



California Regulatory Notice Register

REGISTER 2018, NO. 28-Z

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PROPOSED ACTION ON REGULATIONS

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Adoption

Multi-County: California Automated Consortium Eligibility System

Amendment

State Agency: Department of Rehabilitation

Multi-County: Golden Gate Bridge, Highway and Transportation District

Turlock Unified School District

Sacramento Municipal Utility District

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict-of-interest codes, will review the proposed/amended conflict-of-interest codes of the following:

CONFLICT-OF-INTEREST CODES

ADOPTION

MULTI-COUNTY: California Automated Consortium Eligibility System

AMENDMENT

STATE AGENCY: Department of Rehabilitation
MULTI-COUNTY: Golden Gate Bridge, Highway and Transportation District
Turlock Unified School District
Sacramento Municipal Utility District

A written comment period has been established commencing on July 13, 2018, and closing on August 27, 2018. Written comments should be directed to the Fair Political Practices Commission, Attention Sasha Linker, 1102 Q Street, Suite 3000, Sacramento, California 95811.

At the end of the 45-day comment period, the proposed conflict-of-interest code(s) will be submitted to the Commission's Executive Director for her review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict-of-interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon her or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the proposed conflict-of-interest code(s). Any written comments must be received no later than August 27, 2018. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

**EFFECT ON HOUSING COSTS
AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict-of-interest codes shall approve codes as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict-of-interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict-of-interest code(s) should be made to Sasha Linker, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

AVAILABILITY OF PROPOSED CONFLICT-OF-INTEREST CODES

Copies of the proposed conflict-of-interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission should be made to Sasha Linker, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the “Commission”), under the authority vested in it under the Political Reform Act (the “Act”)¹ by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **August 16, 2018**, at the offices of the Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **August 14, 2018**.

BACKGROUND/OVERVIEW

The Act’s conflict-of-interest provisions prohibit an official from making, participating in making, or using his or her official position to influence a decision in which the official has a financial interest. (Section 87100.) An official has a financial interest in the decision, if it is reasonably foreseeable the decision will have a material financial effect on the official or on specified interest, including a business entity, in which the official has an investment of \$2,000 or more (Sec-

tion 87103(a)); a source of income of \$500 or more in the 12 months prior to a decision (Section 87103(c)); and a business entity in which the official is a director, officer, partner, trustee, employee, or holds any position in management (Section 87103(d)).

Historically, the Commission has determined that an official with an interest in a business entity also has an interest in a parent, subsidiary, or related business entity. This is based on the fact that under Sections 82034 and 87209 an “investment” is any financial interest or security interest of more than \$2,000 in a business entity, and a “business position” is any business entity in which the official is director, officer, partner, trustee, employee, or manager, if the business entity, or any subsidiary, or otherwise related business entity does business in the jurisdiction. Former Regulation 18703.1(c) expressly stated that “[a]n official has an economic interest in a business entity which is a parent or subsidiary of, or is otherwise related to, a business entity in which the official has one of the interests defined in [Section] 87103(a) or (d).” However, this language was removed from Commission regulations in 2014.

Current Regulation 18700.2, however, still defines parent, subsidiary, and otherwise related business entities for purposes of Section 82034 and 87209 of the Act. Moreover, in defining various interests under the Act, Regulation 18700 still directs officials with an interest in a business entity to refer to the definition of parent subsidiary, and otherwise related business entity in Regulation 18700.2. (Regulation 18700(c)(6)(A), (C) and (D).) Accordingly, staff has continued to advise that an interest in a business entity may include an interest in a parent, subsidiary, or otherwise related business entity depending on the factual circumstances. (See *Chmura* Advice Letter, No. 1-17-051, and *Pelletier* Advice Letter, No. 1-17-144.)

REGULATORY ACTION

Amend 2 Cal. Code Regs. Section 18700.2 — Parent Subsidiary, Otherwise Related Business Entity: Defined.

In examining the scope of the parent, subsidiary, or otherwise related business rule, the question of when an official should know if a parent-subsidiary relationship exists for purposes of disqualification has emerged. In response, staff has drafted proposed amendments to Regulation 18700.2. Specifically, proposed subdivision (d) would establish an exception to the general rule that an official with an interest in a business entity also has an interest in a parent, subsidiary, or otherwise related business entity.

The exception provides that an official does not have an interest in a parent, subsidiary, or otherwise related business if all the following conditions are met: the offi-

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

cial owns less than 5 percent of the shares of a corporation and is a passive shareholder, the parent corporation is required to file annual Form 10-K or 20-F Reports with the Securities and Exchange Commission and the parent corporation has not identified the subsidiary or related business on those forms or its annual report.

Just as significantly, proposed subdivision (c) is added to the regulation to clearly state that an official with a financial interest in a business entity also has an interest in a parent, subsidiary, or otherwise related business entity except as provided in the above-mentioned exception found in subdivision (d).

Lastly, in the definition of “otherwise related business entities” in subdivision (b)(3)(A) and (B), the phrase “the same person or a majority of the same persons:” is replaced with “the same person or persons together” to clarify that business entities are considered otherwise related only when the same person or people own a controlling interest in two or more businesses or the same person or people own 50 percent or more ownership interest in two or more businesses. This would apply to businesses other than a parent corporation as defined in subdivision (b)(1) of the proposed regulation.

SCOPE

The Commission may adopt the language noticed herein, or it may choose new language to implement its decisions concerning the issues identified above or related issues.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. This regulation will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulation will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulation will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of these regulations is to implement, interpret, and make specific Government Code Sections 82034, 87100, 87103, and 87209.

CONTACT

Any inquiries should be made to Sukhi K. Brar, Fair Political Practices Commission, 1102 Q St., Suite 3000, Sacramento, CA 95811; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at <http://www.fppc.ca.gov/the-law/fppc-regulations/proposed-regulations-and-notices.html>.

TITLE 2. STATE TREASURER’S OFFICE

Notice of Intention to Amend Conflict-of-Interest Code

NOTICE IS HEREBY GIVEN that JOHN CHIANG, the Treasurer of the State of California, pursuant to the authority vested in him by Government Code sections 87300 through 87302, and 87306, proposes to amend the conflict-of-interest code. Pursuant to Government Code sections 87300 through 87302, and 87306, the conflict-of-interest code designates employees and others who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests. The amendment includes:

- Addition, revision, and deletion of designated positions

Copies of the proposed amended code are available and may be requested from the agency contact set forth below.

WRITTEN COMMENT PERIOD

A written comment period has been established commencing on July 13, 2018 and terminating on August 27, 2018. Any interested person may submit written comments concerning the proposed conflict-of-interest code amendment no later than August 27, 2018 to:

State Treasurer’s Office
Attention: Ravinder Kapoor, Senior Attorney
915 Capitol Mall, Room 110
Sacramento, CA 95814

A public hearing on this matter will not be held unless no later than 15 days prior to the close of the written comment period, an interested person or his or her rep-

representative submits to the agency contact set forth below a request for a public hearing.

The State Treasurer has prepared a written explanation of the reasons for the designations, disclosure categories, and disclosure responsibilities, and has available all of the information upon which the proposed amendment is based.

AGENCY CONTACT

Copies of the proposed amendment to the conflict-of-interest code and all of the information upon which the amendment is based may be obtained from, and any inquiries concerning the proposed amendment should be directed to:

State Treasurer's Office
Attention: Ravinder Kapoor
915 Capitol Mall, Room 110
Sacramento, CA 95814
(916) 653-2995
ravinder.kapoor@treasurer.ca.gov

ALTERNATIVES CONSIDERED

The State Treasurer must determine that no alternative considered by the State Treasurer would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Treasurer has determined that the proposed amended code:

1. Imposes no mandate on local agencies or school districts.
2. Imposes no cost or savings on any State agency.
3. Imposes no cost on any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.
4. Will not result in any nondiscretionary cost or savings to local agencies.
5. Will not result in any cost or savings in federal funding to the State.
6. Will not have any potential cost impact on private persons or businesses, including small businesses.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department or CDFA) intends to adopt Division 8, Chapter 1, sections 8000 to 8608,

within Title 3 of the California Code of Regulations pertaining to its Cannabis Cultivation Program. With this rulemaking, the Department will propose permanent regulations after the consideration of all comments, objections, and recommendations regarding the proposed action.

The Department is issuing this notice to meet requirements set forth in Government Code section 11346.5.

PUBLIC HEARINGS

The Department will hold public hearings at the dates, times, and locations listed below at which time any interested person may present statements or arguments orally or in writing relevant to the proposed action.

Tuesday, July 24, 2018 1 p.m. to 3 p.m.
Adorni Center
1011 Waterfront Drive
Eureka, CA 95501

Thursday, July 26, 2018 1 p.m. to 3 p.m.
Mission Inn Hotel and Spa
3649 Mission Inn Avenue
Riverside, CA 92501

Tuesday, July 31, 2018 1 p.m. to 3 p.m.
Hilton Santa Barbara Beachfront Resort
633 E Cabrillo Boulevard
Santa Barbara, CA 93103

Tuesday, August 28, 2018 1 p.m. to 3 p.m.
California Department of Food & Agriculture
Auditorium
1220 N St
Sacramento, CA 95814

Services, such as translation between English and other languages, may be provided upon request. To ensure availability of these services, please make your request no later than ten (10) working days prior to the hearing by calling the staff person referenced in this notice.

Servicios, coma traducción, de Ingles a otros idiomas, pueden hacerse disponibles si usted los pide en avance. Para asegurar la disponibilidad de éstos servicios, por favor haga su petición al minima de diez (10) días laborables antes de la reunion, llamando a la persona del personal mencionada en este aviso.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may be submitted by mail or by email to:

Amanda Brown
California Department of Food and Agriculture
CalCannabis Cultivation Licensing Division
P.O. Box 942871
Sacramento, CA 94271
CalCannabisRegs@cdfa.ca.gov
Phone: (916) 263-0801

The written comment period closes at 5:00 pm on August 27, 2018. The Department will consider only comments received by that time and via the delivery methods designated above.

AUTHORITY AND REFERENCE

The Department is proposing to adopt sections 8000–8608 of Title 3 of the California Code of Regulations.

Business and Professions Code sections 26000, 26001, 26012, 26013, 26050.1, 26053, 26055, 26060.1 and Health and Safety Code section 11362.768 authorize the Department to prescribe, adopt, and enforce the proposed regulations governing the licensing of commercial cannabis cultivation. The proposed regulations will implement, interpret, make specific or reference sections 12027, 12210, 12212, 12700, 26001, 26010, 26012, 26013, 26015, 26031, 26038, 26050, 26050.1, 26051, 26051.5, 26053, 26054, 26054.2, 26055, 26057, 26058, 26060, 26060.1, 26061, 26063, 26066, 26067, 26069, 26070, 26110, 26120, 26121, 26160, 26180, and 26201 of the Business and Professions Code, sections 1602 and 1617 of the Fish and Game Code, section 12754.5 of the Food and Agricultural Code, section 1140 of the Labor Code, sections 40141 and 42649.8 of the Public Resources Code, and sections 5101, 13149, 13575, and 13751 of the Water Code.

INFORMATIVE DIGEST / POLICY STATEMENT

Existing Law:

Proposition 215 (1996), also known as the Compassionate Use Act of 1996, was passed by California voters and made it legal for patients and their designated primary caregivers to possess and cultivate marijuana for their personal medical use given the recommendation or approval of a California-licensed physician.

Senate Bill 420 (Vasconcellos, Chapter 875, Statutes of 2003), also known as the Medical Marijuana Program Act, required the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use cannabis for medical purposes, and required the establishment of guidelines, including limits, for the lawful cultivation of cannabis grown for medical use.

Assembly Bill 243 (Wood, Chapter 688, Statutes of 2015), Assembly Bill 266 (Bonta, Chapter 689, Statutes of 2015), and Senate Bill 643 (McGuire, Chapter 719, Statutes of 2015), established a regulatory program for the cultivation of medical cannabis as part of the Medical Cannabis Regulation and Safety Act (MCRSA). The MCRSA mandated the Department to establish the Medical Cannabis Cultivation Program (MCCP) to regulate, implement, and enforce the MCRSA as it pertains to the cultivation of commercial medical cannabis. The legislation mandated regulation to encourage environmental protection measures by the cultivator to prevent further pollution of water, degradation of the natural environment, wildlife endangerment, and to protect public peace, health, and safety. MCRSA required the Department to develop and enforce regulations for statewide commercial medical cannabis cultivation activities occurring at nurseries and indoor, outdoor, and mixed-light cultivation sites. The MCRSA also obligated the Department to create and implement a track-and-trace system to monitor commercial medical cannabis from cultivation through the distribution chain, to be the lead agency in implementing California Environmental Quality Act requirements for the statewide cultivation program, and ensure that weighing or measuring devices used for the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 of the Business and Professions Code (commencing with section 12001). Fees associated with cultivation are required to be scaled and must cover the Department's costs of implementing and enforcing the commercial cultivation licensing program and subsequent regulations. The MCRSA has since been repealed, but all of the Department's obligations listed above have been incorporated in the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017.

Proposition 64 (2016), also known as the Adult Use of Marijuana Act or AUMA, was passed by California voters and legalized the consumption and cultivation of cannabis for adult-use and specifies conditions under which cannabis may be cultivated, processed, and sold for commercial purposes in California.

Senate Bill 94 (Committee on Budget and Fiscal Review, Chapter 94, Statutes of 2017), also known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act or MAUCRSA, repealed the MCRSA and integrated the regulation of the medical and adult recreational markets into one regulatory framework that prioritizes consumer and public safety, environmental protection, and tax compliance for commercial cannabis cultivation. This law created agricultural cooperatives for small cannabis cultivators, a method for collecting and remitting taxes, a process for testing and packaging,

and a process for collecting data related to driving under the influence.

Assembly Bill 133 (Committee on Budget, Chapter 253, Statutes of 2017) made technical changes to MAUCRSA on cannabis related issues necessary to implement the 2017 Budget Act. This new law further clarified the intent of the legislature regarding MAUCRSA.

Environmental Information and California Environmental Quality Act Compliance:

One of the largest effects of unregulated cannabis cultivation has been serious adverse impacts to the environment. The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, and the Department of Fish and Wildlife have documented an increase in the number of unregulated cannabis cultivation sites and corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash, and human waste.

The Department prepared the Programmatic Environmental Impact Report (PEIR) in accordance with the provisions of the California Environmental Quality Act. Certified on November 13, 2017, the PEIR provides stakeholders, including the public, responsible agencies, and cannabis cultivators with information about the potential significant environmental impacts associated with the adoption and implementation of these statewide regulations and mitigations to address significant environmental impacts at cannabis cultivation sites in California.

The PEIR is available for viewing at: <https://www.cdfr.ca.gov/CalCannabis/PEIR.html>.

Objectives and Anticipated Benefits from this Regulatory Action:

Existing law obligates the Department to license and regulate all commercial cannabis cultivators in California, but allows for discretion with regard to the promulgation and maintenance of regulations to achieve this goal. The primary goal of these regulations is to establish practical and implementable licensing, enforcement, and track-and-trace programs to fulfill the Department's responsibilities under the MAUCRSA, as well as provide a framework for implementation.

Because regulations are intended to transition California cannabis cultivation to a legitimate industry, cultivators will be provided the opportunity to operate in compliance with state laws and regulations applicable specifically to cannabis and California business requirements in general. For the first time, California cannabis cultivators will have the opportunity to become licensed by the state and openly operate within their communities.

The availability of state licensing for cannabis cultivators allows local and state law enforcement to clearly differentiate legal and illegal cannabis cultivation operations. This clear differentiation allows law enforcement to focus their efforts on eliminating cultivation sites that elect to grow cannabis without a state license. Over time, this prioritization will reduce the number of illegal cannabis cultivators in California and in turn reduce illegal cannabis cultivation activity impacts on California's environment and public health.

Regulations will also outline specific requirements included to protect the environment. Licensed cultivators will be subject to verification of compliance with these requirements and may face fines and penalties if found to be noncompliant. Under the state licensing program, cultivators will face potential consequences for noncompliance that did not exist under the unregulated marketplace. As an effect, the Department expects that state licensed cannabis cultivators will be motivated to comply resulting in protection of the environment at licensed cultivation sites.

Anticipated cumulative benefits of these regulations action include:

- Safeguarding of the environment through implementation of environmental protection measures and enforcement of existing environmental protection laws;
- Promotion of a fair and equitable marketplace for licensed cultivators;
- Creation of legitimate businesses and tax revenue sources;
- Increased worker safety through enforcement of existing employee protection laws.

Regulations are expected to create jobs through the introduction of new cultivation businesses and from industries that will support the emerging legitimate market such as accounting and legal services.

Inconsistency with Federal Regulations or Statutes:

The United States Drug Enforcement Administration, under the Controlled Substances Act, lists cannabis as a Schedule I drug. Schedule I drugs are defined as having a high potential for abuse, having no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug under medical supervision (21 U.S.C. § 812).

Controlled Substances Act, Title 21 — Food and Drugs, Chapter 13 — Drug Abuse and Prevention Control, Subchapter 1 — Control and Enforcement, Part B — Authority to Control; Standards and Schedules: <https://www.deadiversion.usdoj.gov/21cfr/21usc/812.htm>

Consistency with Existing State Regulations:

As required by Government Code section 11346.5(a)(3)(D), the Department has conducted an evaluation of these regulations and has determined that they are not inconsistent or incompatible with existing state regulations.

PLAIN ENGLISH REQUIREMENT

The Department staff prepared the proposed regulations pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a)(1). The proposed regulations are written to be easily understood by the persons that will use them.

DISCLOSURES REGARDING THE
PROPOSED ACTION

The Department has made the following initial determinations:

LOCAL MANDATE

There will be no local mandate. Business and Professions Code section 26200 provides local jurisdictions the ultimate authority to adopt and enforce local ordinances related to cannabis business licensure as well as the ability to completely prohibit the establishment or operation of such businesses within its jurisdiction.

COST OR SAVINGS TO STATE AGENCIES
(FISCAL IMPACT)

The Department is tasked with issuing medicinal and adult-use cannabis cultivation licenses and administering all aspects of the cannabis cultivation regulations. The total annual agency budget equals approximately \$32 million (medicinal and adult-use cannabis) for the current Fiscal Year (2017–18), including \$6.3 million in external consulting services. The program cost will be recovered through one-time application fees and annual license fees, which will need to be adjusted as the market modifies over time.

The Department is tasked with ensuring that licensed cultivators are complying with cultivation regulations. This includes site inspections and ensuring compliance with all licensing requirements, including the track-and-trace system. Department enforcement staff will also be responsible for referring complaints about unlicensed operations to appropriate state and local law enforcement.

It is likely that more illegal grow sites will be reported and local agencies will need to allocate more resources to eradication under MAUCRSA. These additional costs are not caused by Department regulations. By licensing cultivators, these regulations will make it easier for local agencies to identify unlicensed grow sites and the cost per eradication will likely decrease. The Department assumes that the total compliance cost will increase, but the effectiveness of enforcement per dollar spent will also increase. The Department's Standardized Regulatory Impact Analysis used a mid-point cost of eradication equal to \$3 per plant, which is assumed to be inclusive of all incremental eradication/enforcement costs. It is additionally assumed that eradications increase by 15 percent over 2015 levels (2.6 million plants) under MAUCRSA. The total increase in enforcement costs to local agencies equals \$1.189 million.

The Department's regulations do not cause any increase in costs to other state agencies. The State Water Resources Control Board, Department of Pesticide Regulation, Department of Consumer Affairs, and other agencies are required to take actions under MAUCRSA, but any costs are separate from the Department's regulations. Similar to local agency fees, taxes, and regulations, the Department's regulations require cultivators to comply with other state agency regulations, but do not require any agency to take specific actions. As such, other state agencies do not incur costs as a result of these proposed regulations.

COST TO ANY LOCAL AGENCY OR SCHOOL
DISTRICT WHICH MUST BE REIMBURSED IN
ACCORDANCE WITH GOVERNMENT CODE
SECTIONS 17500 THROUGH 17630

None.

OTHER NON-DISCRETIONARY COST OR
SAVINGS IMPOSED ON LOCAL AGENCIES

The Department's regulations do not require additional expenditures by local governments. However, local agencies can set fees, taxes, and other rules independent of what the Department does (or what is required in MAUCRSA) under medicinal and adult use cannabis regulations. The Department will require cultivators to comply with all local regulations, and as such, the cost of complying with these local regulations is included in the economic impact analysis. In short, there are no fiscal impacts to local agencies as part of the medicinal and adult use cultivation regulations, but the economic impact analysis does include local fees/costs that cultivators must pay to obtain a cannabis license because these costs affect cannabis production costs across the state.

COST OR SAVINGS IN FEDERAL FUNDING
TO STATE

None.

DETERMINATION OF ANTICIPATED
BUSINESS IMPACT

The proposed regulations are intended to encourage what are currently illegal cannabis cultivation businesses to become legal (at the state level) and regulated. There may be some new businesses that did not pay taxes before these proposed regulations, and therefore are “new” as far as the California Department of Tax and Fee Administration is concerned. California is known worldwide for its cultivated cannabis, so it is likely that the new businesses are simply current operators that decide to join the regulated market. These proposed regulations will increase the number of legal cannabis cultivation businesses paying taxes in California.

Businesses will be required to submit an application to obtain a license from the Department. The proposed regulations include applicant requirements and the fees required to obtain a license. Businesses will also need to comply with the environmental protection measures set in the proposed regulations. The proposed regulations establish a track-and-trace system that the businesses will need to follow, including uniquely identifying plants and products and recordkeeping.

According to the Department’s Standardized Regulatory Impact Analysis, the net effect of these proposed regulations is an increase of 1,673 jobs statewide. Most of the increase comes from additional labor for local and state government and related programs.

The Department has made an initial determination that the adoption of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Department has considered proposed alternatives that would lessen any adverse economic impacts on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

COST IMPACTS ON A REPRESENTATIVE
PRIVATE PERSON OR BUSINESS

The Department regulations will have an uncertain impact on individuals. Regulations will increase cannabis product safety (e.g. limited pesticides), but this has uncertain effects on consumer health outcomes. Public safety may improve through better regulation, enforcement, and compliance (licensing), but there is limited evidence to analyze this effect. There is no evidence of adverse health or public safety outcomes.

Direct benefits to individuals include an increase in employee wages. Labor income increases with the exception of cultivator proprietor income, with different effects by industry sector. The net impact on wage income equals an increase of \$128 million statewide annually. This is driven by the significant decrease in proprietor income to cultivators that are offset by increased wages in other sectors of the economy that support cannabis cultivation. Effectively, Department regulations reduce cultivator margins by increasing licensing, application, and direct regulatory compliance fees. This results in a decrease in proprietor income and statewide labor income.

HOUSING COSTS

None.

SMALL BUSINESS IMPACT

Most cannabis businesses are small businesses; therefore the impacts listed above would affect these businesses.

BUSINESS REPORTING REQUIREMENT

It is necessary for the health, safety, or general welfare of the people of the state that this regulation which requires a report apply to businesses.

RESULTS OF THE STANDARDIZED
REGULATORY IMPACT ANALYSIS (SRIA)

(A) The creation or elimination of jobs within the state.

The net effect of the Department’s regulations analyzed in its economic impact study is an increase of 1,673 jobs statewide, as shown in Table 32 of the SRIA. Also in Table 32, the total number of jobs created equals 2,795, and the total number of jobs destroyed equals 1,122 (net 1,673). Most of the increase comes from additional labor for local and state (in addition to the Department) government and related programs. Labor in-

come increases with the exception of cultivator proprietor income, with different effects by industry sector. The net impact on wage income equals an increase of \$128 million statewide annually. This is driven by the significant decrease in proprietor income to cultivators that are offset by increased wages in other sectors of the economy that support cannabis cultivation. Effectively, the Department's regulations reduce cultivator margins by increasing licensing, application, and direct regulatory compliance fees. This results in a decrease in proprietor income and increase statewide labor income.

(B) The creation of new businesses or the elimination of existing businesses within the state.

The combined effect of the Department's regulations and increased effectiveness of enforcement for unlicensed cultivation (not directly part of these regulations) will result in new businesses entering the regulated industry. Most of the businesses that enter the regulated market will shift over from the existing unregulated market. There will be some "new businesses" (e.g. do not currently grow cannabis in California), but these new businesses will likely be a small share of the market and will be offset by unregulated cultivators (who are currently producing cannabis in California) leaving the market in response to more effective enforcement. In short, the proposed regulations will cause an increase in the number of licensed cannabis cultivation businesses paying taxes in California. The net increase over current conditions is the difference between the combined medicinal and adult use market after statutory and regulatory adjustments and the current medicinal market. The net increase as defined using SRIA guidelines is the difference between the combined medicinal and adult use market after statutory and regulatory adjustments and the SRIA baseline (combined adult use and medicinal market after statutory adjustments only).

The total number of licensed cannabis cultivation businesses depends on the average license size of the businesses that enter the market. In general, 2,000–7,500 licenses can supply the estimated market size. The regulations would also create a new business sector, processors, that would handle cannabis trimming, drying, and packaging activities. This analysis has assumed that these businesses could be 20 percent of total medicinal cannabis harvest, based on comparable fresh fruit and berry industries.

