# TITLE 9. REHABILITATIVE AND DEVELOPMENTAL SERVICES

**DIVISION 3. DEPARTMENT OF REHABILITATION**

**INITIAL STATEMENT OF REASONS**

**PROBLEM STATEMENT**

The California Department of Rehabilitation (“Department”) is responsible for administering the provision of vocational rehabilitation services for Californians with disabilities in accordance with the United States Code, title 29, section 700 et seq., Welfare and Institutions Code section 19000 et seq., and implementing federal and state regulations (Title 34 Code of Federal Regulations section 361.1 et seq., Cal. Code of Regs., tit. 9, section 7000 et seq.).

Title 34 Code of Federal Regulations section 361.57 requires the Department to develop and implement a process that provides individuals who apply for or receive vocational rehabilitation services an opportunity and process to request a review of decisions made by the Department. The Department has established this process through the administrative review, mediation, and fair hearing procedures promulgated in the Department’s current regulations at sections 7350 through 7361.

The Department’s regulations allow individuals involved in the administrative review, mediation, and fair hearing process to identify a preferred method of communication to receive documents related to their administrative review, mediation, and fair hearing. However, if an individual does not select a preferred method of communication, the Department’s regulations identify mail as the default communication standard for all documents related to the administrative review, mediation, and fair hearing processes. Further, the Department’s regulations require three documents in the administrative review, mediation, and fair hearing process to be sent by certified mail.

The proposed amendments will change the default communication standard to electronic for all documents related to the administrative review, mediation, and fair hearing processes if the individual does not identify a preferred method of communication. The proposed amendments will also remove the requirement to send any documents by certified mail; instead, the documents will be sent in the individual’s preferred method of communication or electronically if the individual did not identify a preferred method of delivery.

**BENEFITS**

The proposed regulations will increase openness and promote transparency for individuals participating in the administrative review, mediation, and fair hearing processes by transmitting documents to individuals in their preferred mode of communication, thereby increasing the likelihood that individuals will receive these important documents and reducing unnecessary duplicative transmission of documents. According to estimates by the Department’s contractor for mediation and fair hearing services for the last ten years, 50% to 70% of the mediation and fair hearing documents that are transmitted by certified mail are returned without delivery to the intended recipient. As both the Department and its contractor transmit the documents by email, as well as mail and certified mail as required by the regulations, the individuals are receiving these documents via email and the transmission of the documents by mail or certified mail creates an unnecessary process for the Department and its contractor. By allowing the individual to choose the method of communication that is best for them, whether it is certified mail, electronic mail, other mode of communication, or multiple modes of communication, the consumer will receive the important documents without creating an unnecessary process for the Department and its contractor. Further, identifying electronic communication as the standard mode of communication will allow individuals to receive important case-related documents in a timelier manner and wherever they establish access to the Internet, instead of receiving these documents only at their mailing address.

With an increasingly mobile population, changing the standard to electronic communication will increase timely access to important documents. Further, the Department’s mediation and fair hearing process has tight deadlines—changing the standard to electronic communication will allow individuals to file requests for change in modality of hearing, change in date and time of hearing, and generally communicate in a timelier manner, thereby increasing access to and participation in the mediation and fair hearing processes.

The proposed regulations will also save the Department and its mediation and fair hearing contractor a minimal amount of money each year in reduced postage costs.

**SPECIFIC PURPOSE AND NECESSITY OF EACH SECTION AS REQUIRED BY GOVERNMENT CODE SECTION 11346.2(b)(1)**

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the problem, administrative requirement, or other condition or circumstance that each adoption is intended to address is as follows

**Section 7352. Appellant’s Mode of Communication**

Purpose: This section is amended to replace the term “his/her” with “appellant’s.” This section is amended to change the default mode of communication to electronic for documents related to the administrative review, mediation, and fair hearing processes instead of mail if a request for a preferred mode of communication is not received by the Department. This section is further amended to add that if in limited circumstances when an appellant has not provided an email address that the default mode of communication is mail.

Necessity: This amendment is necessary to further the State of California’s policy on gender neutral legislative drafting. (Assembly Concurrent Resolution 260) Although this a regulatory change, the Department supports the State of California’s efforts to reduce the amount of gendered language by using the noun instead of gendered pronouns. This is a non-substantive change.

This amendment is necessary to inform the public of their right to request an alternate mode of communication for documents related to the administrative review, mediation, and fair hearing processes and inform the public that the default mode of communication is electronic for documents related to the administrative review, mediation, and fair hearing processes, unless they request an alternate mode of communication. This amendment is necessary to ensure appellants are receiving documents related to the administrative review, mediation, and fair hearing processes if they have not provided an email address to the Department.

