

INITIAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Sections of the California Code of Regulations (CCR), Title 15, Division 3, concerning Citizens Complaints.

These proposed regulations will bring CDCR into immediate compliance with the Ninth Circuit Court of Appeals opinion in *Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215, which held that Penal Code (PC) 148.6, which criminalizes knowingly false speech critical of peace officer conduct, violates the First Amendment.

Therefore, the Department must modify Sections 3084.1 and 3391. This action will clarify and amend CCR Sections that are now deemed in violation of the constitution.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has made an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department’s initial determination.

The Department has determined that this action imposes no mandates on local agencies or school districts, or a mandate, which requires reimbursement pursuant to Part 7 (Section 17561) of Division 4.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective as and less burdensome to affected private persons than the action proposed.

Subsection 3084.1(e) is amended to delete the specific references to PC148.6(a)(1) which has been deemed to be unconstitutional by the Ninth Circuit Court of Appeals. Existing language in 3084.1 states that it is against the law to knowingly make a false complaint against a peace officer. According to *Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215, this is unconstitutional in that it violates the First Amendment.

Subsection 3391(d) is amended to delete language, which was copied in its entirety from PC 148.6(a)(1) and (2) and placed into this Subsection. This specific language has been deemed to be unconstitutional by the Ninth Circuit Court of Appeals. Existing language in Section 3391 states that it is against the law to knowingly make a false complaint against a peace officer. According to *Chaker v. Crogan* (9th Cir. 2005) 428 F.3d 1215, this is unconstitutional in that it violates the First Amendment. The remainder of the existing language found in 3391(d) is left unchanged due to the requirement that a State agency must have a procedure to investigate these types of complaints.