As stated under Section 6.1 of the SRIA, it will take some time for the market to reach equilibrium. There is a multiplicity of rules being promulgated by state and local agencies and this will continue for the next several years. The economic impact analysis presented in the SRIA reflects the best information available, and demonstrates impacts relative to a market in equilibri-

um. Market adjustments should be monitored closely as the industry adjusts over the next several years.

The investment in California's gross state product is the value added contribution for each industry, shown in Table 32 of the SRIA. The net effect on total value added is positive, but varies by sector. The net impact on statewide value-added equals \$140.9 million dollars annually, which is significant but is still a small share of the total economy. Most of the change in value added is due to increased local and state government expenditures (permit fees excluding taxes), and decreases in cultivator proprietor income.

(C) The competitive advantages or disadvantages for businesses currently doing business within the state.

California has an established cannabis production industry and it is likely that this will continue into the foreseeable future. Regulating and standardizing the industry may improve quality and reliability. This could be beneficial and further solidify a competitive advantage for California cannabis producers. It is not possible to quantify these effects at this time.

(D) The increase or decrease of investment in the state.

The Department's regulations are likely to spur investment by cultivators, other California cannabis businesses, and related sectors of the economy. The SRIA analysis clearly shows that regulations require significant investment in cottage, specialty, small, and medium cultivation (and nursery and processing) businesses in California. In the longer run as the industry adjusts it is likely that there will be spillover benefits and additional investment from the conventional agricultural industries. For example, recent trends in high tech agriculture (e.g. irrigation monitoring, farm data management, smart input management, etc.) may have similar application for cannabis cultivation.

The economic market analysis estimates that the total size of the medicinal and adult use cannabis market (farm-gate value) equals approximately \$2.1 billion (after accounting for statutory changes and the impact of these proposed regulations). At 8.84% average corporate tax rate, this results in \$180 million dollars in tax revenues. Additional cultivation taxes equal approximately \$152.20 per pound (inclusive of flower and trim taxes) and thus would generate an additional \$201 million annually.

(E) The incentives for innovation in products, materials, or process.

The Department's regulations are likely to spur private business innovation for cannabis cultivation. Much like conventional agriculture, cannabis is dependent on land, water, and labor resource inputs. All are in

short supply in California and there is a clear incentive to develop technologies to more efficiently manage limited resources. For example, cannabis production is labor intensive during the harvest/trimming process. This requires skilled labor inputs, but there is potential for innovation of new mechanical harvesting approaches similar to the wine grape industry. Other areas for innovation might include identifying and labeling particular strains of cannabis with desirable qualities. This type of research is currently being conducted informally by cultivators. In general, the cannabis cultivation industry is young, evolving, and likely to innovate.

(F) The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency.

The overall purpose of the Department's Program is to establish a regulatory licensing program that would ensure that medicinal and adult use cannabis cultivation operations would be performed in a manner that protects the environment, cannabis cultivation workers, and the general public from the individual and cumulative effects of these operations, and fully complies with all applicable laws.

One of the largest impacts of unregulated cannabis cultivation has been serious adverse impacts to the environment. The State Water Resources Control Board, the North Coast Regional Water Quality Control Board, and the California Department of Fish and Wildlife (FGC 12029 Findings) have documented a dramatic increase in the number of cannabis cultivation sites, corresponding increases in impacts to water supply and water quality, including the discharge of sediments, pesticides, fertilizers, petroleum hydrocarbons, trash, and human waste. These impacts result from the widespread unpermitted, unmitigated, and unregulated impacts of land grading, road development, vegetation removal, timber clearance, erosion of disturbed surfaces and stream banks, stream diversion for irrigation, and temporary human occupancy without proper sanitary or waste disposal facilities which threaten the survival of endangered fish species as well as public safety. In addition, the actions of some cannabis cultivators, either directly or through irresponsible practices, result in the killing of wildlife, including the endangered Pacific Fisher.

In the absence of a formal regulatory framework the negative impacts associated with cannabis cultivation are expected to increase, resulting in an unregulated, unstudied, and potentially permanent negative impact on the environment and upon the peace, health, and safety of Californians.

As indicated on page 3 of this Notice, the Department prepared the Programmatic Environmental Impact Report (PEIR) in accordance with the provisions of the California Environmental Quality Act. Certified on November 13, 2017, the PEIR provides stakeholders, including the public, responsible agencies, and cannabis cultivators with information about the potential significant environmental impacts associated with the adoption and implementation of these statewide regulations and mitigations to address significant environmental impacts at cannabis cultivation sites in California.

The potential improvements in public health, safety, and environmental outcomes were not quantified in the Department's SRIA analysis. Quantified benefits — in terms of change in related industry purchases — are summarized in Table 32 of the SRIA. These benefits result from direct regulatory cost to cultivators, which in turn increase purchases and generate economic activity in other industries. The net increase in terms of output value equals \$140 million, as shown in Table 32 of the SRIA.

SUMMARY OF DEPARTMENT OF FINANCE COMMENTS AND CDFA RESPONSE

The Department of Finance (Finance) provided five comments to the Department's Standardized Regulatory Impact Assessment (SRIA), which generally address two action items: state and local costs and industry projections. A summary of the comments and the Department's responses are below:

Finance Comment #1: "[T]he total regulatory costs should include both state and local costs. Even though departments do not have control over local costs, the regulations require that state-licensed entities comply with local requirements. Thus entities have no choice about paying the local costs. However, we recommend discussing all three numbers together when identifying regulatory costs (the total, the state component, and the local component), as this makes it clear to the public what they should be commenting on and to whom."

Finance Comment #2: "[T]he SRIAs should use likely local costs in the modeling, not straight averages. Some local jurisdictions have chosen very high fees and taxes to discourage cannabis businesses, and including these will make it seem as though the regulated industry is not viable. However, if entities have a choice in where to locate, they will choose lower-cost jurisdictions, and the likely local cost should make the regulated industry viable. This could also help locals figure out if they have chosen their fees appropriately as well."

These first two comments are important, and related, and the Department has addressed them as follows. First, the Department has revised the tradeoff analysis

to demonstrate the effect of regulatory cost only, regulatory cost plus state and local taxes, and regulatory cost plus state taxes only. This allows the reader to see the effect of local taxes and fees on the illustrative tradeoff analysis presented in the SRIA. The Department also clarified that the tradeoff analysis is comparing the risk premium to the regulator costs (and regulatory risk premium) and does not show the net income to the grower (e.g. risk preferences are an important consideration). The conclusion is consistent with the comments above: namely, high local taxes discourage cultivators from locating in those areas, but other areas will have lower taxes and the market will succeed.

The Department also added two points of clarification regarding the tradeoff analysis. First, we note that the local taxes shown represent the average of the counties that currently have taxes in place only, and that many counties do not have taxes (or may be considering lower taxes). Second, the Department clarified that the tradeoff analysis does not consider cultivator risk preferences. In practice, many cultivators that decide to participate in the legal market are likely to be risk averse, which all else equal, would encourage participation in the market (the risk premium would be understated as presented in the analysis).

Finally, the Department adjusted the local costs (fees/permits and taxes) and included them as a regulatory cost in two ways. Local fees and permits were already included in the regulatory cost in the draft cultivation SRIA. The Department moved the local taxes into the regulatory compliance costs. Next, the Department adjusted the total combined local fees and taxes to acknowledge that many of these fees and taxes are uncertain at the local level, and it is likely that many local taxes and fees will be set lower than the current average reported in the SRIA. In addition, cultivators are more likely to locate in counties with lower fees and taxes, thus the averages presented in the SRIA would be expected to decrease for this reason as well. Since the Department has no basis for estimating local fees and taxes in counties that have not yet reported what they might be, it adjusted the local regulatory costs by setting the local taxes to zero in the economic impact analysis. That is, the local fees and permitting costs are included and set equal to the average in the sample counties (which is biased upward), and the taxes are set to zero. Using this approach the Department is able to avoid overstating local fees and taxes while still demonstrating the multiplier effects the additional local revenues will have in local economies. This is a reasonable approximation — given the complete, dearth of information — to adjust for the upward bias in the local fees and permit costs and acknowledge that combined fees and taxes are likely to be lower in counties where cultivators actually choose to locate.

Additional discussion along these lines were added to the SRIA to clarify: (i) local costs shown in the SRIA are biased upward, (ii) local taxes are set to zero in the economic impact analysis to adjust for this bias, (iii) high local fees/taxes will push cultivators to other counties with lower fees and taxes, and (iv) the SRIA shows the combined net effect of local fees and taxes as required. The net result is that the economic impact numbers do not change (local fees were also included), but the Department moved local taxes over to regulatory compliance costs and clearly stated that local taxes and fees are included, and adjusted for the upward bias in the sample average local fees and taxes, as requested. This makes the point that local taxes and fees can be burdensome on the regulated industry and have unintended consequences.

Finance Comment #3: “[T]he SRIAs should make it clear what is likely to happen to the industry over time, rather just in equilibrium after everyone adjusts to being regulated. We know from other states that the first year of a regulated industry has higher prices, tighter supply, and a great deal of entry and exit for businesses. After that, entities seem to have figured out how to comply. Prices should fall, supply should expand, and there should be more stability. Since it can be difficult to model that first year, it might be best to model the eventual equilibrium, disclose that getting there will take some time, and discuss the dynamics of how the market gets there qualitatively. This should help set expectations for the public and ease worries that the industry will figure it out.”

The Department included an additional subsection in the SRIA under the “SRIA Baseline” discussion to clearly state that we are modeling an industry in equilibrium, but it will take several years to adjust this equilibrium. The economic story is consistent with everything described above — namely, there will be downward price pressure as supply expands with cultivators entering the market.

Finance Comment #4: “I should also mention that our official comment letters will make it clear that these cannabis SRIAs have a unique baseline. Usually baselines cannot include the effects of policies that are not legally binding yet, even if they are expected to be binding at the time of implementation. For these SRIAs, since they are tied together, the impacts only makes sense by assuming the other regulations are in place.”

The Department welcomes this additional clarification and agrees that this is an unusual situation.

Finance Comment #5: “Finally, since we were discussing state and local costs, we checked with our budget analysts for your departments. It appears that the SRIAs assume revenues for departments that are inconsistent with the latest information the budget side has. Please check with your departments to ensure that noth-

ing has changed that should be reflected in the modeling.”

The Department clarified the agency budget for the current fiscal year (as specified in the SRIA), and updated 3-year projections based on the information contained in this current SRIA. We understand that the last BCP provided to Finance was based on the MCCP licensing costs. These were derived for a different market size and set of regulations. The current projections are consistent with the current harmonized SRIA.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Two alternative Department regulations were considered in the economic analysis and ultimately rejected: (i) flat cultivation licensing fees, and (ii) higher fines for cultivators that are found to be out of compliance with the Department regulations.

The first alternative considers a revised fee structure where the application and license cost is the same for all license types. It is rejected because it increases regulatory costs to small cultivators and outdoor cultivators, putting them at a disadvantage relative to larger, higher productivity cultivators. The market impacts show this alternative would result in fewer statewide economic benefits than the preferred alternative as large mixed-light and indoor cultivators push out small cultivators. Small and outdoor cultivators already shoulder a larger share of Department regulatory costs.

The second alternative considers fines that are triple the level proposed in the preferred alternative. This effectively increases the regulatory risk premium (which is modeled as a direct increase in cost to cultivators), and corresponding incentives to participate in the regulated market. It is rejected because it results in lower market participation across all cultivation license types. The market impacts show this alternative would result in fewer statewide economic benefits than the preferred alternative as fewer cultivators enter the industry and stay in the unregulated market.

CONTACT PERSON

Inquiries concerning the proposed action may be directed to:

Amanda Brown
California Department of Food and Agriculture
CalCannabis Cultivation Licensing
P.O. Box 942871
Sacramento, CA 94271
Phone: (916) 263-0801
Email: CalCannabisRegs@cdfa.ca.gov

The backup contact person for these inquiries is:

Melissa Eidson
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CalCannabis Cultivation Licensing
P.O. Box 942871
Sacramento, CA 94271
Phone: (916) 263-0801
Email: CalCannabisRegs@cdfa.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the express terms of the proposed regulations. A copy of the initial statement of reasons and the proposed regulations in underline may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. Requests should be directed to Ms. Amanda Brown at the mailing or email address specified above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearings and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the revised regulations. Any person interested may obtain a copy of any modified regulations prior to the date of adoption by contacting Ms. Amanda Brown at the mailing or email address specified above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Amanda Brown at the mailing or email address specified above.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet Web site (<http://cannabis.cdfa.ca.gov/>).

TITLE 16. BUREAU OF CANNABIS CONTROL

CALIFORNIA CODE OF REGULATIONS TITLE 16, DIVISION 42 MEDICINAL AND ADULT-USE CANNABIS REGULATION

Notice is hereby given that the Bureau of Cannabis Control (Bureau), formerly named the Bureau of Marijuana Control, the Bureau of Medical Cannabis Regulation, and the Bureau of Medical Marijuana Regulation, proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

All of the proposed text sections and documents incorporated by reference are proposed to be added to the California Code of Regulations under Division 42 of Title 16.

PUBLIC HEARINGS SCHEDULED

The Bureau will be holding public hearings at the dates, times, and locations listed below at which time any person interested may present statements or arguments orally or in writing relevant to the action proposed. The locations listed below are wheelchair accessible. At the hearings, any person may present state-

ments or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Bureau may need to set a time-limit for each comment. Persons who make oral comments at a hearing may also submit a written copy of their testimony at a hearing.

1. August 7, 2018, 10 a.m. to 12:00 p.m.

Hilton Oakland Airport,
One Hegenberger Road,
Oakland, CA 94621

2. August 14, 2018, 10 a.m. to 12:00 p.m.

Millennium Biltmore Hotel
506 South Grand Avenue
Los Angeles, CA 90071

3. August 27, 2018, 10 a.m. to 12:00 p.m.

Tsakopoulos Library Galleria
828 I Street
Sacramento, CA 95814

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Bureau. Written comments, including those sent by mail or e-mail to the addresses listed below, **must be received by the Bureau at its office not later than 5:00 p.m. on August 27, 2018** or must be received by the Bureau at a hearing.

Submit comments to:

Lori Ajax, Chief
Bureau of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
E-mail: BCC.comments@dca.ca.gov

AUTHORITY AND REFERENCE

Business and Professions Code section 26013 authorizes the Bureau to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA) at Business and Professions Code section 26000 et seq.

BACKGROUND

The Medical Cannabis Regulation and Safety Act (MCRSA) was established through a series of bills passed by the California State Legislature in 2015 and 2016. (Bus. & Prof. Code, § 19300 et seq.) The MCRSA established the Bureau (known in that legisla-

tion as the Bureau of Medical Cannabis Regulation) under the California Department of Consumer Affairs and created California's first framework for the licensing, regulation, and enforcement of commercial medicinal cannabis activity. The Bureau held multiple pre-regulatory meetings in late summer/early fall of 2016 and proposed regulations under the MCRSA in April and May of 2017. The Bureau also held regulatory hearings for the proposed MCRSA regulations, which were withdrawn in September of 2017.

The Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) was established with the passage of Proposition 64, a voter initiative, in November 2016. The AUMA legalized the nonmedicinal adult use of cannabis; established California's framework for the licensing, regulation, and enforcement of commercial nonmedicinal cannabis activity; and set a date of January 1, 2018, for the Bureau to start issuing licenses.

In June 2017, the California State Legislature passed a budget trailer bill, Senate Bill 94, that integrated MCRSA with AUMA and created the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). (Bus. & Prof. Code, § 26000 et seq.) Under MAUCRSA, a single regulatory system will govern the cannabis industry (both medicinal and adult-use) in California. Under MAUCRSA, the Bureau is charged with the licensing, regulation, and enforcement of the following types of commercial cannabis businesses: distributors, retailers, microbusinesses, temporary cannabis events, and testing laboratories. MAUCRSA provides that the Bureau must begin issuing licenses on January 1, 2018.

On January 1, 2018, the Bureau began issuing licenses for medicinal and adult-use cannabis activities relating to retail, distribution, microbusiness, testing laboratories, and cannabis events. These licensed commercial cannabis businesses are in operation under the emergency regulations adopted on December 7, 2017 and readopted on June 6, 2017.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific licensing and enforcement criteria for commercial cannabis businesses, including: distributors, retailers, microbusinesses, temporary cannabis events, and testing laboratories. These proposed regulations would inform the applicants for licensure of the applicable meaning of key statutory terms; identify the documents and supplemental information required in an application for licensure; and provide specific clarification of terms, prohibitions, or conditions for compliance with MAUCRSA for their particular license type. Chapter 1

of these proposed regulations contains general provisions that apply to all license types, entitled All Bureau Licensees. Chapter 2 applies to distributors, Chapter 3 applies to retailers, Chapter 4 applies to microbusinesses, Chapter 5 applies to cannabis events, Chapter 6 applies to testing laboratories, Chapter 7 contains the enforcement provisions, and Chapter 8 contains other provisions, including research funding provisions.

The proposed regulations are necessary to implement the MAUCRSA and are based on extensive research and outreach by the Bureau. This included: guidance provided from subject matter experts, including: the University of California Davis Agricultural Issues Center and the California Department of Pesticide Regulation; scientific resources; former federal guidance related to cannabis activity; and information from other states who have legalized cannabis activity, such as Oregon, Colorado, Washington, Alaska, and Nevada. The Bureau has also reviewed and considered all comments received on its proposed MCRSA regulations and the MAUCRSA emergency regulations. Based on all of the research, conducted and information received, the Bureau has determined that the specific provisions of the proposed regulations are necessary to effectively implement the MAUCRSA.

License Designations — “A” and “M” Commercial Cannabis Activity

In these regulations, the Bureau, along with the Departments of Food and Agriculture and Public Health, propose to allow licensees to conduct business with each other irrespective of their designation as adult-use (A-designated) and medicinal (M-designated) licenses. This allowance will prevent the need for licensees to obtain both an A-designated and an M-designated license and pay twice the license and application fees for the same premises if they wanted to transact both lines of business. These proposed regulations would streamline commerce and reduce paperwork by requiring applicants to obtain a single license and pay one license fee in order to conduct A-designated and M-designated business in one location.

While the MAUCRSA contains a number of requirements for commercial cannabis activity, only a small number of differences exist between A-designated and M-designated licenses — differences that arise only at the customer point of sale. The A-designation or M-designation does not otherwise impact the cannabis cultivation or supply chain. For instance, a retailer must have a license with an M-designation to sell cannabis goods to an individual between 18 and 21 years of age who has a physician's recommendation. (Bus. & Prof. Code, § 26140, subd. (a).) Similarly, in order to sell cannabis products of a particular per-package THC limit, a retailer must have an M-designated license.

(Cal. Code Regs., tit. 17, § 40306.) Indeed, all of the differences between A-designated and M-designated licenses relate only to the retail sale of cannabis goods to adult-use customers versus medicinal customers.

History of the Separate Adult-Use and Medicinal Licenses

Initially, in the emergency regulations adopted on December 7, 2017, the licensing authorities determined that during a transitional period from January 1, 2018 through June 30, 2018, it was necessary to allow A-designated and M-designated licensees to conduct business with each other irrespective of the designation because the adult-use market was new and there would be no place to obtain cannabis goods except for from the existing medicinal market. Following the transitional period, the licensing authorities had prescribed the requirement that A-designated licensees could only do business with other A-designated licensees and M-designated licensees could only do business with other M-designated licensees. For instance, a cultivator with an M-designated license could only sell to a retailer who also possessed an M-designated license.

After noticing the initial emergency regulations, the licensing authorities received feedback from licensees, potential licensees, and the Cannabis Advisory Committee that the transition period should be extended, or the provision allowing licensees to do business with other licensees regardless of the A-designation or M-designation should be made permanent. Licensees have expressed concerns that if the supply chains are separate for A-designated and M-designated licensees, either supply chain could end up with a shortage or an excess of cannabis goods. In either scenario, licensees and customers may be encouraged to turn to the illicit market to either divert excess cannabis goods or to purchase cannabis goods.

Of note, since the commercial cannabis market began on January 1, 2018, the licensing authorities have not been made aware of any public health or safety threat that has been created during the transitional period as a result of allowing commercial cannabis activity between the market designations. Additionally, requiring two separate licenses for the same activity on the same premises means that licensing authorities must require two applications as well as duplicates of other items, such as the bond required by Business and Professions Code section 26051.5(a)(10). This inefficient duplication increases costs for the licensing authorities and the licensees. Further, the number of licensed cannabis businesses is still relatively low when compared to the number of businesses in operation before January 1, 2018. The reasons for this are varied, but a substantial contribution is due to the lack of locally available li-

censes; many jurisdictions are still developing their local cannabis programs.

Based on feedback from stakeholders and the Cannabis Advisory Committee, the licensing authorities have further reviewed the MAUCRSA and have determined that it should be implemented in a manner that allows licensees to buy or sell cannabis or cannabis products to each other irrespective of their A-designation or M-designation. Business and Professions Code section 26053 (a) states that all commercial cannabis activity shall be conducted between licensees. However, nothing in the MAUCRSA expressly states that A-designated licensees may only do business with other A-designated licensees or that M-designated licensees may only do business with other M-designated licensees. Further, Business and Professions Code section 26013 (c), which provides direction to licensing authorities and states that regulations shall not “make compliance so onerous that the operation under a cannabis license is not worthy of being carried out in practice by a reasonably prudent businessperson.” The licensing authorities have determined that there is a high likelihood that requiring the A-designated and M-designated supply chains to remain separate will perpetuate, rather than reduce and eliminate, the illicit market for cannabis. Licensees that are unable to acquire cannabis goods or sell their cannabis goods because of under saturation or over saturation of cannabis goods within their supply chain would be placed in a position where they determine that the requirement of complying with a separate supply chain for A-designated and M-designated cannabis goods is so onerous that continuing to operate under their cannabis license is not worthy of being carried out. When the Bureau readopted its emergency regulations, the Bureau allowed for licenses with both designations. This has streamlined the process and reduced costs for most licensees with both designations.

Continuing to issue licenses with an A-designation and M-designation, and allowing licensees to conduct business with other licensees regardless of the A-designation and M-designation is necessary to avoid increased costs due to the duplication of applications and allows licensees the ability to procure and sell product based on the commercial cannabis market’s demands. This is consistent with Business and Professions Code section 26050, subdivision (b), which requires licensing authorities to affix an A or M on each license. Nothing in that section prohibits licensing authorities from affixing both designations, and indeed it expressly provides that, with limited exceptions stated in statute, “the requirements for A-licenses and M-licenses shall be the same.” (Bus. & Prof. Code,

§ 26050, subd. (b).) While licensing authorities do not have discretion to require testing laboratories to have separate A–designated and M–designated licenses, the entities are exercising their discretion to permit the holders of other license types to fill out one application, pay one license fee, and obtain one license rather than insisting on the formality of two licenses, particularly when there are virtually no distinctions between A–designated and M–designated licenses identified by statute. Where MAUCRSA or local ordinances require such a distinction to be made, the Bureau will require an M–designation or A–designation, as appropriate.

Chapter 1: All Bureau Licensees

The Bureau was established to create a comprehensive and coherent regulatory framework for an established industry that has not been regulated by the State. While MAUCRSA provides guidance on the larger macro issues, much of the implementation specifics and clarification of terms were left to the Bureau. These proposed regulations would help applicants and licensees better understand: (1) the applicable meaning of key statutory and other terms related to the Bureau’s licensing program; (2) what documents and information are required in an application for licensure; and (3) specific clarification of prohibitions, requirements, or conditions for compliance with MAUCRSA.

Article 1

Article 1 of the proposed regulations would make clear the applicable meaning of key statutory terms and other terms used within the proposed regulations. These terms include those relevant to the requirements of licensees, such as “cannabis waste,” “limited–access area,” “medicinal cannabis patient,” and “retail area.”

Article 2

Article 2 of the proposed regulations would clarify what information and documents are required to complete an application for all license types. This information would include contact information, social security or individual tax payer identification number, the location of the proposed business, and the type and designation of the license requested. Within MAUCRSA, the Legislature recognized the current medical cannabis goods marketplace and provided for the issuance of temporary licenses that would allow an applicant, who has been approved by the local jurisdiction, to conduct commercial cannabis activity, to operate while they gather the required items for a complete application and while their application is reviewed by the Bureau. The MAUCRSA also provided for priority review of applications for those applicants that were in operation prior to September 1, 2016. The proposed regulations would further explain, specifically, what would be required to demonstrate the pre–conditions set out in MAUCRSA for priority review.

The MAUCRSA expressly requires an applicant to provide certain information to the Bureau for processing, including a valid seller’s permit issued by the California Department of Tax and Fee Administration, proof of property owner approval for commercial cannabis activity, proof of surety bond, proof of a labor peace agreement if applicable, and fingerprint submission to the Department of Justice. The proposed regulations would further specify what must be submitted to the Bureau related to these items as well as what additional information is required. The proposed regulations would specify that if an applicant submits a license, permit, or other authorization from a local jurisdiction where the premises will be located, then the Bureau will notify the contact person from the local jurisdiction and if the local jurisdiction does not respond within 10 calendar days, the Bureau may approve the application. The proposed regulations would also specify what forms must be used for the applicant’s standard operating procedures.

