in State General Fund for the current State Fiscal Year.

**PURPOSE AND NECESSITY**

Purpose: In section 7162, subsection (c)(3), for clients who use their own vehicles for transportation, DOR currently pays for gasoline and oil as a set rate of $0.15 per mile for a car, and $0.20 per mile for a modified van. The regulation also allows DOR to calculate actual costs of gasoline and oil when it is less than the established mileage rate.

In the proposed amendments, DOR would tie the proposed mileage rate to the U.S. Energy Information Administration’s (EIA) posted average weekly gasoline prices in California at a given time as well as the most recent EIA data on the average miles per gallon for a standard sedan (light-duty, short wheelbase vehicle). The EIA is the statistical and analytical agency within the U.S. Department of Energy. It collects, analyzes, and disseminates independent and impartial energy information to promote sound policymaking and public understanding of energy and its interaction with the economy. It is a reliable source for gasoline price data that is consistently posted and is not arbitrary. It is important to tie the mileage rate to the current market fluctuations and more adequately reflect market rates.

According to the most recent data posted on the site, in 2020, (<https://www.eia.gov/totalenergy/data/browser/?tbl=T01.08#/?f=A&start=1949&end=2020&charted=3-7-11-15>), the average mile per gallon for a light-duty, short wheelbase vehicle was 25.3. The weekly average price per gallon of gasoline in California for the grade of gasoline of “All Grades - Reformulated Areas” for the week encompassing November 14, 2022, was $5.31. (<https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_sca_w.htm>.) In performing the calculation with this data, DOR would divide 5.31 by 25.3 and the resulting rate for a car would be $0.21 per mile. Like the current regulation, which adds $0.05 to the car mileage rate for modified vans, the proposed text would also increase the rate for modified vans by the same amount due to the decrease in miles per gallon from the extra weight that a modified van pulls compared to a standard sedan. The DOR would add $0.05 to the rate for a modified van.

By using the numbers found on the EIA website, the mileage rate would change as the market price changes. Therefore, in the proposed regulation, DOR would assess the data listed on the EIA website for the first day of the first month of the year (January 1) and for the first day of the sixth month mark (July 1) each year. The DOR would then post that rate on its website ([www.dor.ca.gov](http://www.dor.ca.gov)). Based on November 14, 2022 data, the mileage rate would be $0.21 per mile for a car and $0.26 for a modified van.

The DOR selected to base the mileage rate on gasoline prices alone, removing oil from the calculation, because the price of gasoline is a readily identifiable cost of transportation and, unlike oil, it is not covered by maintenance or repair of a vehicle, which in some cases can be provided as a vocational rehabilitation service through other regulations. (See California Code of Regulations, title 9, sections 7149, 7162.5, and 7174.)

The DOR selected to use the average fuel economy for light-duty, short wheelbase vehicles because these are the most used cars in the United States. According to the U.S. Department of Transportation, Federal Highway Administration, the number of light-duty short wheelbase vehicles registered in 2020 was 193,921,800 and the number of light-duty long wheelbase vehicles registered was 59,199,428. (U.S. Department of Transportation, Federal Highway Administration, Highway Statistics (Washington, DC: Annual issues), table VM-1, available at <https://www.fhwa.dot.gov/policyinformation/statistics/2020/vm1.cfm>.)

The DOR selected to use the All Grades – Reformulated Areas gasoline for the retail gasoline average price because this is the most inclusive category of gasoline. Not every car uses regular grade gasoline, although it is the most economical, and the “All Grades – Reformulated Areas” grade of gasoline is an average of all the grades.

The DOR selected to remove the portion of the current regulation that allows for the calculation of actual costs when they are less than the mileage rate. The DOR has created a precise rate calculation that would be utilized in all instances, it is equitable to do so, and it saves staff time in having to do a separate calculation.

Necessity: There are three main reasons for the need to change the mileage rate. First, having a set rate that can quickly become outdated and does not change with the current gasoline prices could appear arbitrary and result in a windfall if the gasoline price goes down, or could be so minimal for the client if the gasoline price goes extremely high. Secondly, the market price would also better track what is happening in the economy and consequently, what financial challenges DOR’s clients may also be facing as a result. Therefore, the current rate of $0.15 per mile, set in 1990, is too low to assist DOR’s clients. Thirdly, the current mileage rate gives the option of calculating actual costs by mileage. It is necessary to use one mileage rate that is tied to the market for consistency and clarity.