**Section 7353. Administrative Review---Appellants**

Purpose: This section is amended to include the title of Administrator of the Orientation Center for the Blind as an individual to whom appellants can direct their requests for an administrative review. This section is amended to inform the public who have requested an administrative review that they will receive their administrative review decision in their preferred mode of communication.

Necessity: This amendment is necessary for clarity and transparency to align the regulation with the Department’s organization structure and accurately reflect the titles of individuals who can conduct administrative reviews. This amendment is necessary to provide clarity and inform the public on how they will receive their administrative review decision. Informing the public of how they will receive their administrative review decision promotes transparency and allows the individual to become more actively engaged with their vocational rehabilitation program.

**Section 7354. Fair Hearing Requests**

Purpose: This section is amended to inform individuals who have requested mediation and/or fair hearing that they will be notified in their preferred mode of communication of important information regarding the time and place of the mediation and/or fair hearing, procedures that will be used at the mediation and/or fair hearing, availability of reasonable accommodations, right to be represented by an authorized representative, and the right to bring witnesses to the hearing.

Necessity: This amendment is necessary to provide clarity and inform the public on how they can expect to receive important information regarding their mediation and/or fair hearing. Informing the public of how they will receive important information regarding their mediation and/or fair hearing promotes transparency and allows the individual to actively track, monitor, and fully participate in their mediation and/or fair hearing.

**Section 7358. Final Decision**

Purpose: This section is amended to change “its” to “a” final decision. This section is amended to inform the public who have participated in a fair hearing that they will receive their fair hearing decision in their preferred mode of communication. This section is further amended to remove the requirement that the impartial hearing officer send a copy of the final decision to the Department via certified mail.

Necessity: This amendment is necessary to provide clarity and inform the public on how they will receive their fair hearing decision. Informing the public of how they will receive their fair hearing decision promotes transparency and allows the individual to anticipate receival of the documents, thereby increasing active engagement with their vocational rehabilitation program. Further, individuals who are dissatisfied with the fair hearing decision have the right to file a petition with the superior court within six months of receiving the fair hearing decision. Informing the public of how they will receive their fair hearing decision helps the public to knowingly anticipate the receival of the decision, thereby granting them maximum time to file a petition with the superior court if desired.

This amendment is necessary to remove an unnecessary requirement regarding how the Department will receive the fair hearing decision, thereby decreasing the length of the regulation and increasing the clarity for the public.

**ECONOMIC IMPACT ASSESSMENT (GOVERNMENT CODE SECTION 11346.3(B))**

The potential economic impact of the proposed regulations is that the Department and its mediation and fair hearing contractor will save a minimal amount of money on certified mail postage on the three documents that will no longer be required to be sent via certified mail, unless requested as the preferred mode of communication by the individual.

The Department concludes that the proposed regulations are:

1. Unlikely to eliminate any jobs within California.
2. Unlikely to create any jobs in California.
3. Unlikely to create any new businesses in California.
4. Unlikely to eliminate any existing businesses in California.
5. Unlikely to affect the expansion of existing businesses in California.

**STUDIES, REPORTS, OR DOCUMENTS RELIED UPON (GOVERNMENT CODE SECTION 11346.2(B)(3))**

None.

**REASONABLE ALTERNATIVES CONSIDERED OR AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES (GOVERNMENT CODE SECTION 11346.2(B)(5)(A))**

The Department has considered other reasonable alternatives, such as first-class mail, as the default communication standard and has determined that while other alternatives exist, in regard to communication between the Department and the individual, it is in the best interest of both parties to default to electronic communication and allow the individual to identify their preferred mode of communication to increase likelihood and timeliness of delivery. All reasonable alternatives were discussed.

**REASONABLE ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS (GOVERNMENT CODE SECTION 11346.2(B)(5)(B))**

No reasonable alternatives to the proposed amendments that would lessen any adverse impact on small businesses were identified. As discussed above, the proposed amendments are not expected to have an adverse impact on small businesses.

**EVIDENCE RELIED UPON TO SUPPORT THE INITIAL DETERMINATION THAT THE REGULATION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS (GOVERNMENT CODE 11346.2(B)(6))**

The Department has determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business. As discussed above, the proposed regulations involve communication between the Department and an individual who has requested an administrative review, mediation, or fair hearing. Businesses are not involved in the Department’s administrative review, mediation, or fair hearing processes. Therefore, it is reasonable to conclude that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business either.