The proposed regulations would clarify that applicants shall have, at a minimum, one individual that meets the definition of “owner” under MAUCRSA and would clarify what a “financial interest” in a commercial cannabis business means. The proposed regulations would also clarify that certain individuals, such as persons employed by the State of California, are prohibited from holding a license when the duties of their employment have to do with the enforcement of MAUCRSA or any other penal provisions of law of this State prohibiting or regulating the sale, use, possession, transportation, distribution, testing, manufacturing, or cultivation of cannabis goods. The proposed regulations would also prohibit persons in district attorney’s offices and law enforcement agencies from holding a license.

The proposed regulations would clarify what the premises diagram must show. The proposed regulations would clarify what is required to demonstrate that a landowner has approved use of the premises for commercial cannabis activity. The proposed regulations would allow an electronic signature on any document submitted to the Bureau. The proposed regulations would also specify the amount of the bond that applicants must have to cover the cost incurred for the destruction of cannabis goods necessitated by a violation of MAUCRSA or the regulations adopted thereunder. The proposed regulations would also specify that applicants or licensees that fall within the scope of sovereign immunity that may be asserted by a federally recognized tribe or other sovereign entity must agree to a limited waiver of sovereign immunity.

The proposed regulations would clarify that applicants must provide proof that their premises is exempt from further review under or otherwise in compliance with the California Environmental Quality Act

(CEQA). The proposed regulations would specify what documents may be submitted by an applicant to demonstrate proof, and would provide clarity regarding the Bureau's process for reviewing previously prepared environmental documents. The proposed regulations would also specify what an applicant may do if a project is considered exempt from further environmental review pursuant to CEQA, and that if the Bureau determines that a project does not qualify for an exemption, then the applicant will be responsible for the costs of preparation of an environmental document.

The proposed regulations would specify that the Bureau may request additional information from the applicant so that the Bureau will have all the necessary information to appropriately evaluate the application for licensure. The proposed regulations would clarify that incomplete applications are abandoned after a specified length of time and that applications may be withdrawn before the Bureau issues or denies a license.

Article 3

Article 3 of the proposed regulations would provide clarification of special conditions, terms, prohibitions, or requirements, set forth in MAUCRSA that apply to all license types. Specifically, the proposed regulations would clarify the annual license fee for each license type depending on the size of the business. The proposed regulations would also specify how the license fee can be paid. The proposed regulations would clarify the requirements for priority licensing. Additionally, the proposed regulations would clarify which offenses are substantially related to the qualifications, functions, or duties of the business for which licensure is sought and would clarify the criteria for the Bureau to consider in determining whether an applicant that has been sufficiently rehabilitated and is therefore suitable for licensure. The proposed regulations would also provide the specific criteria under which a license can be denied, how the Bureau will notify the applicant that the application was denied, and what the applicant must do to contest the denial.

The proposed regulations would clarify how the Bureau will evaluate whether an excessive concentration of licenses exists in the area of a proposed premises, during application review. The proposed regulations would clarify how a license is renewed and when a license must or may be cancelled. Additionally, the proposed regulations would specify when the Bureau must be notified of certain business modifications, and when those modifications require a new application or just notification to the Bureau. The regulations would clarify what happens to the license when an owner of the commercial cannabis business dies, becomes unable to perform the duties associated with the license due to incapacity, or becomes insolvent.

The proposed regulations would specify requirements for the premises, including requiring each premises to have a distinct street address or suite number and prohibiting the sale or delivery of cannabis goods to anyone in a motor vehicle except in certain cases where a drive-in or drive-through has been permitted. The proposed regulations would also specify that alcohol shall not be stored or consumed on a premises. Additionally, the proposed regulations would specify that any premises adjacent to another premises engaging in manufacturing or cultivation shall be separated from those premises by walls, and any doors leading to the cultivation or manufacturing premises shall remain closed.

The proposed regulations specify that a licensed premises must not be within a 600-foot radius of a school providing instruction in kindergarten or any grades 1 through 12, day care center, or youth center that is in existence at the time the license is issued and under what circumstances an exemption may be allowed. The proposed regulations would also specify that a licensee cannot make a physical modification that materially or substantially alters the licensed premises from the premises diagram last filed with the Bureau and clarifies what material or substantial changes are. Further, the proposed regulations would specify that a licensee may not sublet a portion of the licensed premises.

The proposed regulations would provide that a licensee is responsible for the acts of an agent, officer, or other person acting for or employed by the licensee. The proposed regulations would specify that licensees shall not employ or retain persons under 21 years of age. The proposed regulations would clarify that all commercial cannabis activity must be conducted between licensees. The proposed regulations would specify inventory storage requirements and would also clarify what a significant discrepancy in inventory is. The proposed regulations would also specify when a licensee must notify the Bureau of criminal acts, civil judgments, administrative orders or civil judgments related to the violations of labor standards, revocation of a local license, permit, or other authorization, and theft or loss of cannabis goods.

The proposed regulations would specify which business records must be kept, how long they must be kept, and in what manner they must be kept. The proposed regulations would also specify what a licensee may do in case of a disaster, such as a fire or flood.

Article 4

Article 4 of the proposed regulations contains requirements for posting and advertising. The proposed regulations would specify that the licensee must post the license at the licensed premises and clarify where the license must be displayed. The proposed regulations

would specify where and when advertising or marketing placed in broadcast, cable, radio, print, and digital communications are allowable as well as specifying that the licensee shall only display advertising or marketing where a licensee has obtained reliable, up-to-date audience composition data. The proposed regulations would also prohibit the use of any depictions or images of minors under 18 years of age and the use of objects, such as toys, or cartoon characters that are likely to be appealing to minors under 18 years of age. The regulations would prohibit advertising of free cannabis goods, including buy one get one free, free product with donation, contests, sweepstakes, and raffles. The proposed regulations would specify advertising requirements at temporary cannabis events and would define “reliable up-to-date audience composition data.” The proposed regulations would also specify that any advertising or marketing involving direct, individualized communications must utilize a method of age affirmation to verify that the recipient is 21 years of age or older.

Article 5

Article 5 of the proposed regulations contains minimum-security requirements that would apply to all licensees. The minimum-security requirements would include a requirement that visitors to a licensed premises be escorted by the licensee or an employee while in the limited-access areas of the premises and would require that employees of the licensee wear identification badges. The proposed regulations would also specify that licensees must use video surveillance systems and would provide the requirements for video surveillance. The proposed regulations would also specify that licensees must ensure that the limited-access areas can be securely locked using commercial-grade, nonresidential door locks and that licensees must use an alarm system at the licensed premises. The proposed regulations would also include a requirement that a retail licensee shall hire or contract for security personnel to provide security services for the licensed premises.

Article 6

MAUCRSA requires that all cannabis goods be tracked throughout the supply chain. Article 6 of the proposed regulations would specify the requirements for using the track-and-trace system and reporting the movement of cannabis goods in the system. The proposed regulations would also specify that licensees must reconcile the physical inventory of cannabis goods at the premises with the track-and-trace records at least once every 14 days. The proposed regulations would also clarify the track-and-trace requirements for licensees operating under a temporary license, and those in operation at the time of licensure. The proposed regulations would also clarify what a licensee must do if

the track-and-trace system cannot be accessed and the information that must be entered.

Article 7

Article 7 of the proposed regulations would specify how shipments must be accepted or rejected and when returns of cannabis goods are permitted. The proposed regulations would also specify how cannabis waste is to be managed. The proposed regulations would also allow returns of defective products between licensees.

Article 7 is necessary to ensure that returns are limited to only defective products to protect consumer safety and to ensure that returned products are destroyed appropriately to minimize diversion and to ensure that cannabis waste is handled in compliance with state law related to waste. This will assist with public safety by limiting opportunity for cannabis goods to be diverted into the illegal market at the time of disposal or destruction.

Chapter 2: Distributors

The proposed distributor regulations would accomplish three goals: (1) ensuring cannabis goods are properly stored, handled, packaged, and tested; (2) ensuring distributors keep and maintain records that are adequate to effectively track-and-trace the cannabis goods, thereby assuring that cannabis goods are safe for use by the consumer prior to distribution for retail sale; and (3) ensuring cannabis goods are transported in a safe and secure manner.

First, the proposed regulations would clarify that a distributor may distribute and store cannabis goods, cannabis accessories, and licensees’ branded merchandise or promotional materials from the licensed premises. The proposed regulations would specify that live plants may not be stored on the premises. The proposed regulations would require that cannabis goods are properly stored, handled, packaged, and tested. The proposed regulations would allow a distributor to package, re-package, and label or re-label cannabis in the form of dried flower or pre-rolls for a licensee. However, the proposed regulations would prohibit a distributor from accepting cannabis goods that have not already been packaged by the manufacturer who manufactured the products, unless the distributor also holds a manufacturing license and is packaging, re-packaging, labeling, or re-labeling its own manufactured cannabis products. The proposed regulations would specify that the net weight on any package of dried flower shall not be considered inaccurate if the actual weight is within plus or minus 2.5% of the labeled weight. The proposed regulations would also clarify the logistics for laboratory testing and would require the sampling to be recorded on video and that the distributors witness the sampling in person. The proposed regulations would clarify when a batch “passes” laboratory testing and when it “fails.”

The proposed regulations would specify the steps a distributor must take in conducting final quality—assurance review prior to transporting the cannabis goods to retailers.

Second, the proposed regulations would specify that distributors maintain commercial general liability insurance in the aggregate in an amount no less than \$2,000,000 and in an amount no less than \$1,000,000 for each loss. The proposed regulations would also specify that distributors must conduct inventory reconciliation at least once every 14 days and keep and maintain records specific to distribution and quality—assurance.

Third, the proposed regulations would clarify the requirements for the transportation of cannabis goods. The proposed regulations would require that a distributor shall have a completed sales invoice or receipt and shall only transport cannabis goods listed on the receipt, which may not be changed after transport begins. The proposed regulations would also require that cannabis goods are not visible or identifiable during transport, that the cannabis goods are only transported by vehicle, require the cannabis goods to be in a secure locked box within the interior of the vehicle, require the vehicle to be attended at all times in residential neighborhoods, and require all transport vehicles to be equipped with alarm systems. The proposed regulations would specify that certain transport vehicle information must be provided to the Bureau and would set the minimum age for persons in commercial transport vehicles at 21 years of age. The proposed regulations would also require a distributor to submit a shipping manifest to the Bureau and the licensee receiving the cannabis goods prior to transport, and would specify what information a shipping manifest must contain. The proposed regulations would also specify a distributor transport—only license, which would allow the holder to exercise certain privileges related to transport only. The fees for a distributor transport—only license would depend on whether the licensee would transport only the licensee’s product or product for other licensees.

Chapter 3: Retailers

The proposed regulations would specify which individuals may access the retailer premises and retail area. The proposed regulations would require that individuals only be granted access to the retail area to purchase cannabis goods after the licensee has verified that the individual is at least 21 years old, or that the individual is at least 18 years old and possesses a valid physician’s recommendation. The regulations would specify that a retailer confirm the age and identity of the customer. The proposed regulations would clarify the hours a retailer may operate, requirements for when the retailer is not open for business, to whom cannabis goods can be

sold, and how cannabis goods may be displayed in the retail area.

The proposed regulations would clarify what goods a licensee may sell, including the provision that licensees may sell cannabis goods, cannabis accessories, and licensee’s branded or promotional materials, live immature cannabis plants and seeds if certain requirements are met. The proposed regulations would specify the daily limit of cannabis goods that may be sold to an individual and would clarify that retailers may accept cannabis goods returned by customers. The proposed regulations would prohibit retailers from providing free cannabis goods to any person, unless certain criteria are met, including that the free cannabis is provided only to medicinal cannabis patients or to a local program. The proposed regulations would also clarify that a retailer may not package or label cannabis goods with the exception that all cannabis goods must be placed into a resealable child—resistant opaque exit package prior to the customer leaving the premises.

The proposed regulations would also set requirements for delivery and create a license for a non—storefront retailer to conduct retail cannabis sales exclusively by delivery and at temporary cannabis events. The proposed regulations would specify that delivery must be: (1) performed by a delivery employee of a licensed retailer; (2) made to a physical address in any California jurisdiction; (3) not made to public lands or facilities; and (4) made using an enclosed motor vehicle outfitted with a Global Positioning System, vehicle alarm system, and operated by a delivery employee of the licensee. The proposed regulations would specify the amount of cannabis goods that can be carried by a delivery employee of a licensed retailer, what activities the delivery employee may engage in, what requirements a delivery employee must follow while making deliveries, and that the delivery employee may not consume cannabis goods during delivery. The proposed regulations would also clarify what information must be in a delivery request receipt and what delivery route may be taken.

The proposed regulations would specify that retailers may only accept shipments of cannabis goods from a licensed distributor and set requirements for maintaining an accurate record of inventory and performing inventory reconciliation. The proposed regulations would also specify the information a record of sale must contain. Additionally, the proposed regulations would clarify when a transfer of cannabis goods between retail premises may occur.

Chapter 4: Microbusiness

Under MAUCRSA, a microbusiness license allows a licensee to conduct multiple commercial cannabis activities under one license. A microbusiness licensee is

permitted to cultivate cannabis on area less than 10,000 square feet; act as a licensed distributor; manufacture cannabis as a Level 1 manufacturer; and/or sell cannabis as a retailer. The proposed regulations would clarify that an applicant must engage in at least three of the four activities: cultivation, manufacturing, distribution, and/or retail sale. The proposed regulations would specify that the areas of the premises for manufacturing and cultivation shall be separated from the distribution and retail areas by a wall and all doors between the areas shall remain closed when not in use. The proposed regulations would specify the information that must be provided in the application depending on the commercial cannabis activities the licensee intends to engage in, such as requiring a cultivation plan and supplemental water source information if the licensee will engage in cultivation. The proposed regulations would specify that if a microbusiness' cultivation is found to be causing significant adverse impacts on the environment in a watershed or other geographic area, the Bureau shall not issue any new microbusiness licenses that include cultivation for that area. For manufacturing activities, the proposed regulations would require a description of inventory control procedures, quality control procedures, security procedures, and waste procedures. The proposed regulations would also clarify that microbusiness licensees must comply with all the rules and requirements promulgated for each commercial cannabis activity the licensee intends to engage in. The proposed regulations would clarify that if a licensee decides to change the activities they are authorized to engage in they must submit a request for modification to the Bureau and that any suspension or revocation of a microbusiness licensee may affect all activities performed under that license. The proposed regulations would also specify additional recordkeeping requirements for microbusinesses engaging in cultivation and manufacturing.

Chapter 5: Cannabis Events

Under MAUCRSA, state temporary event licenses may be issued, authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair or district agricultural association, provided that certain conditions are met, including that all participants are licensed. The proposed regulations would specify that an applicant for a temporary cannabis event license must first obtain a cannabis event organizer license by submitting an application containing certain information. The proposed regulations would further specify that an application for a temporary cannabis event license must be submitted no less than 60 days prior to the date for which the license is sought and that the license be valid for no more than 4 consecutive days. The proposed regulations would further specify what

must be provided with the application including a diagram of the layout of the event with a detailed description of where cannabis sales and consumption will occur, and a list of all licensees that will be providing onsite sales of cannabis goods at the event must be provided to the Bureau at least 72 hours before the event. The proposed regulations would also require the cannabis event organizer to provide a designated contact person(s) who shall be onsite at the event and reachable by telephone at all times that the event is occurring.

The proposed regulations would specify that all sales of cannabis at a temporary cannabis event may only be performed by a licensed retailer or microbusiness authorized to sell cannabis to retail customers and all cannabis goods to be sold at the event must be transported to the event by a licensed distributor. The proposed regulations would further clarify that cannabis goods sold at a temporary event must comply with the applicable laws and regulations, including testing, packaging, and labeling requirements. The proposed regulations would also provide specific requirements for onsite consumption at a temporary cannabis event, including that access to the onsite consumption area be limited to persons 21 years of age or older and that cannabis consumption not be visible from any public place or non-age-restricted area. The proposed regulations would prohibit the event organizer from receiving profits or compensation based on sales.

Chapter 6: Testing Laboratories

Under MAUCRSA, all cannabis goods must meet certain health and safety standards before they can be sold to consumers. To ensure that cannabis goods meet those standards, a representative sample of the cannabis goods must be tested by a licensed testing laboratory. The proposed regulations would provide requirements for the minimum standards for "passing" the statutorily required testing of cannabis goods for retail sale at retailers or microbusinesses. The regulations would also provide the minimum operational requirements for laboratories, which would include requirements, such as sampling procedures, personnel qualifications, standard operating procedures, and recordkeeping requirements. These proposed regulations would set forth action levels and threshold values that provide the criterion for determining whether a cannabis goods sample passes or fails an analytical test; levels that the Bureau considers to be both protective of public health and achievable by the cannabis industry. The proposed exposure limits are necessary to ensure, to the extent feasible, that no cannabis consumer will suffer material impairment of health from exposure to contaminants in cannabis goods. The proposed action levels are for chemicals, foreign material, heavy metals, and microbiological impurities.

Article 1 of the proposed regulations would clarify the applicable meaning of key statutory terms and other terms used within the regulations. These definitions would include terms, such as “action level,” “certificate of analysis,” “foreign material,” and “quality control sample.”

Article 2 of the proposed regulations would provide the licensing requirements that are specific to testing laboratories, such as proof of ISO/IEC 17025 accreditation, and requirements for obtaining a provisional license if an applicant meets all requirements for licensure apart from the ISO/IEC 17025 accreditation.

Article 3 of the proposed regulations would set forth minimum requirements for the sampling of cannabis goods. These requirements would include: the form that must be used for the testing laboratory’s sampling standard operating procedures; general sampling requirements, such as requirements that the testing laboratory that collects the sample must also perform the required testing; and how samples are to be stored. The proposed regulations would specify that a chain of custody protocol must be implemented to record information related to the sampling. The proposed regulations would also clarify requirements for sampling from a harvest batch, cannabis product batch, and pre-roll batch. The proposed regulations would specify requirements for the transportation of cannabis goods samples. Additionally, the proposed regulations would specify that a testing laboratory may only accept and analyze samples obtained from a distributor for state required testing when there is an accompanying chain of custody form.

Article 4 of the proposed regulations would provide the minimum standard operating procedures for laboratories and specify the forms that must be used. The regulations would also establish what the Bureau considers to be acceptable ways to validate a “nonstandard, amplified, or modified” test method.

Article 5 of the proposed regulations would specify what laboratories must test for and when testing laboratories must begin testing for certain things. The proposed regulations would specify the standards for the analyses of moisture content and water activity, residual solvents and processing chemicals, pesticides, microbial impurities, mycotoxins, foreign material, heavy metals, cannabinoids, and terpenoids. The regulations would also set forth general reporting requirements and require testing laboratories to generate a certificate of analysis for each sample of a batch of cannabis goods that it tests, containing necessary information to identify the testing laboratory, identify the sample, identify the test methods, and provide the test results.

Article 6 of the proposed regulations would provide requirements for post-testing procedures. These requirements would include a requirement that a batch may not be retested following a failed testing unless it

has gone through a remediation process, constraints related to remediation, and requirements for retention of the testing sample.

Article 7 of the proposed regulations would set requirements for the minimum components of a quality–assurance program and what must be contained in the quality–assurance manual. The proposed regulations would require the use of laboratory quality control samples. The proposed regulations would also clarify how to calculate the limit of detection and limit of quantitation and would require licensees to generate a data package for each batch of samples the laboratory analyzes. The proposed regulations would also require proficiency testing, clarify what a satisfactory and unsatisfactory proficiency test is, and require an annual internal audit.

Article 8 of the proposed regulations would specify laboratory employee education and experience requirements. Specifically, the regulations would require that a testing laboratory employ a supervisor or management employee who is responsible for overseeing and directing the scientific methods of the laboratory, ensure the laboratory achieves and maintains quality standards of practice, and provide training to laboratory employees. The proposed regulations would also require that laboratory analysts and samplers meet certain education and experience standards.

Article 9 of the proposed regulations would require testing laboratories licensees to maintain specific records.

Chapter 7: Enforcement

The proposed regulations would specify the enforcement provisions applicable to all Bureau licensees. Specifically, the proposed regulations would provide that the Bureau and its representatives shall have full access to inspect and enter onto any premises licensed by the Bureau. The proposed regulations would specify that the Bureau may provide a notice to comply to a licensee for violations observed during the inspection and would specify what a licensee may do in response to the notice. The proposed regulations would provide that the Bureau may issue citations containing orders of abatement and fines against a licensee for any acts or omissions which are in violation of MAUCRSA or its implementing regulations. The proposed regulations would also set forth the procedure for contesting and complying with citations issued by the Bureau.

The proposed regulations would specify the criteria for use of minor decoys, including that the decoy be under 20 years of age. The proposed regulations would specify that a license may not be held at some premises where certain attire and conduct is permitted, such as employing a person to conduct the sale of cannabis goods while such person is unclothed. The proposed

regulations would further clarify that live entertainment is permitted on a licensed premises so long as certain conditions are met.

Under the MAUCRSA, licensees may be disciplined for failure to comply with any of the requirements for licensure that are in the Act itself or in the regulations. The proposed regulations would specify the additional grounds for discipline, such as failure to take reasonable steps to correct objectionable conditions. The proposed regulations would also specify the procedures for disciplinary actions and would specify that the Bureau may petition for an interim order to suspend a license or impose licensing restrictions in certain cases, such as when permitting the licensee to continue to engage in the licensed activity would endanger the public health, safety, or welfare.

The proposed regulations would specify that a premises must post a notice when it has had a license suspended or revoked and would specify what the notice must say and how it must appear. The proposed regulations would clarify that the Bureau may request the administrative law judge to direct the licensee found to have committed a violation to pay a sum not to exceed the reasonable costs of investigation and enforcement of a case and would specify the process for making the request. The proposed regulations would also specify the minimum conditions for probation that must be contained in an order placing a licensee on probation as a condition of staying a revocation or suspension. The proposed regulations would specify the disciplinary guidelines to be considered in reaching a decision on a disciplinary action under the MAUCRSA or the Administrative Procedures Act. Lastly, the proposed regulations would specify that the Bureau may issue emergency decisions and orders for temporary, interim relief and would specify the circumstances under which such orders may be issued as well as the procedures for issuing such orders.

Chapter 8: Other Provisions

Article 1 contains the proposed regulations related to research funding. The proposed regulations would specify that only public universities in California are eligible to receive funds disbursed pursuant to Revenue and Taxation Code section 34019, and that the amounts disbursed will not exceed the sum of ten million dollars for each fiscal year. The proposed regulations would specify what the request for proposal issued by the Bureau will contain, including the funding available, timeframes for the proposal review, and proposal requirements. The proposed regulations would also specify the selection process and criteria that the Bureau will use, how the funds will be released, and what reports the re-

cipient must provide to the Bureau and how often those reports must be submitted.

Incorporated by Reference

The following documents are incorporated into the regulations by reference:

US Food and Drug Administration's *Guidelines for the Validation of Analytical Methods for the Detection of Microbial Pathogens in Foods and Feeds*, 2nd Edition, April 2015.

US Food and Drug Administration's *Guidelines for the Validation of Chemical Methods for the FDA FVM Program*, 2nd Edition, April 2015.

Bureau of Cannabis Control Disciplinary Guidelines July 2018.

The following forms are incorporated into the regulations by reference:

Transportation Procedures, Form BCC-LIC-015 (New 7/18)

Inventory Procedures, Form BCC-LIC-016 (New 7/18)

Non-Laboratory Quality Control Procedures, Form BCC-LIC-017 (New 7/18)

Security Procedures, Form BCC-LIC-018 (New 7/18)

Cannabis Waste Management Procedures, Form BCC-LIC-019 (New 7/18)

Delivery Procedures, Form BCC-LIC-020 (New 7/18)

Sampling — Standard Operating Procedures, Form BCC-LIC-021 (New 7/18)

Sample Preparation — Standard Operating Procedures, Form BCC-LIC-022 (New 7/18)

Test Methods — Standard Operating Procedures, Form BCC-LIC-023 (New 7/18)

Anticipated Benefit of the Proposed Regulations:

The broad objectives of these proposed regulations are to create a state licensed and regulated commercial cannabis market. The proposed regulations are expected to benefit the health and welfare of California residents through increased protection of the public and the environment from the harms associated with an unregulated commercial cannabis market. Specifically, the proposed regulations will ensure that cannabis goods meet health and safety standards by requiring that samples of each batch of harvested cannabis and cannabis products be tested prior to being sold to consumers. The proposed regulations would also ensure that cannabis goods are sold in a manner that prevents access to the goods by persons under the age of 21 who do not possess a valid physician's recommendation. Finally, the proposed regulations would ensure that cannabis goods

are handled in a manner that prevents diversion into the unregulated and illegal market.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Bureau has determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a search and review of any similar regulations on this topic, the Bureau has concluded that these are the only regulations that concern the state licensing and enforcement of commercial cannabis distributors, retailers, microbusinesses, cannabis events, and testing laboratories. These are also the only regulations that concern research funding for which the Bureau is responsible from the Cannabis Control Fund.