**DOCUMENT(S) RELIED UPON**

U.S. Energy Information Administration: Table 1.8 Motor Vehicle Mileage, Fuel Consumption, and Fuel Economy [<https://www.eia.gov/totalenergy/data/browser/?tbl=T01.08#/?f=A&start=1949&end=2020&charted=3-7-11-15>]

U.S. Energy Information Administration: Weekly Retail Gasoline and Diesel Prices [<https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_sca_w.htm>]

U.S. Department of Transportation, Federal Highway Administration, Highway Statistics 2020 (Washington, DC: Annual issues), table VM-1 [<https://www.fhwa.dot.gov/policyinformation/statistics/2020/vm1.cfm>]

**DEPARTMENT OF REHABILITATION**

**EMERGENCY RULEMAKING**

## Proposed Regulation Text

Title 9. Rehabilitative and Development Services

Division 3. Department of Rehabilitation

Article 5. Transportation Services

Section 7162. Client-Owned Vehicle Use

(a) Clients who use their own vehicles for transportation shall receive payment in accordance with this section and sections 7162.3 and 7162.5. The payment made pursuant to this section shall be in the form of a monthly allowance paid to the client, except that payment of parking fees may vary from situation to situation. For example, if the client is attending a public school, the Department may purchase a parking permit for the client to use for parking in the school's parking lot.

(b) Upon a determination by the counselor that a client-owned vehicle must be used because either of the following conditions exists, the rate of payment shall be the amount specified in (c):

(1) The client is required to operate their own vehicle to complete an Individualized Plan for Employment (IPE).

(2) A publicly owned or contracted mode of transportation is not readily available or would cause undue hardship to the client. Readily available and undue hardship shall be determined by considering such factors as:

(A) The special needs of the client.

(B) The proximity of public transportation to the client's home and to their destination.

(C) The frequency of public transportation at the times of day during which the client will be traveling.

(c) When the conditions specified in (b) exist, the transportation allowance shall include all of the following:

(1) Actual costs of necessary bridge tolls.

(2) Actual costs of necessary parking, unless other payment arrangements pursuant to (a) have been made.

(3) Payment for ~~gasoline and oil which shall be the lesser of actual costs or~~ mileage at a rate of a certain amount per mile as published by the Department twice annually and in accordance with the federal energy data indexes maintained by the U.S. Energy Information Administration, calculated as follows:

(A) ~~Fifteen cents per mile for vehicles other than vans which have been specially adapted to meet the client's needs.~~

For vehicles other than vans which have been specially adapted to meet the client’s needs, the Department will divide the most current week’s retail gasoline average price for All Grades - Reformulated Areas gasoline in California by the most recently available average fuel economy for light-duty, short wheelbase vehicles.

(i) The average fuel economy for light-duty, short wheelbase vehicles are according to the federal energy data indexes maintained by the U.S. Energy Information Administration and is available at [www.eia.gov](https://www.eia.gov).

(ii) The average weekly retail price for All Grades – Reformulated Areas gasoline is according to the federal energy data indexes for California maintained by the U.S. Energy Information Administration and is available at [www.eia.gov](https://www.eia.gov).

(iii) In accordance with this section, and as soon as practicable after the U.S. Energy Information Administration reports the number stated in (ii) for the week including July 1 and January 1 of each State Fiscal Year, the Department will calculate and publish a rate certain for mileage using the number stated in (ii) and the most recently reported number stated in (i) above. This rate will be made available at the Department’s website ([www.dor.ca.gov](http://www.dor.ca.gov)).

(B) ~~Twenty cents per mile for vans specially adapted to meet the client's needs.~~ For vans adapted to meet the individual’s needs, the Department will take the mileage rate for standard vehicles and add an additional five (5) cents.

(d) A client may elect to use ~~his/her~~ their vehicle in lieu of public transportation. The rate of payment in such case shall equal the lesser of the following:

(1) Mileage rate and actual costs of ~~gas, oil, and~~ necessary parking and bridge tolls.

(2) The least expensive rate charged by the local public transportation company for the mode of transportation accessible to the client.

(e) The transportation allowance shall be calculated on an average monthly basis and paid to the client at the beginning of each month.

(f) A monthly transportation allowance shall be prorated and adjusted in a following month to reflect client absences when both of the following conditions exist:

(1) The transportation allowance is determined pursuant to (c).

(2) Client absences are in excess of four days per month.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code; Reference: Section 19150, Welfare and Institutions Code; 29 U.S.C. section 723; 34 CFR sections 361.5, 361.42, 361.44, 361.46 and 361.48.