Evaluation of Inconsistency/Incompatibility with Existing Federal Regulations:

Under the federal Controlled Substances Act (21 U.S.C. §801 et seq.) cannabis is illegal. However, the U.S. Department of Justice issued guidance regarding the enforcement of cannabis activities in a memorandum issued by Deputy Attorney General James M. Cole on August 29, 2013, commonly referred to as the Cole Memorandum. Although the Cole Memorandum was rescinded in January 2018, these proposed regulations are not inconsistent or incompatible with the tenets of the Cole Memorandum. The Bureau has also determined that these proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a search and review of any similar regulations on this topic, the Bureau has concluded that these are the only regulations that concern the State licensing and enforcement of commercial cannabis distributors, retailers, microbusinesses, and testing laboratories. These are also the only regulations that concern research funding from the Cannabis Control Fund.

DISCLOSURES REGARDING THE
PROPOSED ACTION

The Bureau has made the following initial determinations:

Mandate on local agencies and school district: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 et seq.: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: The proposed regulations are expected to increase the costs of all businesses licensed by the Bu-

reau. It is expected that the average business will incur \$80,000 of initial costs for compliance and \$200,000 annual ongoing cost. Only businesses within the cannabis industry are expected to incur these additional costs. The costs may vary depending on the type and size of the business.

The proposed regulations are expected to have no financial effect on individuals who are not cannabis users. On the other hand, individuals who are cannabis users are expected to incur no initial costs and roughly \$200 of annual ongoing costs due to the proposed regulations. The price of cannabis is expected to rise due to the proposed regulations. The customers who are the end consumers are expected to incur some of those additional costs.

Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action will directly affect businesses statewide, including small businesses, the Bureau concludes that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant.

Significant effect on housing costs: None

Small Business Determination: The Bureau has determined that the proposed regulations will affect small businesses. It is expected that the proposed regulations would result in an initial cost of \$60,000 for a small business and an annual ongoing cost of \$150,000.

Results of the Standardized Regulatory Impact Analysis

The Bureau worked with the University of California Agricultural Issues Center (AIC) to prepare the Standardized Regulatory Impact Analysis (SRIA). The SRIA was submitted to the California Department of Finance on May 9, 2018. Below, is a summary of the SRIA.

It is expected that the regulations will result in the approximately 4,837 new jobs in the State of California. Of these expected jobs, 3,227 are expected to be in the retail sector, 783 new jobs in the laboratory testing sector, and 827 new jobs in the distributor sector.

The regulations are expected to lead to the creation of approximately 48 new retail operations and 20 new testing laboratory businesses throughout the state. Overall, it is estimated that 5,000 new businesses will enter, and 6,000 existing businesses will exit the industry.

The regulations are expected to result in competitive advantages for some business who are operating in California and competitive disadvantages for other businesses operating within California. The new requirements in the regulations are expected to create a competitive advantage for existing businesses that can easily adjust to the new requirements. On the other hand, some existing businesses may have more difficulty ad-

justing to the new requirements in the regulations. These businesses may be at a competitive disadvantage if shifting their operations to comply with new requirements requires additional costs that a new business may not have to bear. Additionally, the few testing laboratories that are currently in operation will likely have a competitive advantage as they are already operating in what is expected to be an expanding sector.

The regulations are expected to result in an increase in investment in California. The revenue within the cannabis industry is expected to increase by about \$634 million. This increase in revenue is expected to be accompanied by an increase in investment. Additionally, many businesses under the regulations will require additional investment in security equipment and other costs of complying with the regulatory requirements. It is expected that a large amount of increased investment will be the laboratory testing sector. New testing laboratories will be established, and investment will be required to ensure that existing testing laboratories meet the requirements of the regulations.

It is expected that the regulations will create an incentive for innovation. This is most notable in the laboratory testing sector. As stated above, the requirements for testing laboratories will require significant levels of investment due to the creation of new businesses. The types of testing required by the regulations are currently very costly. Therefore, there is an incentive for testing laboratories to develop and use new equipment and processes that will enable the laboratory to perform the required tests in a more efficient way.

There are a number of benefits that are expected as a result of the regulation. First, the regulations are expected to benefit public safety as well as worker safety. The regulations contain minimum security requirements for all licensed cannabis businesses, which are expected to increase in the security of the premises of all licensed cannabis businesses. This is expected to result in a decrease in the likelihood of crime occurring on the premises. The security requirements are expected to create a deterring effect that would prevent some crimes from being committed. Additionally, the security requirements would allow the Bureau and law enforcement to effectively investigate and resolve any crimes that may occur. A reduction in crime around cannabis businesses would benefit the public and employees of these businesses. The security requirements along with the track-and-trace system are expected to prevent cannabis goods from exiting the regulated system and entering the illegal market. A reduction of the amount of cannabis on the illegal market will benefit the welfare of all California residents.

The laboratory testing requirements within the regulation are also expected to provide a benefit to the public. The laboratory testing requirements are expected to

identify the cannabis goods that may be unsafe for public consumption and remove them from the market. Under the testing requirements in the regulation, only the cannabis goods that have been thoroughly tested and approved for consumption will be sold. Any cannabis goods that do not pass the testing will not be allowed to enter the market. Preventing potentially harmful products from entering the market will likely benefit the health and welfare of California residents.

Summary of comments from the Department of Finance and Bureau response

Department of Finance Comment 1

In regard to the testing laboratory sector, your comment states:

First, the SRIA should address the possibility that costs are higher than estimated in the laboratory sector, which may decrease the number of businesses that choose to shift into the legal sector. The SRIA assumes that in the long run the number of testing facilities will increase proportionally to the testing needs implied by the growing demand of the legalized cannabis market. However, if only a few laboratories are able to make investments, the price for testing services will be higher, increasing the retail price of cannabis products and decreasing the total quantity of cannabis sold in the legal market.

Bureau Response to Comment 1

Testing is the area of regulations that have the potential to add substantial costs to the final production and it is therefore appropriate to focus attention on testing regulation. If testing costs were higher than anticipated without increasing consumer willingness to pay, that would decrease the quantity of legal cannabis sold. The issue of testing capacity is an important consideration. We note that the SRIA did not evaluate short-term bottlenecks in testing capacity, the issues, as your comment makes clear is the longer term supply of testing services.

An important consideration is that about 80% of the full testing costs calculated in the SRIA relate to loss of product that fails to meet testing standards. Laboratory testing costs equate to about \$30 per pound of direct laboratory costs, including collection of samples. Since the amount of investment depends on potential return, we would expect higher returns to testing would attract the needed capital and do not see a constraint therein as the industry moves past the initial startup of regulations. One issue may be the trade-off between scale economies in the laboratory and the cost of moving samples. The SRIA assumes a distribution of large and small laboratories partly to reflect the fact that cultivators, manufacturers and retailers are likely to be concentrated in different locations so the cost of moving sam-

ples may allow smaller local laboratories to compete with large labs servicing centralized locations. We are monitoring the license process for testing laboratories to better anticipate if there are likely to be problems in terms of testing capacity and costs.

Department of Finance Comment 2

In regard to small businesses, your comment states:

Second, the analysis should address the potentially disproportionate impacts on small businesses of the costs of compliance. For large successful businesses, the cost to comply represents a small share of its profits, but for small businesses the cost of compliance may be a significant share of their already low operational profits, leading them to choose non-compliance or exit from the industry.

Bureau Response to Comment 2

As you note, scale economies in regulatory compliance can be significant, especially when there are substantial fixed costs in understanding and responding correctly to new regulations. Regulations that may cause advantages to larger operations include several categories. First, in some cases there may be volume discounts for mandated packaging, or other required materials. As a share of total costs of a retail or distribution business these are very small. Second, we show data that the cost of testing per unit of cannabis products is smaller for larger batch sizes because testing costs are mostly constant per batch. If larger distributors or retailers have larger batch sizes associated with products that they handle, they would gain some economies. Finally, the cost for security such as cameras and security employees may be roughly constant per location whether the distributor or retailer handles more cannabis or less. Therefore, that fixed cost may be spread across more units at larger operations, providing a cost advantage. The largest costs of the proposed regulations are roughly proportional to volume. This applies to testing costs per pound and packaging requirements.

We note that these size-related cost impacts are similar to those found in any industry and are not unique to cannabis. However, cannabis is different because product-specific regulations likely account for a higher share of total costs and have a larger impact on small businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Bureau must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or

would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Bureau invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

In considering the proposed regulations, the Bureau considered a lower-cost, alternative and a higher-security alternative. The proposed regulations impose a 50-pound maximum batch size for testing. The proposed regulations also require the use of an enclosed vehicle for deliveries of cannabis and allow for one retailer employee to make deliveries on their own. Additionally, the proposed regulations require that licensees maintain security cameras in specific locations with at least a 1280 x 720 resolution at a minimum of 15 frames per second. The proposed regulations also require that video footage be stored for at least 90 days. The proposed regulations require that cannabis goods be rendered unrecognizable and unusable prior to disposal and that cannabis waste be disposed of by licensed waste haulers. The proposed regulations require that retailers only sell cannabis goods between the hours of 6 a.m. and 10 p.m.

The lower-cost alternative would remove the maximum batch size for testing. The lower-cost alternative would also allow for delivery using a bicycle, motorcycle, or scooter in addition to enclosed vehicles. Like the proposed regulations, the lower-cost alternative would allow for one employee to make deliveries by themselves. The lower-cost alternative does not have any security video requirements. The lower-cost alternatives have no waste storage and disposal requirements. The lower-cost alternative also does not restrict the hours that a retailer may sell cannabis goods.

The higher-security alternative would lower the maximum batch testing size to 10 pounds. The higher-security alternative would also require the use of enclosed vehicles for delivery, but would require that at least 2 employees make deliveries together. Additionally, the higher-security alternative would require security cameras to be placed at specific locations. The higher-security alternative would require that the cameras record at least at a resolution of 1280 x 1024 at a minimum of 20 frames per second and that the footage be stored for at least 90 days. The higher-security alternative includes more stringent waste cannabis waste disposal requirements. The higher-security alternative also requires that prior to disposal, cannabis waste be disguised by blending with solid waste or soil, the waste be weighed and labeled with a bill of lading, and quar-

antined in a dedicated area on camera for 72 hours prior to disposal. Like the proposed regulations, the higher-security alternative requires that retailers only sell cannabis goods between the hours of 6 a.m. and 10 p.m.

The proposed regulations are expected to increase the total compliance cost by \$408 per pound and are expected to result in an increase in the cannabis industry's revenue by \$695 million with an increase in quantity sold by 33,765 pounds when compared to the non-regulated baseline. The lower-cost alternative is expected to increase compliance costs by \$350 per pound, or \$58 per pound less than the proposed regulations, and expected to result in an increase in the cannabis industry's revenue by \$665 million with an increase in quantity sold by 43,755 pounds when compared to the non-regulated baseline. The higher-security alternative is expected to increase compliance costs by \$744 per pound or \$336 per pound more than the proposed regulations, and is expected to result in an increase in the cannabis industry's revenue by \$641 million with a decrease in quantity sold by 57,549 pounds when compared to the non-regulated baseline.

The lower-cost alternative was not chosen because the additional safety and security obtained from the proposed regulations are important enough to warrant the additional cost. Adequately monitoring the premises of licensees, preventing theft during deliveries, and ensuring adequate and accurate testing are all very important in maintaining the safety and security of the public. Additionally, the lower-cost alternative is expected to result in smaller industry revenue than the proposed regulations. Therefore, the Bureau elected to proceed with the proposed regulations over the lower-cost alternative.

The higher-security alternative was not chosen because the higher costs of this alternative are not warranted by the marginal increase in safety and security. Having at least 2 delivery employees make deliveries does decrease the risk of theft while making deliveries. However, this decrease in theft can be achieved through other methods without having to employ an additional employee. For example, if a delivery employee ensures that the vehicle they use for deliveries has all the required security features, and the employee does not leave cannabis goods in the vehicle unattended, the risk of theft can be decreased without the need for an additional employee. The smaller maximum batch limit of 10 pounds as compared to the 50-pound limit in the proposed regulations is expected to greatly increase cost, but provide very little benefit in terms of more accurate testing. Also, the higher-security alternative is expected to have a smaller increase in industry revenue when compared to the proposed regulation. Therefore, the Bureau has elected to proceed with the proposed regulations over the higher-security alternative.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Kaila Fayne
Bureau of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95260
916-465-9120
Kaila.Fayne@dca.ca.gov

The backup contact person for these inquiries is:

CJ Croyts-Schooley
2920 Kilgore Road
Rancho Cordova, CA 95260
916-465-9029
cj.croyts-schooley@dca.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact persons listed above.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Bureau will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the Initial Statement of Reasons, the Standardized Regulatory Impact Analysis, and technical, theoretical, and/or empirical studies, reports, or documents relied upon. Copies of materials may be obtained by contacting Kaila Fayne at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding hearings and considering all timely and relevant comments received, the Bureau may adopt the proposed regulations substantially as described in this notice. If the Bureau makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Bureau adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Kaila Fayne at the address or phone number indicated above. The Bureau will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Kaila Fayne at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement or Reasons, and the text of the regulations can be accessed through the Bureau's website at www.bcc.ca.gov.

TITLE 17. DEPARTMENT OF PUBLIC HEALTH

Title 17, California Code of Regulations DPH-17-010 Cannabis Manufacturing Licensing

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulation permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The Department is conducting a 45-day written comment period during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement Overview section of this notice.

PUBLIC HEARING

The Department has scheduled public hearings to accept comments on the proposed action. Any person may present statements or arguments described in the Informative Digest. The Department requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Dates, Times and Locations:

1. **July 30, 2018, 10:00 a.m.**, 900 E. Birch Street, Valencia Room, Brea, CA 92821
2. **August 20, 2018, 10:00 a.m.**, 901 Myrtle Avenue, Eureka, CA 95501

3. **August 27, 2018, 10:00 a.m.**, 8400 Edes Avenue, Oakland, CA 94621

An agenda for the public hearing will be posted at the time and place of hearing location.

WRITTEN COMMENT PERIOD

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on August 27, 2018, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: regulations@cdph.ca.gov. It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "**DPH-17-010 Cannabis Manufacturing Licensing**" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;
3. By United States Postal Service to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814; or
4. Hand-delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All submitted comments should include the regulation package identifier, "**DPH-17-010 Cannabis Manufacturing Licensing**," author's name and mailing address.

AUTHORITY AND REFERENCE

The Department is proposing to adopt the proposed rulemaking under the authority provided in sections 26001, 26011.5, 26012, 26013, 26050.1, 26051.5, 26054.2, 26057, 26106, 26120, and 26130 of the Business and Professions Code.

The Department is proposing to add Chapter 13 to Division 1 of Title 17, California Code of Regulations in order to implement, interpret, or make specific sections 26000, 26001, 26010, 26011.5, 26012, 26013, 26030, 26031, 26050, 26050.1, 26051.5, 26053, 26054.2, 26055, 26057, 26058, 26060, 26062.5, 26067, 26070, 26106, 26120, 26121, 26130, 26131, 26132, 26133, 26134, 26135, 26140, 26150, 26160, 26161, 26180 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

These proposed regulations will implement the Department's responsibilities under the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Act).

The proposed regulations will:

1. Establish the licensing scheme, including temporary licenses, for manufacturers of cannabis products, including the requirements for applications and the individuals or entities that are required to submit applications;
2. Establish licensing fees;
3. Set minimum standards for extraction processes;
4. Set minimum standards for sanitary manufacturing practices;
5. Establish licensee responsibilities for operations, including, among others, requirements related to security, training, recordkeeping, and disposal;
6. Establish quality and safety standards for finished manufactured cannabis products; and
7. Establish packaging and labeling standards for manufactured cannabis products.

BACKGROUND

The Department is one of several state agencies with regulatory authority under the Act. Primary responsibilities for administration and enforcement of the Act are divided between:

- **California Department of Food and Agriculture (CDFA)**, which will license and regulate cannabis cultivators and oversee the state track-and-trace system.
- **Bureau of Cannabis Control (Bureau)** in the Department of Consumer Affairs, which will license and regulate retailers, distributors, testing labs, and microbusinesses.
- **California Department of Public Health (The Department)**, which will license and regulate cannabis product manufacturers. The Department is also required to develop standards for the production and labeling of all adult-use and medical cannabis products.

The Department worked closely with the Bureau and CDFA during the regulation development process to ensure consistency, when appropriate.

Legislative History of Cannabis Regulation

In 1996, voters approved the Compassionate Use Act (CUA), which allowed patients and primary caregivers to obtain and use medical marijuana as recommended by a physician, and prohibits physicians from being punished or denied any right or privilege for making a

medical marijuana recommendation to a patient. In 2003, Chapter 875, Statutes of 2003 (Senate Bill (SB) 420) established the Medical Marijuana Program (MMP), which allowed patients and primary caregivers to collectively and cooperatively cultivate medical marijuana. It also established a medical marijuana card program for patients to use on a voluntary basis.

Passed in 2015, Assembly Bill (AB) 266 established the Medical Marijuana Regulation and Safety Act (MMRSA) for the statewide licensure and regulation of medical marijuana. The primary portion of MMRSA was contained in the California Business and Professions Code sections 19300–19360. Also passed in 2015, AB 243 and SB 643, in conjunction with AB 266, established the regulatory framework to regulate the cultivation, sale, testing, manufacturing and transportation of medical cannabis in California. In 2016, several provisions of the MMRSA were amended through SB 837, including a renaming of the law to the Medical Cannabis Regulation and Safety Act (MCRSA).

Prior to the enactment of the MMRSA, California had no regulatory oversight of cannabis at the state level. Some local jurisdictions regulated cannabis cultivation or dispensaries.

In November 2016, voters passed Proposition 64, the Adult Use of Marijuana Act (AUMA). AUMA legalized the use of marijuana in California for non-medical purposes for adults aged 21 and over. AUMA was codified in separate code sections from the MCRSA. In June 2017, the Governor signed SB 94 (Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2017), a budget trailer bill to combine AUMA and MCRSA into a single, unified law known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (Act).

History of Regulatory Proposal

The Department initially released a rulemaking package in April 2017 (published April 28, 2017, in the Regulatory Notice Register) under the authority provided in MCRSA. Upon repeal of the MCRSA, the Department withdrew its rulemaking package. However, the package had already been through a 45-day public comment period and hundreds of public comments were submitted. The Department reviewed and considered all comments and made revisions to the text, as appropriate. The revised text, which also incorporated rules and requirements for adult-use cannabis, was released as emergency regulations in November 2017 and became effective December 7, 2017.

Previous to the adoption of emergency regulations, the Department of Consumer Affairs formed the state's Cannabis Advisory Committee under the Bureau of Cannabis Control. The Committee was formed under authority from Business and Professions Code Section 26014. The Committee's members were announced on

October 4, 2017, and meetings began on November 16, 2017. The Committee has met six times since the adoption of the emergency regulations and has made a series of recommendations to the agencies responsible for cannabis licensing. These recommendations come from subject-specific subcommittees, which include subcommittees on Enforcement, Microbusiness, Public Health and Youth, Retailers, Testing Laboratories, Cultivators, Distributors, Equity, Licensing Application, and Manufacturers.

Establishment of Permanent Regulations

This proposed rulemaking action will make the emergency regulations permanent. Some revisions to the emergency text have been made as a result of public comments received, as well as clarifications needed in response to questions received by the Department.

The Act, in Business and Professions Code (BPC) §26011.5, establishes protection of the public as the primary concern. The Department developed this regulatory proposal with that in mind by establishing the following:

- Safety requirements for extraction processes, especially volatile solvent extractions, to minimize potential negative effects;
- Security requirements to protect the physical safety of employees and to minimize the potential for diversion of cannabis or cannabis products;
- Standard operating procedures to protect the integrity of the cannabis product throughout the manufacturing process by preventing contamination; and
- Requirements to ensure uniform distribution of cannabinoids.

Policy Statement Overview

Problem Statement:

The Department is required to license manufacturers of cannabis products, to set manufacturing standards for cannabis products, and to set packaging and labeling standards for such products.

Objectives (Goals):

The objective of these proposed regulations is to implement the Department's responsibility under the Act to protect public health and safety through the licensing of cannabis product manufacturers, the establishment of safety standards for cannabis products, and the establishment of minimum standards for packaging and labeling of cannabis products.

Benefits:

By providing regulatory oversight to a previously unregulated industry, there are numerous benefits to the health and welfare of California residents, worker safety, and the state's environment. These include:

- consumer awareness and protections by establishing packaging and labeling requirements and setting product standards
- worker safety by setting minimum operational and labor requirements
- manufacturing and safety measures designed to protect workers and the public from accidents involving extractions

STATEMENTS OF DETERMINATIONS AND ECONOMIC ANALYSIS

In addition to the following determinations, the Department has prepared a Standardized Regulatory Impact Analysis (SRIA), which is required for major regulations by the Administrative Procedure Act. Due to its extensive length and in the interests of ease of reading for the regulated public, the SRIA has been included as a separate document in this regulatory package.

EVALUATION AS TO WHETHER THE REGULATIONS ARE INCONSISTENT OR INCOMPATIBLE WITH EXISTING STATE REGULATIONS

The Department has made a determination that these regulations are not inconsistent or incompatible with existing state regulations. As the oversight of cannabis commercial activity is a newly created state responsibility, no other state regulations are already in existence that address the same topic.

DOCUMENTS INCORPORATED BY REFERENCE

The incorporation by reference of requirements published by the United States Food and Drug Administration, the United States Department of Agriculture, and the United States Consumer Product Safety Commission in Sections 40252, 40270, 40272, 40306, and 40415 is appropriate as publishing these documents in the California Code of Regulations would be cumbersome, impractical, and unnecessary. The documents consist of numerous pages of text. The documents are easily available to the public, and will be made available on the Department's website, and can be provided to anyone upon request to the Department.

The incorporation by reference in Section 40126 of Form CDPH 9041 (11/17) is appropriate for ease of use to the regulated industry. The form is designed so that individuals can complete it electronically, then mail or email it to the Department. It is unnecessary to duplicate the information in the text of the regulation itself, as adopting the form by reference will provide clarity and ease of use.

The following documents are incorporated by reference in the proposed regulation text:

1. Form CDPH 9041 (11/17)
2. United States Food and Drug Administration (USFDA), Defect Levels Handbook: The Food Defect Action Levels, revised February 2005.
https://www.fda.gov/RegulatoryInformation/Guidances/ucm056174.htm#CH_PTA
3. USFDA, 21 Code of Federal Regulations, Part 120, subpart B, revised January 2001.
<https://www.cdph.ca.gov/Programs/CEH/DFDCS/CDPH%20Document%20Library/FDB/FoodSafetyProgram/Juice/JuiceHACCPRegulations.pdf>
4. United States Department of Agriculture (USDA), FSIS Compliance Guideline for Meat and Poultry Jerky Produced by Small and Very Small Establishments: 2014 Compliance Guideline.
<https://www.fsis.usda.gov/wps/wcm/connect/5fd4a01d-a381-4134-8b91-99617e56a90a/Compliance-Guideline-Jerky-2014.pdf?MOD=AJPERES>
5. USFDA, 21 Code of Federal Regulations, Part 700, subpart B, revised March 2016.
<https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?CFRPart=700&showFR=1&subpartNode=21:7.0.1.2.10.2>

NONDUPLICATION

These proposed regulations include many of the statutory provisions imposed by the Act. Such provisions are duplicated in these proposed regulations in order to provide clarity and ease of understanding to the reader, and to provide a single location in which members of the public and the regulated industry can find applicable requirements. These proposed regulations should not be considered duplicative of federal law, even in instances where federal law has been incorporated by reference. Due to the nature of cannabis products, specifically that they are considered by statute neither a food nor a drug, existing federal rules are not applicable to cannabis products. Specific inclusion of the federal rules in the Department's regulations is necessary for the Department to hold cannabis product manufacturers responsible for the same health and safety precautions as manufacturers of food and drug products.

MANDATED BY FEDERAL LAW OR REGULATIONS

The Department has made a determination that this proposal is not mandated by federal law or regulations.

LOCAL MANDATE

The Department has determined that this regulatory action 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.

FISCAL IMPACT ASSESSMENT

- A. Cost to Any Local Agency or School District:** None.
- B. Cost or Savings to Any State Agency:** Funding for the Department for FY 2017–18 is \$13.5 million appropriated from the Cannabis Control Fund.
- C. Other Nondiscretionary Cost or Savings Imposed on Local Agencies:** None.
- D. Cost or Savings in Federal Funding to the State:** None.

HOUSING COSTS

The Department has determined that this proposed action will not have an impact on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

The Department has determined that the proposed regulatory action would have a significant economic impact on California business enterprises and individuals that statewide is over \$50 million.

The following businesses will be affected:

- Manufacturers of cannabis extracts.
- Manufacturers of cannabis products.

The projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action include:

- (1) The following records are required to be kept:
 - a. The acquisition of cannabis, including raw cannabis or cannabis extract;
 - b. The disposition of all acquired cannabis;
 - c. Employee training activities;
 - d. Equipment calibration and maintenance; and
 - e. Operational activities.

- (2) The following compliance requirements will be imposed:
 - a. Licensees must develop standard operating procedures and adhere to minimum standards related to sanitary manufacturing practices;
 - b. Licenses must establish minimum security requirements;
 - c. Licensees must establish inventory control procedures;
 - d. Licensees must adhere to specified packaging and labeling requirements.
- (3) There are no specific reporting requirements beyond the recordkeeping requirements.

The Department has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

STATEMENT OF RESULTS OF THE STANDARDIZED REGULATORY IMPACT ANALYSIS (SRIA)

The Department has determined that the regulations affect the following as described:

- A. The creation or elimination of jobs within the State of California.** The proposal will positively impact the creation of jobs in California. See the SRIA for further details.
- B. The creation of new businesses or the elimination of existing businesses within the State of California.** The proposal will impact the creation of new businesses or result in the elimination of existing businesses within California. See the SRIA for further details.
- C. The competitive advantages or disadvantages of businesses currently doing business within the State of California.** The proposal will impact the competitive advantages or disadvantages of businesses currently doing business in California. See the SRIA for further details.

- D. The increase or decrease of investment in the state.** The proposal will impact the level of investment in the state. See the SRIA for further details.
- E. The incentive for innovation in products, materials, and processes.** The proposal will impact the incentive for innovation. See the SRIA for further details.
- F. The benefits of the regulations including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment or quality of life.** This proposal will benefit public health and safety of California residents and worker safety. See the SRIA for further details.

SUMMARY OF DEPARTMENT OF FINANCE REVIEW OF SRIA AND DEPARTMENT RESPONSE

Department of Finance Comment #1: “Manufacturers have choices about where to locate their business, and to the extent that they concentrate in jurisdictions where local permitting is cheaper, the regulatory costs will be lower. However, if this leads to more concentrated production, the demand for transportation of goods would likely be higher in these areas.”

Department Response: We agree with this statement. State taxes and fees on manufacturers are applied uniformly across the state and no distinction is made based on where the business is located. Once a manufacturer decides to operate, state taxes and fees are expected to have a minimal, if any, effect on the decision of where the manufacturer will locate. Local taxes and fees will be relevant to where businesses choose to establish themselves as well as proximity to suppliers, customers and other cannabis businesses.

The Humboldt Institute for Interdisciplinary Marijuana Research (HIIMR), an economic team based at California State University, Humboldt, and contracted by the Department to conduct research and economic analyses for this regulatory package, estimates that for manufacturers, more than one third of the total Department regulatory costs on manufacturers is due to the local component while less than two thirds is due to the state component. Local costs would total \$49.6 million or 6.4 percent of manufacturer sales in the long run. To arrive at this, HIIMR assumed a “typical” level based on local cannabis manufacturer taxes and fees, excluding very high jurisdictions. The ease with which a business is capable of moving to another local jurisdiction will affect a business’s ability to avoid high local fees. For manufacturers in particular, the incentive to locate in low-cost areas is strong because transportation costs are low relative to product value. The cannabis oil used

to make concentrates, edibles, and topicals is light in weight, and the resulting products are typically highly valued relative to their weight. Additionally, if a manufacturer wanted to relocate to a low-cost area, the moving costs are fairly modest and can be spread over a number of years. All of these factors suggest that manufacturers' location choices are highly responsive to city and county taxes and fees. Local jurisdictions that charge relatively high fees and taxes can expect to attract and retain relatively few manufacturers and receive little revenue. There has been anecdotal evidence that the revenue from cannabis fees turned out to be lower than expected in some localities.

The landscape continues to change at the local level. But a reasonable range of cost differences between jurisdictions can be assumed in order to demonstrate the importance of local fees. Suppose that a "low fee" jurisdiction has local annual fees equal to \$1,000 and taxes at 2 percent and that a "high fee" jurisdiction has local annual fees equal to \$5,000 and taxes at 10 percent. Simulations indicate that if all localities were "low fee" then total industry local costs would be 2.2 percent of manufacturer sales, while if all localities were "high fee" then total industry local costs would be 11 percent. This is a fairly large difference of almost nine percentage points in costs, which would have an impact on profits and likely cause firms to move to "low fee" jurisdictions. It is beyond the scope of the SRIA to calculate the revenue maximizing fee and tax rates, but cities are likely to find that lowering fees and tax rates attracts manufacturers, increases overall revenue, and generates additional transportation service.

DOF Comment #2: "The SRIA may be understating the amount of business creation and destruction by assuming many existing, unlicensed manufacturers become licensed. If instead they shut down and new businesses emerge, there would be more turnover."

Department Response: HIIMR has assumed that in the near future, manufacturers that seek a license (particularly for the adult-use segment) come mostly from the currently unlicensed California market. But it is certainly possible that many unlicensed manufacturers remain unlicensed or shut down, and this may be true especially for smaller-sized manufacturers. If this is the case, then adult-use manufacturers will largely be newly created firms. In the long run, the expectation is for a normal firm "turnover" of 10 percent of existing firms.

DOF Comment #3: "It is possible that input prices may fall more than the SRIA assumes. While this would hurt cultivator profits, it may help manufacturers and lead to greater expansion in the sector than estimated."

Department Response: There is uncertainty as to the magnitude of input price changes, but it is certainly

possible that cannabis flower and trim prices will fall greater than expected. As anticipated, the price of processed cannabis has continued to fall since the SRIA was submitted. In the last couple of years in California, and in states that have legalized adult-use cannabis, manufactured cannabis sales rise as a percent of cannabis sales. It is expected that this will continue into the future. HIIMR's analysis indicates that it will be easier for cannabis manufacturers to maintain stronger profit margins, given a greater ability to differentiate their products and exercise some market pricing power, as compared to those who sell flower cannabis products. In turn, if input prices are lower than expected and profits margins are large, it is expected that additional entry into the manufactured market is possible.

New regulatory feature

Subsequent to the completion of the SRIA, the licensing authorities have revised the requirements regarding "A" and "M" licenses. Cannabis businesses will only submit a single license application, rather than an application for each market. Upon licensure, businesses will be able to conduct commercial activities with all other licensees.

In HIIMR's modeling, this does not change the number of firms estimated to seek licensing. However, manufacturers who previously would have obtained two licenses will now obtain only one license. These manufacturers will also report higher sales, because sales will be the combination of adult-use and medical products. The impact on total license fees paid by the manufacturer is uncertain and depends on the distribution of firms by size and the number of new entrants, as existing medical licensees entering the adult-use market no longer need a separate license. The higher combined sales may push the manufacturer into a higher revenue tier with a higher license fee but the impact on total license fees paid depends on sales. For example, a manufacturer with \$750,000 in adult-use sales and \$750,000 in medical sales pays \$15,000 for each license, for a total of \$30,000. If the manufacturer need only purchase one combined license with sales of \$1,500,000, the license fee is \$25,000. On the other hand, a manufacturer with \$75,000 in adult-use sales and \$75,000 in medical sales pays \$2,000 for each license, for a total of \$4,000. If the manufacturer need only purchase one combined license with sales of \$150,000, the license fee is \$7,500.

This regulatory change will therefore have an ambiguous effect on total licensing costs for manufacturers that will be driven by the distribution of manufacturers in each license tier. The shape of this distribution will become more clear within the first year or two of licensing.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Department are estimated to be about \$50,000. See the attached SRIA for further details.

BUSINESS REPORTING REQUIREMENT

In order to protect public health and safety, the regulations establish minimum requirements for record-keeping by cannabis product manufacturers. Business and Professions Code section 26160 requires licensees to keep accurate records of commercial cannabis activity, and Business and Professions Code section 26067 requires the use of a track-and-trace program to track the movement of cannabis items through the distribution chain. It is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulatory action may affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Several elements of the proposed rulemaking package have alternatives that were considered by the Department prior to the commencement of this rulemaking:

1. Background investigations for all employees. The Department considered requiring that all persons employed by a manufacturing operation undergo a Live Scan criminal history check, as owners are required to do. This alternative was rejected as too costly for both the industry and the Department, with no corresponding increase in public health protection.

2. Product imprints. The Department considered mandating that a warning symbol be imprinted directly on edible products. Many infused products don't have a surface that is conducive to printing, stamping, or marking. The Department found no evidence that product imprints reduce exposure by minors.
3. Mandatory identification badges for cannabis industry employees. The Department decided not to mandate the use of identification badges. Identification badges can pose a risk of contamination in the manufacturing process. Other provisions of the regulation require jewelry and other items to be secured or removed so that they cannot dangle or fall into ingredients or products. Mandating the issuance of identification badges would run contrary to this provision. Nothing would prohibit a licensee from issuing identification badges if the licensee determines the use of such badges does not pose a risk of contamination and is appropriate to ensure the security of the premises.

CONTACT PERSON

Inquiries regarding the proposed regulatory action can be directed to Linda M. Cortez, with the Office of Regulations at (916) 440-7807, or the designated back-up contact, Dawn Basicano at (916) 440-7367.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file).

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 558-1710 (or the California Relay Service at 711), send an email to regulations@cdph.ca.gov, or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action

will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FINAL STATEMENT OF REASONS

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

INTERNET ACCESS

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.cdph.ca.gov and by clicking on the following: Programs, Office of Regulations, and the Proposed Regulations link.

TITLE 17. DEPARTMENT OF PUBLIC HEALTH

Requirements for the Use of X-Ray in Mammography (DPH-10-005)

NOTICE IS HEREBY GIVEN that the California Department of Public Health (Department) proposes to amend Sections 30315.05 through 30320.90 in Division 1, Chapter 5, Subchapter 4, Group 3, Article 4.5. in title 17 of the California Code of Regulations (17 CCR). This notice of proposed rulemaking commences a rulemaking to make the regulations permanent after considering all comments, objections, and recommendations regarding the regulation.

PUBLIC PROCEEDINGS

The Department is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or, contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement overview section of this notice.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action described in this notice to:

California Department of Public Health
Office of Regulations
1415 L Street, Suite 500
Sacramento, CA 95814

Comments may be submitted by facsimile (FAX) at (916) 636-6220 or by e-mail to Regulations@cdph.ca.gov. The written comment period closes at **5:00 p.m. on August 27, 2018**. The Department will consider only comments received at the Department by that time. **Please include the package Identifier DPH-10-005.**

Written comments should include the author's contact information so that the Department can provide notification of any further changes to the regulation proposal.

PUBLIC HEARING

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

The Department will consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

ASSISTIVE SERVICES

The Department can provide assistive services such as the conversion of written materials into Braille, large print, audiocassette, and computer disk. For public hearings, assistive services can include sign-language interpretation, real-time captioning, note takes, reading or writing assistance. To request these assistive services, please call (916) 558-1710 (or California Relay at 711 or 1-800-735-2929), email Regulations@cdph.ca.gov or write to the Office of Regulations at the address noted above. Note: The range of assistive services available may be limited if requests are received less than 10 business days prior to a public hearing.

AUTHORITY AND REFERENCE

Authority: Health and Safety Code sections 100275, 114975, 115000, 115060, 131200

Reference: Health and Safety Code sections 101050, 115060, 115100, 115115, 115145, 115165, 123145, 131050, 131051, 131052, 151050

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Problem Statement: Currently, Department regulations continue to follow the federal MQSA accreditation process for certification of mammography service providers by FDA. These regulations were adopted when the Department was an FDA-approved Accreditation Body (AB) and performed those federal accreditation functions. However, the Department is no longer AB and no longer performs those federal functions. For a facility to provide, or continue to provide, mammography services, it must apply for, or renew, federal certification following the federal accreditation process, in addition to completing the state's process, under the California Mammography Quality Assurance Act (MQAA), for certifying X-ray machines used for mammography. Because the Department's regulations were developed for carrying out the federal accreditation process, the regulations are silent in how the state's MQAA machine certification process functions. Due to the differences between the federal and state processes and the regulatory silence regarding the state's machine certification process, mammography providers become confused resulting in diverting facility staff away from providing patient procedures, to regulatory issues, which in turn could reduce access to mammography services. As it pertains to interventional mammography that is not subject to the federal MQSA, current requirements are seldom appropriate, creating regulatory and enforcement confusion and inconsistencies that could also reduce access to these procedures. By amending the current regulations, facilities can focus on providing accessible and consistent patient care rather than on regulatory issues.

Anticipated Objectives and Benefits of the Proposed Regulation:

Objectives: Broad objectives of this proposed regulatory action are to:

- Reduce possible barriers to consistent and accessible mammography services by repealing the facility accreditation processes previously adopted for federal MQSA purposes.
- Clarify and emphasize the approval processes specific to the MQAA by restructuring existing regulations.
- Ensure standards for performance of interventional mammography are appropriate and consistent by clearly addressing it in regulation.

- Ensure and maintain public health and safety by removing regulatory barriers.
- Update existing regulations for clarity and consistency with current federal and state legislation.

Benefits: Anticipated benefits from this proposed regulatory action are:

- Increased patient care consistency between all mammography facilities.
- Increased access to mammography services.
- Increased clarity of approval processes for new providers of screening, diagnostic, and interventional mammography.
- Continued protection of the public health and safety.
- Updated, clear, and consistent regulations.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Department evaluated this proposal to determine whether the proposed regulations are inconsistent or incompatible with existing state regulations. This evaluation included a review of both the Department's existing general regulations, and those regulations specific to the regulatory control of radioactive material. Some inconsistencies in those specific regulations were found and are addressed in this proposal. An Internet search of other state agency regulations was also performed and it was determined that no other state regulations addressed the same subject matter and that this proposal was not inconsistent or incompatible with other state regulations. Therefore, the Department has determined that this proposal, if adopted, would not be inconsistent or incompatible with existing state regulations.

AUTHORITY AND BACKGROUND

The Radiation Control Law (RCL), Health and Safety Code (H&S Code), sections 114960 et seq., authorizes the Department to promulgate regulations regarding sources of ionizing radiation for the protection of the health and safety of the public and radiation workers. The Radiologic Technology Act (RT Act), H&S Code 27(f)¹, authorizes the Department to promulgate regulations regarding certification and permitting of individuals who use X-rays on human beings for diagnostic or therapeutic purposes. The Mammography Quality Assurance Act of 1992 (MQAA), Statutes 1992, chapter 870, requires the Department to adopt registration and certification requirements for mammography equipment and individuals performing

¹ This short format "H&S Code 27" for a given Health and Safety Code section will be used throughout this document for brevity. For example, "H&S Code 27" means California Health and Safety Code section 27.

mammography. (H&S Code 115060(e) and 106965.) The regulations that implement, interpret and make specific the provisions of the RCL pertaining to MQAA (registration and certification of mammography equipment) are in 17 CCR 30315.10 through 30320.90², hereinafter referred to as “Article 4.5”. The regulations that implement, interpret and make specific the provisions of the RT Act pertaining to MQAA (certification of persons who apply X-ray to humans) are in 17 CCR, Division 1, Chapter 5, Subchapter 4.5 (commencing at section 30400). This proposal makes no changes to the RT Act regulations.

The governor of this state signed into law the Mammography Quality Assurance Act of 1992 (Stats. 1992, Ch. 870, § 2 (AB 2841)), which required individuals that perform mammography be certified pursuant to the RT Act, incorporated the May 1990 version of Appendix B of the “Rules of Good Practice for Supervision and Operation of Mammographic X-ray Equipment” (Rules of Good Practice) (Reference 1), as approved by the Radiologic Technology Certification Committee (RTCC), until registration and certification regulations for mammography equipment were adopted, and, among other requirements, specified financial penalties for violations of the RT Act and RCL. RTCC is the Department’s consultant regarding the RT Act as specified in H&S Code 114855.

In 1993, the President of the United States signed into law the Mammography Quality Standards Act of 1992 (MQSA) [Pub.L. No. 102–539]. The FDA issued interim regulations (58 Fed. Reg. 67558 (Dec. 21, 1993), amended by 59 Fed. Reg. 49808 (Sep. 30, 1994)) to implement MQSA. Those regulations established congressionally mandated uniform, national quality standards for mammography. MQSA requires that, to provide mammography services after October 1, 1994, persons providing such services are accredited by an approved accreditation organization and obtain a certificate from the Secretary of Health and Human Services. MQSA was reauthorized as the Mammography Quality Reauthorization Standards Act of 1998 [Pub.L. No. 105–248]. The FDA has issued final regulations (62 Fed. Reg. 55852 (Oct. 28, 1997), as amended by 63 Fed. Reg. 56555 (Oct. 22, 1998) and 64 Fed. Reg. 32404 (June 17, 1999)) that supersede and clarify the interim regulations. The final regulations are codified in Title 21, Code of Federal Regulations, Part 900 (21 CFR 900).

² The short format “17 CCR 30315.10” for a given-regulation found within title 17, California Code of Regulations will be used throughout this document for brevity.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Local Mandate: The Department has determined that this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs that require state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Mandated by Federal Law or Regulations: Not applicable.

Other Statutory Requirements: None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: May result in minor staff time savings.

Cost or savings to any state agency: May result in minor staff time savings.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private person or business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statewide adverse economic impact directly affecting businesses and individuals: The Department has determined that the proposed regulatory action would have no significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

Significant effect on housing costs: No impact.

Business Reporting Requirement: No impact

Small Business Determination: The Department has determined that there would be an effect on small businesses subject to these regulations because small

businesses are currently required to comply with the regulations.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Department analyzed whether and to what extent this proposal affects the following:

1. The creation or elimination of jobs within the State of California.

This proposal is unlikely to create or eliminate jobs as it does not create or repeal programs or processes.

2. The creation of new businesses or the elimination of existing businesses within the State of California.

This proposal is unlikely to create new businesses or eliminate existing businesses as it does not create or repeal programs or processes.

3. The expansion of businesses currently doing business within the State of California.

This proposal will not result in expansion of businesses as it does not create or repeal programs or processes.

4. The benefits of the regulation to the health and welfare of California residents, worker safety, and the State's environment.

This proposal increases benefits to residents by certifying only those radiation machines that are capable of providing quality mammography for the detection of breast cancer. This proposal increases benefits to worker safety by clarifying QA tests and responsible persons over such tests. This proposal would not significantly affect the state's environment because the radiation energy emitted from the use of X-ray equipment dissipates to normal atomic structures without environmental contamination.

CONTACT PERSONS

Inquiries concerning the subject matter in this notice may be directed to Truyen Nguyen of the Department's Radiologic Health Branch, at (916) 445-9570. For inquiries related to the regulatory process, to Veronica Rollin, Office of Regulations, at (916) 445-2529.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and all information on which this rulemaking is based. Copies may be obtained by contacting the Office of Regulations at Regulations@cdph.ca.gov or by phone at (916) 558-1710.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the Office of Regulations at Regulations@cdph.ca.gov. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout are available via the Internet by clicking [here \(www.cdph.ca.gov\)](http://www.cdph.ca.gov).

TITLE 18. OFFICE OF TAX APPEALS

The Office of Tax Appeals Proposes to Adopt California Code of Regulations, Title 18, Division 4.1, *Office of Tax Appeals — Rules for Tax Appeals*; and Proposes to Repeal California Code of Regulations, Title 18, Division 2.1, Chapter 4, *Appeals from Actions of the Franchise Tax Board*; and Proposes to Adopt Amendments to California Code of Regulations, Title 18, Division 2.1, Section 5510, *General Application of Chapter 5*, and Section 5600, *Definitions, Board Hearing Procedures; Taxes Affected by This Chapter*.

NOTICE IS HEREBY GIVEN that the Office of Tax Appeals (OTA) proposes to adopt California Code of Regulations, title 18, division 4.1, *Office of Tax Appeals — Rules for Tax Appeals*, pursuant to the authority vested in it pursuant to Government Code sections 15679 and 15679.5. The proposed Office of Tax Appeals — Rules for Tax Appeals implement, interpret, and make specific the statutory provisions of the Taxpayer Transparency and Fairness Act of 2017 (Stats. 2017, Ch. 16) regarding the rules for appeals before the Office of Tax Appeals (OTA), a new agency created by this Act. The proposed regulations provide guidance to taxpayers, state taxing authorities, and the regulated public regarding the rules governing appeals before OTA, as explained in more detail below.

OTA also proposes to repeal California Code of Regulations, title 18, Division 2.1, Chapter 4, *Appeals from Actions of the Franchise Tax Board*, pursuant to the authority vested in it pursuant to Government Code sections 15679 and 15679.5. OTA further proposes to adopt amendments to California Code of Regulations, Title 18, Sections 5510, *General Application of Chapter 5*, and 5600, *Definitions, Board Hearing Procedures; Taxes Affected by This Chapter*, pursuant to the authority vested in it pursuant to Government Code sections 15679 and 15679.5.

Previously, on or around January 1, 2018, OTA promulgated under Division 4 of Title 18 of the California Code of Regulations, as an Emergency Regulation, the *Office of Tax Appeals Rules for Tax Appeals* (hereinafter OTA's Emergency Rules for Tax Appeals). (Cal. Code Regs. tit. 18, §§ 30100–30832.) If the proposed regulatory action is adopted; OTA intends to let OTA's Emergency Rules for Tax Appeals expire on December 31, 2018. OTA further intends the proposed regulatory action to become effective on January 1, 2019, so that

there is a seamless transition from OTA's Emergency Rules for Tax Appeals (under Division 4) to OTA's proposed permanent Rules for Tax Appeals (under Division 4.1). In summary, the proposed regulatory action would replace OTA's Emergency Rules for Tax Appeals as the governing procedure for the conduct of appeals before OTA.

A comment period has been established commencing on July 13, 2018, and closing on August 27, 2018. All inquiries should be directed to the contact person listed below.

PUBLIC HEARING

OTA has not scheduled a public hearing on this proposed action. However, OTA will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

AUTHORITIES

Office of Tax Appeals Rules for Tax Appeals

Proposed Regulations 30000, 30214, 30214.5, 30215: Government Code sections 15679, 15679.5.

Proposed Regulation 30101: Government Code section 15679; Health and Safety Code section 25215.74; Revenue and Taxation Code sections 20, 7051, 8251, 9251, 13170, 30451, 32451, 34013, 38701, 40171, 41128, 42020, 42103, 43501, 45851, 46601, 50152, 55301 and 60601.

Proposed Regulations 30102, 30103, 30104, 30105, 30106, 30201, 30202, 30203, 30204, 30205, 30206, 30207, 30208, 30209, 30210, 30211, 30211.5, 30212, 30213, 30216, 30217, 30218, 30219, 30220, 30221, 30222, 30223, 30224, 30301, 30302, 30303, 30304, 30310, 30311, 30312, 30313, 30314, 30315, 30316, 30401, 30402, 30403, 30404, 30405, 30410, 30411, 30412, 30413, 30420, 30421, 30430, 30431, 30432, 30433, 30501, 30502, 30503, 30504, 30505, 30601, 30602, 30603, 30604, 30605, 30606, 30607, 30701, 30702, 30703, 30704, 30705, 30706, and 30707: Government Code section 15679.

Board of Equalization Rules for Tax Appeals.

Repeal of Chapter 4, *Appeals From Actions of the Franchise Tax Board* (Regulations 5410 to 5465): Government Code sections 15679 and 15679.5.

Proposed Amendments to Regulations 5510 and 5600: Government Code sections 15679 and 15679.5.

REFERENCES

Office of Tax Appeals Rules for Tax Appeals

Proposed Regulation 30000: Government Code sections 15670, 15671, 15672, 15679, 15679.5.

Proposed Regulation 30101: Government Code section 15672; Health and Safety Code section 25215.45; Revenue and Taxation Code sections 6561, 6814, 6902, 7710, 8128, 8851, 9152, 12428, 12978, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30261, 30362, 32301, 32402, 38441, 38602, 40091, 40112, 41033, 41085, 41101, 43301, 43452, 45301, 45652, 46351, 46502, 50114, 50140, 55081, 55222, 60350 and 60522.

Proposed Regulation 30102: Government Code sections 11425.10, 15670–15672, 15676, and 15679.5.

Proposed Regulation 30103: Government Code sections 15570.54, 15600, 15672, 15674; Revenue and Taxation Code sections 20, 18533, 19006, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19322.1, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

Proposed Regulation 30104: Article III, section 3.5 of the California Constitution; Government Code sections 15570.54, 15600, 15672, and 15674; Revenue and Taxation Code section 19570.

Proposed Regulation 30105: Government Code sections 15570.54, 15600, 15672, and 15674; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

Proposed Regulation 30106: Government Code sections 15570.54, 15600, 15672, and 15674; Revenue and Taxation Code section 20.

Proposed Regulation 30201: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections, 15672, and 15674; Revenue and Taxation Code sections 20, 6561, 6561.5, 7710.5, 8851.5, 19045, 19047, 19048, 19085, 19087, 19104, 19331, 19333, 19334, 19345, 19346, 20645, 30261.5, 38442, 40092, 41086, 41091, 43302, 45302, 46352, 50115, 55082, and 60351.

Proposed Regulation 30202: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15672, and 15674; Revenue and Taxation Code sections 20, 6561, 6561.5, 6566, 7710.5, 8851.5, 19045, 19047, 19048, 19085, 19087, 19104, 19331, 19333, 19334, 19345, 19346, 20645, 30261.5, 38442, 40092, 41086, 41091, 43302, 45302, 46352, 50115, 55082, and 60351.

Proposed Regulation 30203: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30262, 38443, 40093,

41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30204: Business and Professions Code sections 22973.1, 22977.2, and 22979; Civil Code of Procedure 1013; Government Code sections 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulations 30205 and 30206: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30207: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6539, 6562, 6566, 7700.5, 7707, 7711, 8828.5, 8829, 8852, 8855, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19343, 19346, 20645, 30244, 30262, 30265, 38434, 38443, 38447, 40093, 40097, 41087, 41091, 43303, 43307, 45303, 45307, 46353, 46357, 50116, 50120, 55087, 55083, 60352, and 60340.

Proposed Regulation 30208: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11415.40, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 7700.5, 7711, 8828.5, 8852, 18533, 19043.5, 19045, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19334, 19335, 19343, 19345, 19346, 20645, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30209: Business and Professions Code sections 22970.2, 22973.1, 22977.2, and 22979; Government Code sections 15606, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538.5, 6562, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 20645, and 34013.

Proposed Regulation 30210: Government Code sections 11445.10, 11445.30, 11445.40, 11470.10, 11511.5, 15679.5.

Proposed Regulation 30211: Government Code sections 15676 and 15678; Revenue and Taxation Code section 19523.5.

Proposed Regulation 30211.5: Evidence Code sections 912, 954, 980; Revenue and Taxation Code sections 7099.1, 21028.

Proposed Regulation 30212: Government Code sections 11507.3, 15679.5.

Proposed Regulation 30213: Government Code sections 11515, 11523; Evidence Code sections 451, 452.

Proposed Regulations 30214 and 30214.5: Government Code sections 11511, 11512, 11513, 11414, 11450.05 to 11450.50, and 15670.

Proposed Regulation 30215: Government Code sections 11413.10 to 11413.80, and 15670.

Proposed Regulation 30216: Government Code sections 11513, 15674 and 15679.5.

Proposed Regulation 30217: Government Code sections 15606, 15670, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 19714, and 20645.

Proposed Regulations 30218 and 30219: California Constitution article VI, section 18, subdivision (m); Government Code sections 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, 15606, 15670, 15672, 15674, 15676, and 15679.

Proposed Regulation 30220: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 6562, 7711, 8852, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30221: Government Code section 15672; Revenue and Taxation Code sections 7093.5, 9271, 30459.1, 40211, 41171, 43522, 45867, 46622, 50156.11, 55332, and 60636.

Proposed Regulations 30222, 30223, 30224: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 6562, 7711, 8852, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30301: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6538, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

Proposed Regulations 30302, 30303, 30304: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, and 20645.

Proposed Regulation 30310: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6456, 7202, 7203, 7261, 7262, 7270, 7657.5, 8880, 18533, 19006, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30285, 32258, 38454.5, 40105, 41099, 43159.1, 43159.2, 45158, 46159, 50112.6, 55045.1 and 60210.5.

Proposed Regulations 30311, 30312, 30313, 30314, and 30315: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345, and 19346.

Proposed Regulation 30316: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 18533, 19006, 19045, 19047, 19048, 19084, 19085, 19087, 19324, 19331, 19333, 19334, 19335, 19343, 19345, and 19346.

Proposed Regulation 30401: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30402: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 11445.30, 11509, 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30403: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11435.15, 11435.20, 11435.25, 11435.55, 11435.60, 11440.20, 11445.30, 11509, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30404: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11415.40, 11440.20, 11445.30, 11509, 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852,

18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 3303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30405: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11440.20, 11445.30, 11509, 15570.54, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 6562, 7711, 8852, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19331, 19333, 19343, 19345, 30262, 38443, 40093, 41087, 43303, 45303, 46353, 50116, 55083, and 60352.

Proposed Regulation 30410: Government Code sections 11513 and 11528.

Proposed Regulation 30411: California Constitution article VI, section 18, subdivision (m); Government Code sections 11425.30, 11425.40, 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, 15670, 15672, 15674, and 15679.5.

Proposed Regulation 30412: California Constitution article VI, section 18, subdivision (m); Government Code sections 11425.50, 11425.60, 11475, 11475.10, 11475.20, 11475.30, 11475.40, 11475.50, 11475.60, 11475.70, 15670, 15672, 15674, 15679, and 15679.5; Revenue and Taxation Code sections 20, 19047, 19087, 19331, 19333, 19335, and 19345.

Proposed Regulation 30413: Government Code sections 11425.10, 11425.50, and 15672; Revenue and Taxation Code sections 20, 19047, 19333, and 19345.

Proposed Regulation 30420: Government Code sections 11445.30, 11509, 11511, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 19047, 19087, 19333, and 19345.

Proposed Regulation 30421: Government Code sections 11445.30, 11509, 11511.5, 11512, 15672, 15674, and 15679; Revenue and Taxation Code sections 20, 19047, 19087, 19333, and 19345.

Proposed Regulation 30430: Government Code sections 6254, 11124.1, 11425.10, 11425.20, 15619, 15674, and 15675; Revenue and Taxation Code sections 20, 7081, 19542, 19545, and 20645.

Proposed Regulations 30431 and 30432: Government Code sections 6254, 11124.1, 11425.10, 11425.20, 15619, 15674, 15675, and 15676.5; Revenue and Taxation Code sections 20, 7081, 19542, 19545, and 20645.

Proposed Regulation 30433: 15676.5, 15679. Reference: Government Code sections 6254, 11124.1, 11425.20, 15619, 15674, and 15676.5; Revenue and Taxation Code sections 20, 7081, 19542, 19545, and 20645.

Proposed Regulation 30501: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 15570.54,

15672, 15674, 15675, and 15679; Revenue and Taxation Code sections 20, 40, 8852, 8853, 18533, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulation 30502: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 11425.60, 15570.54, 15672, 15674, 15675, and 15679; Revenue and Taxation Code sections 20, 40, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulation 30503: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 11425.60, 15570.54, 15672, 15674, 15675, and 15679; Reference: Revenue and Taxation Code sections 20, 40, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulation 30504: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 11425.60, 15570.54, 15672, 15674, 15675, and 15679; Revenue and Taxation Code sections 20, 40, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulation 30505: Business and Professions Code sections 22973.1, 22977.2, and 22979; Government Code sections 11425.10, 11425.50, 15570.54, 15672, 15674, 15675, and 15679; Reference: Revenue and Taxation Code sections 20, 40, 8852, 8853, 18533, 19043.5, 19045, 19047, 19048, 19084, 19085, 19087, 19104, 19324, 19331, 19333, 19334, 19335, 19343, 19345, 19346, 30263, 38445, 40095, 41089, 43305, 45305, 46355, 50118, 55085, and 60354.

Proposed Regulations 30601, 30602, 30603, 30604, 30605, 30606, and 30607: Government Code section 15672; Revenue and Taxation Code sections 19048, 19334, and 19346.

Proposed Regulation 30701: Government Code sections 15670, 15674, and 15676; Revenue and Taxation Code sections 20, 7091, 7156, 8269, 9269, 18533, 19043.5, 19047, 19085, 19104, 19333, 19345, 20645, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30702: Government Code sections 15670, 15674, 15676; Revenue and Taxation Code sections 20, 7156, 18533, 19043.5, 19047, 19085,

19104, 19324, 19331, 19333, 19334, 19343, 19345, 19346, 20645, and 21013.

Proposed Regulation 30703: Government Code sections 15670, 15674, 15676; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30704: Government Code sections 15672 and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 19717, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30705: Government Code sections 11440.20, 15670, 15674, and 15676; Revenue and Taxation Code sections 20, 7091, 7156, 8269, 9269, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30706: Reference: Government Code sections 11440.20, 15670, 15674, and 15676; Revenue and Taxation Code sections 20, 7091, 7156, 8269, 9269, 18533, 19047, 19085, 19104, 19333, 19345, 20645, 21013, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Proposed Regulation 30707: Government Code sections 11440.20, and 15674; Revenue and Taxation Code sections 7091, 7156, 8269, 9269, 30458.9, 38708, 40209, 41169, 43520, 45865, 46620, 50156.9, 55330, and 60630.

Board of Equalization Rules for Tax Appeals

Repeal of Chapter 4, *Appeals from Actions of the Franchise Tax Board*: Government Code sections 15600, 15672 and 15674; Revenue and Taxation Code sections 20 and 20.5.

Proposed Amendments to Regulations 5510 and 5600: Government Code sections 15600, 15672 and 15674; Revenue and Taxation Code sections 20 and 20.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5(a)(3)

Summary of Existing Laws and Regulations

The Taxpayer Transparency and Fairness Act of 2017 (Stats. 2017, Ch. 16), as amended by Assembly Bill 131 (Stats. 2017, Ch. 252), collectively referred to hereinafter as “the Act,” created OTA on July 1, 2017. The Act further transferred to OTA the various duties, powers, and responsibilities of the State Board of Equalization (hereinafter “board” or “BOE”) necessary or appropriate to conduct appeals hearings, except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution.

Therefore, under the Act, BOE’s constitutional duties, powers, and responsibilities are now limited to the following five items:

- (1) The review, equalization, or adjustment of a property tax assessment pursuant to Section 11 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that review, equalization, or adjustment.
- (2) The measurement of county assessment levels and adjustment of secured local assessment rolls pursuant to Section 18 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that measurement and adjustment.
- (3) The assessment of pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties and property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity pursuant to Section 19 of Article XIII of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that assessment.
- (4) The assessment of taxes on insurers pursuant to Section 28 of Article XIII of the California Constitution and any duty, power, or responsibility conferred by statute on the board in connection with that assessment.
- (5) The assessment and collection of excise taxes on the manufacture, importation, and sale of alcoholic beverages in this state pursuant to Section 22 of Article XX of the California Constitution, and any duty, power, or responsibility conferred by statute on the board in connection with that assessment and collection.

(Gov. Code, §15600, subd. (a).) Effective July 1, 2017, the newly created agency “The California Department of Tax and Fee Administration” (CDTFA) is the successor to, and is vested with, all of the duties, powers, and responsibilities of BOE with respect to the administration of taxes and fees, except those five areas of constitutional duties, powers, and responsibilities described above. (Gov. Code, §15570.22.)

Furthermore, as of January 1, 2018, OTA is the successor to, and is vested with all the duties, powers, and responsibilities of the BOE necessary or appropriate to conduct appeals hearings with respect to tax and fee programs that were previously the duties, powers, or responsibilities of BOE. (Gov. Code, § 15672.) This includes hearing appeals of tax and fee programs administered by the Franchise Tax Board (FTB) and CDTFA.

For purposes of the Act, OTA has jurisdiction to hear the following appeals:

- (1) A petition, including, but not limited to, a petition for redetermination, petition for reassessment, petition for reconsideration of successor liability, or petition for rehearing.
- (2) Administrative protest with respect to a tax or fee administered by the California Department of Tax and Fee Administration.
- (3) Claim, including a claim for refund with respect to a tax or fee administered by the California Department of Tax and Fee Administration.
- (4) Appeal from an action of the Franchise Tax Board filed under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code or Chapter 1 (commencing with Section 20501) and Chapter 4 (commencing with Section 20641) of Part 10.5 of Division 2 of the Revenue and Taxation Code.
- (5) Application, including, but not limited to, an application for administrative hearing.
- (6) Any other item that may be scheduled for a hearing, including, but not limited to, requests for relief of taxes, fees, interest, or penalties.

(Gov. Code, §15671.) The Act does not specifically list the tax and fee programs subject to appeal before OTA, but it would include all those programs administered by CDTFA.

Beginning January 1, 2018, tax appeals panels consisting of three administrative law judges (ALJs) shall conduct all appeals hearings for those duties, powers, and responsibilities transferred to OTA. (Gov. Code, §15674.) Pursuant to the Act, a person may be represented on an appeal by any authorized person or persons over the age of 18. (Gov. Code, §15676.) OTA must establish a process under which a person filing an appeal may request a closed hearing, which includes objective criteria for determining whether to grant such a request. (Gov. Code, §15676.5.) To the extent not inconsistent with the Act, OTA must conduct all appeals hearings and proceedings pursuant to the Administrative Procedure Act, which is a reference specifically to Title 2, Division 3, Part 1, Chapter 4.5, *Administrative Adjudication: General Provisions*, and/or Chapter 5, *Administrative Adjudication: Formal Hearings*, of the Government Code, which are more commonly referred to as the Administrative Procedure Act (the Administrative Procedure Act itself encompasses Chapters 3.5, 4, 4.5 and 5 under Title 2, Division 3, Part 1 of the Government Code).

Chapters 4.5 and 5 of the Administrative Procedure Act govern the procedure for administrative appeals, but are specifically written for those administrative appeals which are conducted before the Office of Admin-

istrative Hearings, and thus are not specifically applicable to OTA. (Gov. Code, §15679.5, subd. (a).)

Therefore, the Act directs OTA to adopt “regulations as necessary or appropriate to carry out the purposes” of the Act, and further specifies that OTA is responsible to amend, repeal, or add to the regulations contained in Division 2.1 of Title 18 of the California Code of Regulations, as necessary or appropriate for OTA to govern hearings and proceedings. (Gov. Code, §§ 15679, subd. (a); 15679.5, subd. (b).) Division 2.1 contains the Rules for Tax Appeals of the State Board of Equalization, the predecessor to OTA.

As relevant, Chapter 4 of BOE’s Rules for Tax Appeals (Cal. Code Regs, tit. 18, §§ 5410–5465) governs Appeals from Actions of the Franchise Tax Board. These rules specifically apply to appeals before BOE, thus, for example, Regulation 5410 provides for methods of delivery of written documents and correspondence, and specifies that these be delivered to BOE at a physical address and email address belonging to BOE. Throughout, the regulations reference procedures applicable to units within BOE, such as the Board Proceedings Division, the Chief of Board Proceedings Division, the role of the Chief Counsel, the Appeals Division, the Board Chair, and the board, which are specific to that agency. Nevertheless, effective January 1, 2018, the Act prohibits BOE from hearing or deciding any appeals from actions of FTB and provides that “on or after January 1, 2018, the [BOE] shall not conduct appeals or take any other action with respect to an appeal,” except with respect to those five constitutional duties described above. (Gov. Code, §§ 15674(b).) Considering that BOE no longer has jurisdiction and authority to hear appeals from FTB, this entire chapter needs to be deleted to avoid confusion among the regulated public considering the agency to which to submit a tax appeal.

Chapter 5 of BOE’s rules for tax appeals governs the general procedures for board action, and discusses those procedures, such as the conduct of a board meeting, voting, quorums, presentation of evidence, communication with board members, etc. (Cal. Code Regs., tit. 18, §§ 5510–5576.) Regulation 5510 specifies those tax and fee programs to which the chapter applies, and specifically includes tax and fee programs which were transferred away from the BOE and over which BOE no longer has authority and jurisdiction to hear appeals pursuant to Government Code section 15674.

Chapter 6 of BOE’s Rules for Tax Appeals governs taxpayer bill of rights reimbursement claims for actions before the board. Regulation 5600 specifically provides that the claims procedure applies to those tax and fee programs which were transferred away from the BOE and over which BOE no longer has authority and jurisdiction to hear appeals pursuant to Government Code section 15674.

Furthermore, BOE's Rules for Tax Appeals are specifically written to apply to a five-member voting board which is exempt from complying with Chapters 4.5 and 5 of the Administrative Procedure Act (governing administrative appeals), but which is subject to the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132), which requires BOE to hold public meetings. Thus, the board's Rules for Tax Appeals do not establish a procedure for a closed hearing. On the other hand, OTA is not subject to the Bagley-Keene Open Meeting Act, but is required to follow Chapters 4.5 and 5 of the Administrative Procedure Act. Furthermore, OTA is statutorily required under the act to promulgate a process to allow for hearings which are closed to the public, which is prohibited under the Bagley-Keene Open Meeting Act. (Gov. Code, § 15676.5).

Additionally, appeals of taxes and fees previously administered by BOE resulted in an internal review to the board. Under the Act, appeals of those same taxes and fees are now administered by CDTFA, which results in an appeal to a third-party agency (OTA). Therefore, there are problems with applying the board's Rules for Tax Appeals to appeals before OTA. Specifically, the procedures followed by BOE, which do not take into account a third-party review structure, are incompatible with requirements of the Act. As one example, under the board's Rules for Tax Appeals, the Franchise Tax Board may file a petition for rehearing with the Chief of Board Proceedings with respect to a tax or fee administered by FTB. (Cal. Code Regs, tit. 18, § 5461.) Under the Act, the board's duties with respect to the administration of taxes and fees previously administered by the board (except for the five areas described above) are now transferred to the jurisdiction of CDTFA, which is a separate entity from OTA. The board's Rules for Tax Appeals do not establish a procedure for CDTFA to file a petition for rehearing with OTA with respect to a tax or fee now administered by CDTFA, even though the board has no jurisdiction over these programs. (See Cal. Code Regs, tit. 18, § 5561.) This is inconsistent with the Act, which requires that OTA conduct appeals including petitions for rehearing from tax and fee programs administered by the CDTFA (non-constitutional functions of the board, including the administration of all tax and fee programs currently administered by CDTFA, were transferred from the board to CDTFA on July 1, 2017). (Rev. and Tax Code, § 15671.)

The Act further provides that Chapter 3.5 of Part 1 of the Government Code, *Administrative Regulations and Rulemakings* (more generally referred to as the Administrative Procedure Act) "shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the office [(OTA)]." (Gov. Code, §15679, subd. (b).)

At the time the Act was passed on July 1, 2017, there were no rules or regulations which were specifically written to apply to an appeal before OTA. Therefore, on or around January 1, 2018, OTA promulgated emergency regulations, the *Office of Tax Appeals Rules for Tax Appeals*. (Cal. Code Regs, tit. 18, §§ 30100- 30832.) OTA's Emergency Rules for Tax Appeals are expected to expire on or around December 31, 2018.

There are issues with the expiring Emergency Rules for Tax Appeals, which were drafted by the Office of Administrative Hearings and CDTFA, on behalf of OTA, because the emergency regulations were hastily drafted to meet a January 1, 2018 deadline and do not meet the needs of OTA to carry out the duties, powers, and responsibilities imposed by the Act. Specifically, there are issues because both the board's Rules for Tax Appeals, and OTA's Emergency Rules for Tax Appeals, bifurcate, separate, and apply different standards and rules of practice depending on the type of tax or fee being appealed (e.g., Franchise and Income Tax, Property Tax, or Business Taxes). The procedures set forth in the Emergency Rules for Tax Appeals, applying different standards to different taxpayers, creates confusion, uncertainty and inequality, and has generated concern among the regulated public. This disparate system was drafted based on the prior legal framework in place prior to the creation of OTA, because under prior law the board heard appeals from the Franchise Tax Board, and also determined appeals of taxes and fees administered by the board (which did not result in an appeal to a third party agency). However, this system is no longer appropriate for the neutral third party appellate system created by the Act. The regulatory action proposes to distinguish and separate the applicable rules of practice for the board and OTA, respectively, by making the board's Rules for Tax appeals only apply to appeals before the board, and making OTA's Rules for Tax Appeals only apply to appeals to OTA. Specifically, the proposed regulatory action applies OTA's proposed Rules for Tax Appeals to Franchise and Income Tax Appeals and Business Tax Appeals, and specifies that the board's Rules for Tax Appeals only apply to those constitutional functions remaining with the board (mainly, appeals of Property Taxes and Alcoholic Beverage Taxes, and excluding any tax or fee program subject to appeal to OTA).

Effect, Objectives, and Benefits of the Proposed Regulatory Action

There are issues because there are currently no regulations that specifically implement, interpret, or make specific the Act's statutes regarding the rules and procedures governing appeals before OTA, aside from OTA's Emergency Rules for Tax Appeals. However, the Emergency Rules for Tax Appeals are expected to expire on

December 31, 2018, and these rules cannot be extended or readopted as an emergency action beyond this time-frame. (Gov. Code §§ 11346.1, subd. (h), 15679, subd. (a)(2).) The regulated public, including state tax agencies who would be appearing before OTA, will need additional guidance governing the rules applicable to appeals before OTA.

The proposed regulatory action is necessary because the existing framework, pulling pertinent provisions from the board's rules for tax appeals, the rules applicable to the Office of Administrative Hearings, and the upcoming expiration of OTA's Emergency Rules for Tax Appeals, do not apply a clear and consistent framework for the public to understand the applicable rules of practice. This is because, one, the existing organizational structures of the applicable regulations and statutes are too inconsistent and vary too widely and, two, due to the creation of OTA, OTA's procedural rules should be placed in a new, more suitable division of title 18 of the California Code of Regulations. In addition, it is necessary to clarify practices and to make those changes and establish those processes, including a process for a closed hearing, and rules for admission of evidence and witnesses, as required under the Act.

Under the Act, OTA is further responsible for adopting regulations regarding the presentation of evidence and preparation for hearings and proceedings before OTA, which do not require application of specialized knowledge. (Gov. Code, §15679.5, subd. (b).) Aside from references to other laws, including the Administrative Procedure Act, and the BOE Rules for Tax Appeals, the Act does not itself create any specific governing procedures for OTA. OTA is left to create its own governing procedures under the Act.

The proposed regulations will allow OTA to set the policies and procedures governing appeals before OTA, including rules for admission of witnesses and evidence, procedures for closing a hearing, rules for preparation for hearings and proceedings before OTA, rules for publication of decisions, briefing schedules, etc., before OTA. These regulations are critical in order to govern the procedure for appeals before OTA. OTA is proposing these permanent regulations through the Office of Administrative Law's permanent rulemaking process, due to the expiration of the emergency regulations.

OTA anticipates that the adoption of the proposed regulatory action will benefit OTA, FTB, CDTFA, local entities, taxpayers, representatives, and the general public by:

- Creating a comprehensive set of procedural regulations which cover all of OTA's administrative review functions with regard to conducting an appeal.
- Establishing procedural regulations that are easier to understand and provide a greater degree of clarity than OTA's current Emergency Rules for Tax Appeals (Cal. Code Regs., tit. 18, §§ 30100–30832), and the board's Rules for Tax Appeals (Division 2.1 of Cal. Code Regs., tit. 18).
- Retaining flexibility to respond to individual circumstances and new or changed responsibilities of OTA.
- Improving upon the current procedural framework, which includes the board's Rules for Tax Appeals (Division 2.1 of Cal. Code Regs., tit. 18), to the extent relevant and applicable and not inconsistent with the Act, the administrative process set forth in the Administrative Procedure Act for appeals to the Office of Administrative Hearing (Gov. Code, §§ 11380 to 11529) to the extent not inconsistent with the Act, the California Code of Judicial Ethics, with respect to ex parte communications and the conduct of an Administrative Law Judge, and OTA's Emergency Rules for Tax Appeals (Cal. Code Regs., tit. 18, §§ 30100–30832).
- Setting forth all of the procedures applicable to OTA's appeals process in one place, applying the same rules and standards to all tax and fee programs to the extent applicable under the law, and providing the same procedures for all taxpayers and parties to the extent allowable under the law.
- Bifurcating and separating the applicable rules of practice by applying OTA's proposed Rules for Tax Appeals to Franchise and Income Tax Appeals and Business Tax Appeals, and specifying that the board's Rules for Tax Appeals to those constitutional functions remaining with the board (mainly, appeals of Property Taxes and Alcoholic Beverage Taxes, and excluding any tax or fee program subject to appeal to OTA).
- Clarifying practices and to make those changes and establishing those processes, including a process for a closed hearing, and rules for admission of evidence and witnesses, as required under the Act.

- Establishing an improved regulatory framework that consistently, clearly, and fully describes OTA's appeals processes in a structurally integrated and logical framework. In this way, the OTA intends to improve its relationship with tax and fee payers.
- Providing taxpayers, public agencies with appeals before OTA, and tax professionals with a single, well-organized, and clear source for all of the procedural information they need to know, from the initiation of the appeals process to the final written opinion from OTA.
- Setting forth all of OTA's procedural regulations in a logically organized structure that provides consistent and clear requirements and guidelines.
- Clearly setting forth and clarifying the jurisdiction of OTA.
- Defining terms applicable in an appeal before OTA.
- Specifying the rules and procedures generally applicable to an appeal before OTA.
- Setting forth the appeal requirements, briefing schedules, and related procedures.
- Setting forth the oral hearing procedures, including the process for a closed hearing.
- Setting forth the procedures for publication of precedential and nonprecedential opinions of OTA, including the depublishing of opinions that have been superseded by a later precedential opinion.
- Setting forth the process for filing a petition for rehearing for appearance and nonappearance matters.
- Setting forth the rules applicable to a taxpayer bill of rights reimbursement claim.

All of the provisions in the proposed regulatory action are fully consistent with current law, including the provisions of the Act establishing OTA, and transferring the duties and responsibilities of the board with respect to appeals to OTA, and adding statutes to and amending statutes in the Government Code, and there is nothing in the proposed regulatory action that would significantly change how individuals and businesses would generally behave in response to current state and federal law, including the provisions of the Act, in the absence of the proposed regulatory action.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations

OTA has performed an evaluation of whether the proposed regulatory action is inconsistent or incompatible with existing state regulations and determined that the proposed regulatory action is not inconsistent or incompatible with existing state regulations. This is because

the proposed regulations are the only state regulations that specifically implement, interpret, and make specific the statutes regarding the rules, process, and procedures for appeals to OTA.¹ In addition, OTA has determined that there are no comparable federal regulations or statutes to the proposed regulatory action.

SUMMARY OF PROPOSED REGULATIONS

OTA proposes this regulatory action to implement, interpret, and make specific the Act's statutes requiring OTA to adopt regulations as necessary or appropriate to carry out the purposes of the Act, including the governing rules and procedure for appeals conducted before OTA. Specifically, the proposed regulatory action proposes to adopt OTA's Rules for Tax Appeals, which does the following:

Chapter 1: Title of Division

30000. Statement of Intent: Title of Division

The Taxpayer Transparency and Fairness Act of 2017 took effect on July 1, 2017, authorizing the establishment of OTA and granting it sole jurisdiction over tax appeals arising from actions taken by FTB and CDTFA, beginning January 1, 2018. OTA issued emergency regulations pursuant to Government Code section 15679. OTA is able to carry out its duties, powers, and responsibilities under the emergency regulations until January 1, 2019.

Proposed Regulation 30000 states OTA's intent in promulgating nonemergency regulations to continue to fulfill its statutory duties, and names the proposed regulations the Rules for Tax Appeals to provide a commonly understood reference to the new regulatory provisions.

Chapter 2: Jurisdiction, Definitions, and General Applicability

Article 1: Application of Division 4.1, Definitions, and Jurisdiction

30101. Application of Division 4.1

Proposed Regulation 30101 provides specific guidance to taxpayers as to the tax and fee programs and appeals or petitions for rehearing to which the proposed Rules for Tax Appeals will apply. Listing the tax and fee programs is necessary to eliminate the need for the regulated public to consult all of the various statutes to determine whether appeals for a particular program may be appealed to OTA. Placing this section at the beginning of chapter 2 is appropriate because it contains pro-

¹ OTA intends to let its Emergency Rules for Tax Appeals expire on December 31, 2018, prior to the earliest anticipated effective date of the proposed regulatory action, and OTA's emergency rules cannot be extended or readopted as emergency regulation beyond this timeframe. (Gov. Code, §§ 11346.1, subd. (h), and 15679, subd. (a)(2).)

visions of general applicability to all of the proposed text of the Rules for Tax Appeals. Subdivision (a) provides that OTA has jurisdiction over Franchise and Income Tax Appeals (part 10.2 of division 2 of the Revenue and Taxation Code). Subdivision (b) provides that OTA has jurisdiction over appeals submitted pursuant to part 9.5 of division 3 of title 2 of the Government Code. Subdivision (c) provides that OTA has jurisdiction over appeals from a tax or fee program administered by CDTFA. Subdivisions (c)(1) through (18) list tax and fee programs administered by CDTFA.

30102. Definitions

Proposed Regulation 30102 provides clear, uniform definitions for the meaning of the terms used in the new Rules. This section is necessary to ensure that everyone interested in OTA's appeals procedures understands the meaning of terms used in the proposed Rules for Tax Appeals without the necessity of repeating definitions in multiple sections. Specifically, proposed Regulation 30102 defines the terms: Agency, ALJ, Appeals Bureau, Appeals Bureau decision, Brief, CDTFA, Discovery, Evidence, Ex-parte communication, FTB, Lead ALJ, Local entity, Local or district tax, Mail, Motion, Oral hearing record, OTA, Panel, Relevant evidence, Representative, Submission date, Subpoena, and Written record, within the context of the proposed Rules for Tax Appeals.

30103. Jurisdiction

Proposed Regulation 30103, subdivision (a) provides clear guidance to the regulated public regarding the types of appeals from an action of the FTB that can be brought before OTA. Subdivision (b) provides clear guidance to the regulated public regarding the types of appeals from a decision of the CDTFA that can be brought before OTA. Subdivision (c) provides notice to the regulated public that other laws may expand or limit OTA's jurisdiction before OTA has time to amend this section.

30104. Limitations on Jurisdiction

Proposed Regulation 30104 provides clear guidance to the regulated public regarding the types of issues that OTA does not have jurisdiction to consider. Specifically, subdivisions (a) and (b) provide that OTA does not have jurisdiction to consider whether a statute or a provision of the California Constitution is invalid or unenforceable unless a federal or California appellate court has already made such a determination. In subdivisions (c) through (g), proposed Regulation 30104 provides that OTA does not have jurisdiction to consider (c) whether a state agency violated the Information Practices Act, the Public Records Act, or any other similar provision of the law; (d) whether a taxpayer is entitled to a remedy for an agency's actual or alleged violation of any substantive or procedural right, unless the viola-

tion affects the adequacy of a notice, or the validity of an action, from which a timely appeal was made, or the amount at issue in the appeal; (e) an appeal from a proposed assessment or proposed overassessment; (f) an appeal that is not subject to review by FTB or CDTFA; (g) an appeal that is subject to review by CDTFA where the Appeals Bureau has not yet issued a decision on the appeal.

30105. Questions of Jurisdiction and Timeliness

Proposed Regulation 30105 describes the steps that OTA may take when issues are raised regarding whether or not an appeal was filed timely or whether or not OTA has jurisdiction over the appeal. Subdivision (a) provides that OTA may request additional briefing on an issue in appeal related to jurisdiction or timeliness. Subdivision (b) provides that if OTA does not raise an issue related to jurisdiction or timeliness, either party may raise such an issue during briefing. Subdivision (c) provides that OTA may take certain actions with respect to an appeal when there is an issue regarding timeliness or jurisdiction, including but not limited to: ruling on such issues prior to briefing; requesting additional briefing; or directing the parties to address such issues during the general briefing schedule.

30106. Jurisdiction over Transitioning Appeals

Proposed Regulation 30106 provides clear guidance to the regulated public regarding the transfer of non-final appeals from the BOE to OTA effective January 1, 2018. Specifically, subdivision (a) provides that as of January 1, 2018, OTA has jurisdiction over appeals where BOE failed to issue a decision, or issued a decision that was not final before January 1, 2018. Subdivision (b) provides that OTA has jurisdiction over a petition for rehearing filed with BOE or OTA on a decision that was not final as of January 1, 2018. Subdivision (c) provides that a briefing schedule established by BOE prior to January 1, 2018, will remain applicable to the appeal unless otherwise directed by OTA. Subdivision (d) provides that all other appeals for which the CDTFA Appeals Bureau has issued a decision, and a party has made a timely request for an oral hearing prior to January 1, 2018, are subject to the jurisdiction of OTA.

Chapter 3: Appeal Requirements and Procedures

Article 1: Filing an Appeal

30201. Appeal Filing Requirements

Proposed Regulation 30201 explains the information required in a written appeal from an action of the FTB or the CDTFA Appeals Bureau filed with OTA. Specifically, subdivisions (a) and (b) provide that the information necessary to identify and contact appealing parties and their representatives in the appeal should be included in the written appeal. Subdivisions (c), (d), and (e) require appellants to provide relevant information regarding the grounds for the appeal, the supporting facts

and law, and the amount being appealed. Subdivision (f) requires appellants or their representative(s) to sign the appeal. Subdivisions (g) and (h) require appellants to provide identifying information to ensure that OTA and the tax agencies can adequately identify the records associated with the appellant(s).

30202. Methods for Delivery of Written Documents and Correspondence

Proposed Regulation 30202 directs the public on how documents related to an appeal may be delivered to OTA. Subdivision (a) provides the means for delivery of documents related to an appeal, which include paper and electronic delivery options. Subdivision (b) notifies the public that notifications and acknowledgments from OTA will be sent by mail, unless there is an agreement that notifications and acknowledgments will be sent by another method. Subdivision (c) notifies the public that unless there is an objection, OTA may deliver correspondence using electronic means.

30203. Time for Submitting an Appeal

Proposed Regulation 30203 provides the deadlines for filing tax appeals. Subdivision (a) lists the deadlines for filing when an appellant is appealing adverse actions taken by the Franchise Tax Board. Subdivision (b) lists the deadlines for filing when an appellant is appealing adverse decisions of the California Department of Tax and Fee Administration.

30204. Extensions

Proposed Regulation 30204 notifies the public of extensions of filing deadlines when documents are mailed to OTA. Subdivisions (a), (b), and (c) extend the filing deadlines for mailed appeals depending on the location where the appeal is deposited in the mail. Extensions vary depending on whether an appeal is mailed from California, from another state, or from outside of the United States.

30205. Date of Mailing

Proposed Regulation 30205 notifies the public of the date OTA considers a document to be mailed. Since appeals and related documents have deadlines for submission to OTA, this regulation explains how the date of mailing will be determined by OTA, depending on whether the document is mailed or delivered in another manner. It provides for an extension of a date of mailing if a document is submitted on a Saturday, Sunday or state holiday.

30206. Appeals Filed With Other Agencies

Proposed Regulation 30206 provides that OTA may accept an appeal that has been incorrectly filed with another agency. Although, by law, appeals from adverse actions by the FTB and the CDTFA must be filed directly with OTA, this proposed regulation acknowledges that there may be circumstances where an appellant, in

good faith, incorrectly files his or her appeal with another tax agency or the State Board of Equalization (the former body for deciding tax appeals). OTA will deem the petition or appeal timely under those circumstances.

30207. Acknowledging an Appeal

Proposed Regulation 30207 delineates OTA's procedures for acknowledging that an appeal has been filed. Subdivision (a) instructs the public that OTA will mail an acknowledgment of receipt of an accepted appeal to each party. Subdivision (b) provides that acknowledgment of a Petition for Redistribution will be mailed to parties and also to the taxpayer whose allocations are the subject of the petition.

30208. Perfecting an Appeal

Proposed Regulation 30208 explains that OTA will accept an appeal if it meets threshold requirements, and describes the steps OTA will take if the information OTA received is insufficient for a valid appeal. Specifically, subdivision (a) states that if OTA can identify the appeal and if substantially all of the information required in regulation 30201 is present, along with contact information for the party or the party's representative and required parties' signatures, OTA will accept that appeal as valid. Subdivision (b) explains the process through which OTA will give a party the opportunity to bring an appeal into compliance with threshold requirements, the timeline for which a party must do so, and how OTA will respond to timely and untimely attempts to meet those requirements.

30209. Submission for Decision Without Oral Hearing

Proposed regulation 30209 explains the circumstances under which an appellant will be considered to have waived the right to an oral hearing. Subdivision (a) further explains that such cases will be submitted for decision based on the written record. Subdivision (b) explains that in an innocent spouse appeal, if neither the appealing spouse nor the non-appealing spouse request an oral hearing, or neither responds to a notice of oral hearing, the appeal will be submitted for decision based on the written record.

Article 2: Appeal Procedures

30210. Conferences

Proposed regulation 30210 provides guidance on appeal conferences. Subdivision (a) states that the provisions of Article 2 apply to all proceedings before OTA, including nonappearance matters and oral hearing matters. Subdivision (b) provides who may request a conference and when, and explains that OTA will determine when a conference is necessary. Further, conferences can be conducted by the Lead ALJ or an OTA attorney, and will generally be informal and not recorded. Subdivision (c) explains who may request a conference and how. Subdivision (d) sets out where conferences will be physically held, and that conferences can be held

by electronic means if all parties are able to participate and can understand the proceeding. Subdivision (e) sets out that OTA will set prehearing conferences and provide parties with notice of the time and location of the conferences. OTA will consult with the parties in scheduling other conferences and provide written notice of the time and location of conferences. Subdivision (f) gives examples of matters that may be discussed at a conference. Subdivision (g) explains that, unless otherwise directed by OTA, any new evidence that a party wishes to discuss at a conference should be provided to OTA and the other party no later than three business days prior to the conference.

30211. Representation

Proposed section 30211 provides guidance on representation of a taxpayer before the OTA. Subdivision (a) states that a taxpayer may be represented in an appeal by anyone at least 18 years of age of their choosing. Subdivision (b) sets out that OTA will recognize all authorized representatives and the role of such representatives. Subdivision (c) sets out how to substitute or withdraw representation. Subdivision (d) explains that someone disbarred or suspended from practice before the FTB shall promptly notify OTA of such and may not represent a party in an appeal before OTA.

30211.5. Privileges

Proposed regulation 30211.5 sets out that the rules pertaining to privileges shall apply to the extent required by law, and that, in addition, communications between a taxpayer and a federally authorized tax practitioner shall be protected as confidential as provided in Revenue and Taxation Code sections 7099.1 and 21028.

30212. Consolidation and Deconsolidation

Proposed regulation 30212 explains how appeals may be consolidated or deconsolidated. Subdivision (a) provides that OTA may consolidate appeals on a motion of a party or upon OTA's own initiative, if the facts and issues are similar and no substantial right of any party will be prejudiced. OTA will promptly notify the parties if an appeal is consolidated. Subdivision (b) sets out the standard under which OTA may decide to deconsolidate appeals. Subdivision (c) sets out how any party may submit an objection to a consolidation or deconsolidation, when to object, and the basis upon which an objection should be made.

30213. Authority of Administrative Law Judges

Proposed Regulation 30213 lists the actions that may be taken by a Panel in order to hold a fair hearing. The proposed regulation provides that the Lead ALJ or any member of the panel has full power, jurisdiction, and authority to (a) perform acts necessary for the purpose of ascertaining the facts on which a decision may be

based; (b) determine the order that witnesses will testify at the hearing; (c) request that each party identify the issues to be heard, agreed-upon facts, and the evidence upon which the party wishes to rely; (d) ask relevant questions of any witness or party to clarify the record; (e) issue interlocutory and final orders, instructions, and decisions; (f) issue post-hearing orders and sections; (g) issue rulings on motions; (h) order the closure or reopening of the record; (i) issue and vacate submission orders; and (j) take any other action necessary for the orderly and fair adjudication of disputes.

30213.5. Orders

Proposed regulation 30213.5 provides authority for OTA to issue orders to, and sanctions against, the parties to facilitate the fair and orderly resolution of appeals. Proposed regulation 30213.5 explains that orders may be enforced under the provisions of Government Code sections 11455.10 through 11455.30.

30214. Evidence

Proposed Regulation 30214 provides the rules relating to evidence and witnesses that apply to proceedings, including oral hearings, before OTA. Specifically, subdivision (a) explains that parties appearing before OTA should cooperatively engage in informal discovery prior to requesting OTA involvement in the discovery process. Subdivision (b) provides time limitations for a party to obtain the names of witnesses and to inspect and make copies of statements pertaining to the subject matter of the proceeding, statements of witnesses having personal knowledge of relevant acts, omissions, or events, any other relevant writing or thing, and investigative reports. Subdivision (c) defines "statements" to include written statements signed or authenticated by the person, recordings or transcripts of oral statements, and written reports or summaries of oral statements. Subdivision (d) provides that the inspection or copying of any privileged or confidential writing or thing is not authorized. Subdivision (e) provides that OTA may allow a subpoena upon a showing of good cause if the person requesting the subpoena bears the burden of proof or if the subpoena is to be issued to a nonparty to the appeal. Subdivision (f) provides that all relevant evidence is admissible unless it is subject to a privilege, and further provides that the Lead ALJ may exclude evidence if its admission will necessitate undue consumption of time. Additionally, subdivision (f) provides that the Panel may use the California rules of evidence when evaluating the weight to give evidence. Subdivision (g) provides that a request for discovery beyond what is outlined in this section will only be granted upon a showing of good cause.

30214.5. Noncompliance with Discovery Requests

Proposed Regulation 30214.5 provides that OTA will strive to provide an informal and efficient administra-

tive process for the parties to cooperatively exchange requested information that is relevant to an appeal. Specifically, subdivision (a) provides that if a party claims that the opposing party has not complied with a request for discovery, OTA may request a response from the opposing party, with a deadline for the response of at least 30 days. Subdivision (b) provides that OTA may issue an order to compel discovery. Subdivision (c) provides that OTA may deny a party's motion to compel discovery if it determines that the discovery request is overly burdensome, invasive, or otherwise not in the interest of adjudication of the hearing before it.

30215. Ex Parte Communications

Proposed Regulation 30215 provides that OTA will follow the rules restricting ex parte communications contained in the Code of Judicial Ethics adopted by the Supreme Court and the rules found in Government Code sections 11430.10 through 11430.80.

30216. Incorporation of the Administrative Procedure Act

Proposed Regulation 30216 explains how provisions of the Administrative Procedure Act have been incorporated into the rules governing OTA's conduct of hearings and proceedings. Specifically, subdivision (a) provides that hearing procedures will be accessible to all representatives. Subdivision (b) provides that when an oral hearing is not requested or is waived, appeal proceedings will be conducted under Chapter 4.5 of the Administrative Procedure Act, except that OTA retains the discretion to utilize aspects of Chapter 5 and prohibit usage of portions of Chapter 4.5 of the Administrative Procedure Act. Subdivision (c) provides that when an oral hearing is requested, OTA will conduct the hearing process pursuant to Chapter 5 of the Administrative Procedure Act, except that OTA retains the discretion to utilize aspects of Chapter 4.5 and prohibit usage of portions of Chapter 5. Subdivision (d) lists provisions included in Chapters 4.5 and 5 of the Administrative Procedure Act that will not apply to proceedings before OTA. Subdivision (e) provides that OTA is exempted from provisions of the Administrative Procedure Act if required by the context or subject matter of the proceeding. Subdivision (f) defines "Presiding Officer," as used in the Administrative Procedure Act, to mean "Lead ALJ" or "Panel," or the Presiding ALJ if no Lead ALJ or Panel has been assigned to an appeal. Subdivision (g) provides that OTA always has discretion to use the informal hearing procedures found in Chapter 4.5 of the Administrative Procedure Act. Subdivision (h) provides that if any provision of the Administrative Procedure Act conflicts with these regulations, these regulations are controlling.

30217. Determination that Appeal Is Frivolous

Proposed Regulation 30217 explains that OTA may impose a frivolous appeal penalty and provides a list of the factors that OTA will consider in determining whether or not the penalty is warranted. Subdivision (a) explains that the frivolous appeal penalty may be imposed if a Panel determines that a franchise or income tax appeal is frivolous or is maintained for the purpose of delay. Subdivision (b) provides that the factors that may be relevant in determining whether a frivolous appeal penalty is warranted include (1) whether the appellant is making arguments that previously have been formally rejected; (2) whether the appellant is making the same arguments that it made in prior appeals; (3) whether the appellant submitted the appeal for the purpose of delay; (4) whether the appellant has a history of submitting frivolous appeals or failing to comply with California's tax laws; or (5) whether the appellant has been notified that a frivolous appeal penalty may apply.

30218. Application of Ethics Codes

Proposed Regulation 30218 provides that each ALJ will abide by the Code of Judicial Ethics adopted by the California Supreme Court.

30219. Application of Burden of Proof

Proposed Regulation 30219 explains how the burden of proof is applied. Specifically, subdivision (a) provides that the burden of proof is upon the appellant as to all issues of fact, except as otherwise provided by law. Subdivision (b) provides that the burden of proof as to an issue of fraud is upon the Agency by clear and convincing evidence. Subdivision (c) provides that proof by a preponderance of the evidence is required, except as otherwise provided by law.

Article 3: Postponements, Deferrals, and Dismissals

Section 30220. Postponement and Deferral

Proposed regulation 30220 provides rules for OTA to allow the parties to defer proceedings in an appeal. The proposed regulation directs the parties on specific situations in which a party can postpone or defer their appeal. Subdivision (a) provides that OTA may postpone or defer proceedings for good cause. Subdivision (b) provides examples of good cause, including but not limited to (1) illness of that person or a member of that person's immediate family; (2) an unavoidable scheduling conflict; (3) a new representative who requires additional time to become familiar with the case; (4) all parties desire a postponement; (5) an appellant's involvement in a bankruptcy action that may impact the appeal proceedings or be relevant to the resolution of the issues on appeal; or (6) pending court litigation, or proceedings at the agency, that may impact the appeal proceedings or be relevant to the resolution of the issues on appeal, or

the resolution of other pending appeals raising similar issues.

Section 30221. Settlement or Resolution

Proposed regulation 30221 provides that OTA may defer an appeal if the parties are seeking settlement. The proposed regulation further provides that upon notification from a party that settlement negotiations have terminated without a settlement, OTA will reactivate the appeal and will advise the parties as to the next step in the appeal.

Section 30222. Written Notice

Proposed regulation 30222 provides that OTA will provide written notification to the parties if an appeal is postponed or deferred.

Section 30223. Dismissal

Proposed regulation 30223 provides rules for when an appeal will be dismissed at OTA. Specifically, the proposed regulation provides that the case will be dismissed if (a) the appellant or the representative of appellant submits a written, signed request for dismissal; (b) an Agency submits a written concession of the entire amount of the deficiency, refund or claim at issue; or (c) the parties submit a written stipulation, signed by all the parties, in which all parties agree to the dismissal.

Section 30224. Request for Reconsideration of CDTFA Appeals Bureau Decision

Proposed regulation 30224 provides rules for when a party submits a request for reconsideration of CDTFA's Appeals Bureau Decision. Subdivision (a) states that OTA will defer the appeal until CDTFA's Appeals Bureau either issues a revised or supplemental decision or notifies the party in writing that the request has not been accepted. Subdivision (b) states that the time for submitting an appeal will restart after the parties have been notified.

Chapter 4: Briefing Schedules and Procedures

Article 1: General Briefing Schedule

Section 30301. Application of Chapter

Proposed regulation 30301 provides that the general briefing schedule applies to all appeals from actions of FTB or CDTFA, unless the schedule is modified. Subdivision (a) provides that the general briefing schedule may not apply if the appeal involves an innocent spouse determination, or in the case of a petition for redistribution of local or district tax. Subdivision (b) provides that if an appeal involves a jeopardy determination, OTA will compose a suitable briefing schedule.

Section 30302. General Requirements

Proposed regulation 30302 provides the general requirements of the briefing schedules for appeals before OTA. Subdivision (a) provides that OTA will inform the parties of applicable deadlines and extensions by

written notification, and will ensure that all parties receive copies of any correspondence. Subdivision (b) provides that OTA will provide written acknowledgment of receipt of any brief to all parties, and will ensure that the opposing party is provided with a copy of the brief and exhibits. Subdivision (c) provides information regarding requests for an extension of time for filing a brief. Subdivision (d) provides formatting requirements for briefs. Subdivision (e) provides that OTA may return a brief that does not conform to the form and page limits specified in subdivision (d), except that a party may request to file a nonconforming brief. Subdivision (f) provides that failure to submit a brief that conforms to the requirements stated in this proposed regulation constitutes a waiver of the right to submit that brief. Subdivision (g) provides that OTA may accept non-party (amicus) briefs at its discretion.

30303. General Briefing Schedule

Proposed Regulation 30303 provides the general briefing schedule for appeals. Subdivision (a) provides that the appellant's appeal letter will constitute the appellant's opening brief unless the appellant requests the opportunity to supplement it. If the appellant requests to supplement the opening brief, OTA will allow 60 days for the appellant to file a supplement to the opening brief. Subdivision (b) allows respondent 60 days to file its opening brief. Subdivision (c) allows 30 days for appellant to file a reply brief to respondent's opening brief and provides that the appellant's reply brief may only address new facts, issues, or arguments raised on respondent's opening brief. Subdivision (d) provides that the submission of the appellant's reply brief will generally end the briefing process, unless additional briefing is permitted.

30304. Requests for Additional Briefing

Proposed Regulation 30304 provides that OTA or parties to an appeal may request additional briefing. Subdivision (a) provides that OTA will address any request for additional briefing and coordinate the briefing process. Subdivision (b) provides that a party may request additional briefing and provides examples of potential grounds for a request for additional briefing. Subdivision (c) provides that additional briefs generally may use ordinary and informal language and may be hand-written or typed.

Article 2: General Briefing Schedule for Innocent Spouse Appeals

30310. Application

Proposed Regulation 30310 explains that Article 2 provides the briefing schedule for appeals arising from requests for innocent spouse relief. Article 2 is necessary because innocent spouse appeals raise special privacy concerns and may involve, in addition to the ap-

pealing party and the agency, the appealing party's spouse or former spouse.

30311. Definitions

Proposed Regulation 30311 provides definitions for the terms (a) "appealing spouse," (b) "requesting spouse," (c) "non-requesting spouse," and "non-appealing spouse" used in Article 2.

30312. Special Rules and Procedures

Proposed Regulation 30312 provides procedures that are specific to innocent spouse appeals. Subdivision (a) provides that, if both spouses submit timely appeals, then the appeals will be consolidated. Subdivision (b) provides that, if only one spouse submits a timely appeal, then the non-appealing spouse will receive a copy of the appeal and be notified of his or her right to join the appeal. Subdivision (c) provides that OTA shall use the best available information to contact the non-appealing spouse. Subdivision (d) provides that OTA will retain jurisdiction over an innocent spouse appeal through the conclusion of the appeal, notwithstanding any withdrawal by an agency of a notice or decision. Subdivision (e) provides that either party in an innocent spouse case may request a separate hearing. Subdivision (f) explains provisions for a party in an innocent spouse case to request that an oral hearing be closed to the public, and provisions for a party in an innocent spouse case to request that items in the record be sealed.

30313. Protection of Confidential Information

Proposed Regulation 30313 provides that OTA will take reasonable steps to ensure that the personal identifying information of one spouse is not provided to the other spouse.

30314. Opening Briefs

Proposed Regulation 30314 provides a schedule for the filing of opening briefs in innocent spouse appeals. Subdivision (a) provides that the appealing spouse's perfected appeal letter constitutes the appealing spouse's opening brief, unless the appealing spouse requests to submit a separate opening brief. It further provides that, if the appealing spouse requests to submit a separate opening brief, the opening brief generally must be filed within 60 days. Subdivision (b) provides that the agency may submit its opening brief not later than 60 days from the date OTA acknowledges the appealing spouse's opening brief. Subdivision (c) provides that the non-appealing spouse may submit an opening brief not later than 60 days from the date of the notification of the non-appealing spouse's right to participate in the appeal.

30315. Reply Briefs

Proposed regulation 30315 provides clear guidance regarding the submission of reply briefs and the conclusion of the briefing process in innocent spouse appeals.

Subdivision (a) provides the deadline for the appealing spouse to file a reply brief. Subdivision (b) explains that the reply brief may only address points of disagreement with the Agency's opening brief and the non-appealing spouse's opening brief. Subdivision (c) describes the requirements for a reply brief filed by the non-appealing spouse or the Agency. Subdivision (d) provides that the briefing schedule is concluded if no reply brief is submitted. Subdivision (e) provides that additional briefing may be requested.

30316. Conformity with Federal Action

Proposed regulation 30316 provides clear guidance on the procedures that are to be followed in an innocent spouse appeal filed with respect to franchise and income taxes when relief has been granted under Internal Revenue Code section 6015. Subdivision (a) provides that the party who receives notification that relief has been granted under Internal Revenue Code section 6015 must submit proof of such notification to OTA as soon as is practical. Subdivision (b) provides that OTA will notify FTB and the non-requesting spouse of the federal grant of innocent spouse relief, and also provides that FTB and the non-requesting spouse may provide information that indicates that relief should not be granted. Subdivision (c) provides circumstances in which additional briefs may be provided. Subdivision (d) provides that if a party receives notification that relief has been granted under Internal Revenue Code section 6015 before the briefing schedule has concluded, the briefing schedule will not be concluded until the requirements of this regulation are satisfied. Subdivision (d) further provides that if a party receives notification that relief has been granted under Internal Revenue Code section 6015 after the briefing schedule has concluded, then briefing will be reopened. Subdivision (e) provides that this regulation shall only apply to appeals from notices that grant or deny, in whole or in part, innocent spouse relief pursuant to Revenue and Taxation Code sections 18533 or 19006.

Chapter 5: General Oral Hearing Procedures

Article 1: Scheduling an Oral Hearing

30401. Process for Requesting an Oral Hearing

Proposed regulation 30401 provides clear guidance to taxpayers on how to request an oral hearing. Subdivision (a) provides that an appellant may request an oral hearing in writing at any time prior to the completion of briefing, and then lists the steps that OTA will take to confirm the request for an oral hearing, or to determine if the appellant has waived the right to an oral hearing. Subdivision (b) provides that, for innocent spouse appeals, both the appealing spouse and the non-appealing spouse may request an oral hearing, and provides the circumstances under which a Panel will conduct separate oral hearings. Subdivision (c) provides that if a

Panel conducts separate oral hearings, the Panel will not decide the appeal until both hearings have concluded.

30402. Notice of Oral Hearing

Proposed regulation 30402 explains OTA's responsibility to notify the parties that an oral hearing has been scheduled. Subdivision (a) provides that if an oral hearing is granted, OTA will send the parties a notice of oral hearing. Subdivision (b) provides that a notice of oral hearing will be sent to the parties at least 45 days prior to the oral hearing date, unless all parties agree to a shorter notice period. Subdivision (c) provides that the notice of oral hearing will contain the name of the taxpayer; OTA's case identification number for the appeal; the date, time, and location of the oral hearing; the due date of the response to the notice of oral hearing; and the date the notice of oral hearing was mailed.

30403. Response to Notice of Oral Hearing

Proposed regulation 30403 provides clear guidance on responding to a notice of oral hearing. This proposed regulation also informs parties to an appeal of their right to an interpreter and reasonable accommodation. Subdivision (a) provides that the response to oral hearing should include a statement indicating that the party or party's authorized representatives will appear at the hearing, or that the party requests a postponement, the party waives the opportunity to appear, or the party withdraws its appeal. Subdivision (b) provides that persons participating in oral hearings who require an interpreter are entitled to an interpreter at no charge, and that the response to the notice of oral hearing should set forth the party's request for an interpreter and state the primary language spoken by the person for whom an interpreter is requested. Subdivision (c) provides that if a person requires special accommodation for other reasons, the response should describe the person's disability and the accommodation sought. Subdivision (d) provides that the response to the notice should provide the name and address of all witnesses who will testify for the party. Subdivision (e) provides that if a witness will be testifying in an expert capacity, the response to the notice should include a summary of that person's credentials and a brief summary of the nature and purpose of the expert's testimony. Subdivision (f) provides that the response to the notice should also include any other information requested by OTA in order to facilitate a fair and orderly oral hearing.

30404. Waiver of Oral Hearing

Regulation 30404 explains provisions for removing a matter from the oral hearing calendar. Specifically, subdivision (a) provides that a matter will be removed from the oral hearing calendar if the party or parties who requested an oral hearing fail to return the response to the notice of oral hearing by the deadline, or fail to appear at the oral hearing. Subdivision (b) provides that OTA, in

its discretion, may return the matter to the oral hearing calendar upon a showing of reasonable cause for failing to appear or return the hearing notice.

30405. Posting of the Oral Hearing Schedule on OTA's Website

Proposed Regulation 30305 provides that OTA will post hearing dates on its website at least 15 calendar days before the hearing date.

Article 2: Conducting an Oral Hearing

30410. Oral Hearing Rights

Proposed regulation 30410 explains that at an oral hearing, each party will have the right to call and question witnesses; to introduce exhibits; and to respond to the evidence against him or her. Proposed regulation 30410 also states that where a party offers oral testimony as evidence at an oral hearing, the oral evidence may be taken only on oath or affirmation.

30411. Disqualification of Administrative Law Judge for Cause

Proposed regulation 30411 provides that any party may file a motion to disqualify for cause any of the administrative law judges assigned to a Panel, and that there is no right to peremptory challenges.

30412. Concluding an Oral Hearing

Proposed regulation 30412 provides that upon concluding an oral hearing proceeding, the Panel will determine the submission date when the official oral hearing record will be closed. Proposed regulation 30413 also provides that, for good cause, the Panel may defer its determination of the submission date or it may reopen the oral hearing record.

Article 3: Motions and Presentation of Evidence at an Oral Hearing

30420. Presenting Information and Documents at Oral Hearing

Proposed regulation 30420 provides guidance on how exhibits, witness lists, and witness declarations are to be presented to OTA. Subdivision (a) states that the party providing exhibits should provide a list of the exhibits with a brief description of each document; explains how exhibits should be labeled; and explains that the Agency should include in its exhibits any jurisdictional documents including the written decision or notice of action taken by the Agency that is the subject of the appeal. Subdivision (b) provides that each party must submit a list of all witnesses who will testify on its behalf, with a copy to the other party, at least 15 calendar days before the hearing or earlier if directed to do so by OTA, and also provides that any witness who will testify as an expert must be clearly identified with a brief description of the purpose of each expert witness's testimony. Subdivision (c) provides that parties may submit declarations of persons who will not be present

at the hearing, and that such declarations should be signed under penalty of perjury and filed with the filing party's brief. This subdivision also explains provisions for the opposing party to question the witness providing the declaration, or request documentation related to the declaration, and for the witness to respond to questions.

30421. Motions

Proposed regulation 30421 explains how prehearing motions are to be filed. Subdivision (a) provides that all motions made prior to the oral hearing shall be directed to the Lead ALJ or to a Presiding ALJ. Subdivision (b) provides that prehearing motions shall be made with written notice to all parties. Subdivision (c) provides that the Lead ALJ assigned to a Panel or a Presiding ALJ may decide prehearing motions, order additional briefing on the issue, or defer decision until the date of the hearing. Subdivision (d) provides that, generally, a prehearing motion shall be filed at least 15 days before the start of the oral hearing, and any response to the prehearing motion shall be filed by the due date specified by OTA.

Article 4: Observation of Oral Hearings

30430. Public Transparency

Proposed regulation 30430 explains that oral hearings are generally open to the public, and that submitting an appeal constitutes a waiver of the right to confidentiality with regard to all of the briefing and other information provided to OTA by either the party or an Agency, with certain specified exceptions. Subdivision (a) provides that oral hearings before a Panel are open to the public, unless ordered otherwise in accordance with this regulation, and that the submission of an appeal constitutes a waiver of the right to confidentiality. This subdivision also provides that OTA may disclose information pursuant to Revenue and Taxation Code section 19545, the California Public Records Act, and other applicable law. Subdivision (b) provides that the waiver of confidentiality does not apply to any person's address, telephone number, social security number, federal identification number, or other account number, and such information will not be provided to the public in response to a request made pursuant to the California Public Records Act. Subdivision (c) provides that nothing in this regulation prohibits any party to an OTA hearing, ALJs, or OTA staff from referring to information described in this regulation in briefs, or in a manner that will not disclose any person's actual address, telephone number, social security number, federal identification number, or bank account number at a hearing. Subdivision (d) provides that there is no right to confidentiality as to relevant information that OTA includes in a written opinion that is required to be published pursuant to Government Code section 15675.

30431. Requests to Close an Oral Hearing from Public Observation or Seal the Record

Proposed regulation 30431 explains provisions for having an oral hearing closed and having the oral hearing record sealed. Proposed regulation 30431 provides that a request to close an oral hearing or seal the oral hearing record should be made in writing, should be made prior to the due date of the appellant's response to the notice of oral hearing, and should state the grounds upon which it is based, with copies provided to all other parties, including the Agency.

30432. Closing Hearings, Sealing the Record, and Redacting Information

Proposed regulation 30432 provides criteria for determining when a hearing will be closed to the public, when items contained in the oral hearing record or the written record will be sealed, and when information contained in the decision or other documents will be redacted. Specifically, subdivision (a) provides that OTA will consider: (1) whether the appeal involves trade secrets or other confidential research, development, or other information; (2) where a request for a closed hearing is made, to ensure the ability of the party to be represented by the person of their choice, in the circumstances of that particular case; and (3) other grounds as necessary to ensure a fair hearing and provision of due process. Subdivision (b) provides that any request to seal records will be applied to as narrow a set of records as required under the circumstances. Subdivision (c) provides that an appellant may request to redact information in decisions no later than 15 days after the mailing of the decision. Subdivision (d) provides that this section will be applied and interpreted in a manner that recognizes the public interest in transparency.

30433. Ruling Upon a Request to Close an Oral Hearing, Seal Records, or Redact Information

Proposed Regulation 30433 provides notification that OTA will issue a written order granting or denying any request provided in regulation 30432.

Chapter 6: Decision by Written Opinion

30501. Publication of a Written Decision

Proposed Regulation 30501 prescribes the information to be included in written opinions issued by OTA, as well as the timeframe for publication of the opinions and the system for numbering decisions. Specifically, subdivision (a) provides that a written opinion will explain the reasons for granting or denying the appeal, in whole or in part. Subdivision (b) provides that a written opinion will include findings of fact, legal issues, applicable law, the holding of the Panel, and the names of the adopting or dissenting administrative law judges. Subdivision (c) explains that at least two out of three Panel members must concur in each holding, and that a con-

curing or dissenting member may provide a separate written opinion. Subdivision (d) provides that OTA will publish a written decision on its website within 100 days after the date upon which the decision becomes final. Subdivision (e) prescribes the format for the decision numbers assigned to posted OTA decisions. Subdivision (f) provides that an appellant may request that the record be sealed or that information be redacted in a decision.

30502. Citation of OTA Opinions and Precedential Effect

Proposed Regulation 30502 provides specific guidance to the public regarding the procedures and timeline for requesting that an opinion be given precedential effect in accordance with Government Code section 11425.60, the factors that designated staff at OTA will consider in determining whether to designate an opinion as precedential, and the posting of precedential opinions. Specifically, subdivision (a) provides that a proposal to give an opinion precedential effect may be communicated by any person to an email address listed on OTA's website. Subdivision (b) explains that a written opinion published by OTA is not precedential in any other appeal before OTA unless OTA has designated that its opinion is precedential. Subdivision (c) lists the factors that OTA will consider in determining whether to designate an opinion as precedential, including whether the opinion (1) would establish a new interpretation of law or modify or repeal an existing interpretation of law; (2) would resolve an apparent conflict in the law; (3) would involve a legal issue of continuing public interest; (4) would make a significant contribution to the law; or (5) whether there is any other basis to justify precedential status. Subdivision (d) provides that the Chief Counsel of OTA, in consultation with the Presiding ALJs, will determine if a written opinion should be precedential, and the Director of OTA will have the authority to accept or reject the determination that a decision should be precedential. Subdivision (e) explains that there will be a delay of 30 days from the time precedential decisions first are posted on OTA's website until they become precedential.

30503. Withdrawal of Precedential OTA Opinions

Proposed Regulation 30503 notifies the public that OTA may withdraw, in whole or in part, the precedential status of an opinion that it previously designated as precedential, with an explanation, and when OTA does so, the decision will be published as an overturned decision on OTA's website.

30504. Precedential Decisions of the Board of Equalization

Proposed Regulation 30504 notifies the public that, as part of a written opinion, OTA may withdraw, in whole or in part, the precedential status of an opinion of

the State Board of Equalization (BOE) that was adopted prior to January 1, 2018, and that if OTA does so, it will publish a notation of the change in precedential status on its website. Additionally, it specifies that BOE decisions that remain precedential may be cited to OTA.

30505. Finality of Written Opinions

Proposed Regulation 30505 provides the information necessary to ensure that the parties to an appeal have a clear understanding of the date a decision becomes final. Specifically, subdivision (a) explains that a decision becomes final 30 days from the date the written opinion is mailed to the parties unless a party to the appeal files a petition for rehearing during that 30-day period. Subdivision (b) explains that OTA may correct typographical or non-substantial errors in a published decision without affecting the date the decision becomes final. Subdivision (c) provides that, while a Panel may sever any issue from an appeal for separate consideration, and issue an opinion on the severed issue prior to deciding the appeal, the Panel's decision on the severed issue only becomes final when the decision resolving the entire appeal becomes final.

Chapter 7: Petitions for Rehearing

30601. Definitions

Proposed Regulation 30601 defines "filing party" and "non-filing party" for purposes of discussing submissions of petitions for rehearing.

30602. Time for Filing a Petition for Rehearing

Proposed Regulation 30602 provides information regarding timelines and procedures for filing petitions for rehearing. Specifically, the proposed regulation explains that a petition for rehearing must be filed during the 30-day period described in proposed Regulation 30505(a) to be timely. Additionally, proposed Regulation 30602 provides that if a petition for rehearing does not contain sufficient information, OTA's notification of receipt will explain the deficiency, and the petitioning party will be allowed 30 days to cure the deficiency. If the petitioning party does not cure the deficiency within 30 days, OTA will reject the petition and notify the parties of the rejection in writing, unless OTA finds good cause to accept the petition for rehearing.

30603. Form and Content of the Petition for Rehearing

Proposed Regulation 30603 specifies that every petition for rehearing must be in writing, must meet certain formatting requirements, and must contain (a) the name or names of the submitting parties; (b) the address and telephone number of the submitting party and its representative, if applicable; (c) any portion of the amount at issue that has been conceded; (d) the signature of each submitting party or the signature of an authorized representative on behalf of each submitting party; and (e) the facts and arguments showing grounds for a rehearing.

30604. Grounds for Rehearing

Proposed Regulation 30604 describes the grounds on which a rehearing may be granted. Specifically, subdivision (a) provides that a rehearing may be granted if an irregularity in the appeal proceedings prevented fair consideration of the appeal. Subdivision (b) provides that a rehearing may be granted if an accident or surprise occurred during appeal proceedings. Subdivision (c) provides that a rehearing may be granted if newly discovered, relevant evidence has become available. Subdivision (d) provides that rehearing may be granted if there is insufficient evidence to justify the written opinion or if the opinion is contrary to law. Subdivision (e) provides that a rehearing may be granted due to an error in law. At the trial court level, the equivalent of a petition for rehearing is a motion for a new trial. California Code of Civil Procedure section 657 specifically sets forth the grounds for granting a new trial. As explained in the board's precedential decision in the *Appeal of Wilson Development, Inc.* (94-SBE-007, Oct. 5, 1994), the board has historically looked to the Code of Civil Procedure in determining whether grounds for a rehearing exist. It is the intent in drafting regulation 30604, that in determining whether to grant a rehearing of an administrative appeal before OTA, that OTA continue to apply the grounds for a new trial as set forth in Code of Civil Procedure section 657, to the extent those grounds are relevant to an administrative hearing. Subdivisions (a) through (e) of proposed regulation 30604 are specifically intended to apply paragraphs 1, 3, 4, 6, and 7, respectively, in Code of Civil Procedure section 657. Code of Civil Procedure, Paragraph 6 (subdivision (d) of proposed regulation 30604) applies in the context that the decision is against the law, and Paragraph 7 (subdivision (e) of proposed regulation 30604) applies in the context that there is an error in law that occurred during the appeal proceedings that was excepted to by the party filing the application or petition. It is the intent of OTA in setting forth the grounds for rehearing in proposed regulation 30604, to summarize the underlying law as set forth in the Code of Civil Procedure, and to continue the board's precedential decision in the *Appeal of Wilson Development, Inc.* (94-SBE-007, Oct. 5, 1994) in looking to the Code of Civil Procedure in determining whether to grant a new hearing. Proposed regulation 30604 is intended merely to summarize and apply the underlying substantive law as set forth in Code of Civil Procedure, section 657, as that law is relevant to an administrative hearing. Proposed Regulation 30604 is not intended to create any new appeal rights or expand or restrict those appeal rights beyond what is contained in Code of Civil Procedure, section 657.

30605. Number of Petitions for Rehearing

Proposed Regulation 30605 makes it clear that only one petition for rehearing regarding the same appeal may be submitted, and that once a Panel has issued a decision on a petition for rehearing or issued a written opinion after a rehearing, neither party may submit another petition for rehearing.

30606. Decisions on Petitions for Rehearing

Proposed Regulation 30606 describes the potential outcomes from a petition for rehearing, whether a rehearing is granted or denied. Specifically, the proposed regulation provides that if a rehearing is granted, the initial decision will be held in abeyance pending resolution of the rehearing, and if a rehearing is denied, the initial decision becomes final 30 days from the date of the denial. Additionally, OTA may modify a prior decision without a rehearing if all parties consent.

30607. Briefing on Rehearing

Proposed Regulation 30607 prescribes the briefing schedules when a single petition for rehearing has been granted and when petitions for rehearing filed by more than one party have been granted. Specifically, subdivision (a) provides that the general requirements for briefs explained in Proposed Regulation 30302 apply to the administration of the briefing process and the documents submitted as briefs for a rehearing. Subdivision (b) provides the schedule for the filing party's opening brief, the non-filing party's reply brief, and the filing party's reply brief when a single petition for rehearing has been granted. Subdivision (c) provides the schedule for opening briefs and reply briefs when there is more than one filing party and more than one petition for rehearing has been granted. Subdivision (d) provides that OTA may permit or require additional briefs. Subdivision (e) provides that OTA may order any briefing schedule that it deems appropriate. Subdivision (f) provides that the parties may request an extension of time for filing a brief under guidelines stated in Proposed Regulation 30302(c).

Chapter 8: Taxpayer Bill of Rights Reimbursement Claims

30701. Jurisdiction

Proposed Regulation 30701 provides specific guidance to taxpayers as to the tax and fee programs for which OTA may consider claims for reimbursement. Subdivision (a) provides that OTA has jurisdiction over reimbursement claims related to Personal Income and Bank and Corporation Income Tax. Subdivision (b) provides that OTA has jurisdiction over reimbursement claims related to Business Taxes and Fees. Subdivisions (b)(1) through (13) list the business tax and fee pro-

grams for which a reimbursement claim may be considered by OTA.

30702. Appeals from FTB

Proposed Regulation 30702 provides specific guidance to taxpayers who have filed appeals from actions of the FTB with OTA regarding the types of fees and expenses that may be reimbursable, and to make it clear that fees and expenses are reimbursable only if a Panel issues a finding in writing that the action taken by the FTB was unreasonable.

30703. Appeals from CDTFA

Proposed Regulation 30703 provides specific guidance to taxpayers regarding reimbursement claims involving a tax or fee program administered by the CDTFA. Specifically, subdivision (a) provides that only those fees and expenses that were incurred after the date of the notice of determination, jeopardy determination, or claim for refund are eligible for reimbursement. Subdivision (b) provides that fees and expenses “related to a hearing before OTA” may be reimbursable only if (1) the claimant had previously submitted an appeal to OTA; (2) a Panel granted, in whole or in part, the appeal; and (3) a Panel issues a finding in writing that the action taken by CDTFA was unreasonable.

30704. Determination of Reasonable Fees

Proposed Regulation 30704 references the statutes in the Revenue and Taxation Code that provide a limitation on the amount of fees for professional representation that may be regarded as reasonable. With respect to reimbursement claims from actions of the FTB, subdivision (a) refers to Revenue and Taxation Code section 19717(c)(1)(B)(iii). With respect to reimbursement claims in business tax and fee appeals from the CDTFA, subdivision (b) refers to Revenue and Taxation Code section 7156(c)(1)(B)(iii).

30705. Claim Procedure

Proposed Regulation 30705 provides that a reimbursement claim must be submitted to OTA not later than one year after the date the Panel’s decision becomes final, except that OTA may grant extensions of time for submitting the claim upon a showing of good cause. The proposed regulation also provides that, if a claim is incomplete, the claimant will be granted 30 days to complete the claim.

30706. Dismissal; Agency Statement; Responses; Oral Hearings

Proposed Regulation 30706 provides guidance to the Agencies regarding the timeline for submitting a statement in response to a claim for reimbursement, guidance to taxpayers regarding the timeline for filing a response to an Agency’s statement, and information regarding scheduling an oral hearing. Specifically, subdivision (a) provides that a claim must be dismissed if the

appeal was not granted in whole or in part. Subdivision (b) provides that the Agency may submit a response within 60 days of a completed claim, except that OTA may grant extensions upon a showing of good cause. Subdivision (c) provides that a claimant may respond to an Agency statement within 60 days of the mailing of the statement, and if the claimant does so, the Agency may be given an additional 30 days to respond to the new material. Subdivision (d) provides that an oral hearing will be scheduled after the submission of all documents, the parties will receive at least 45 days’ notice of the hearing date and time, and the claimant may waive an oral hearing.

30707. Notice of Decision

Proposed Regulation 30707 informs taxpayers and the Agencies that OTA will send them written notice of its decision on a claim for reimbursement, and that OTA’s decision on a claim is final 30 days from the date it is mailed, with no provision for a petition for rehearing.

Furthermore, the proposed regulatory action proposes to amend sections 5510 and 5600 of the Board of Equalization — Rules for Tax Appeals, which does the following:

5510. GENERAL APPLICATION OF CHAPTER 5

The draft amendments to Regulation 5510 clarify the scope of the board and OTA’s respective jurisdiction over tax appeals. First, the draft amendments add “Limitations on Authority of the Board” to the title of section 5510. In subdivision (a) (which specifies to which types of appeals the chapter applies), the draft amendments delete references to those tax and fee programs over which the board does not have constitutional authority, as provided in Government Code section 15600, subdivision (b). Specifically, the draft amendment to subdivision (a) of section 5510 provides that Chapter 5 in the board’s Rules for Tax Appeals will only apply to appeals submitted to the board for decision under the Alcoholic Beverage Tax law, the Private Railroad Car Tax, Publicly Owned Property, State-Assessed Property, Tax on Insurers Law, and the Welfare Exemption. Former subdivision (c), providing rules and procedures for appeals from actions of the Franchise Tax Board, and subdivision (d) dealing with fuel tax, were deleted because the board no longer hears appeals from the Franchise Tax Board or administers taxes on fuel. Instead, a new subdivision (c) is proposed, which specifies that on or after January 1, 2018, the board will not conduct appeals or tax any other action with respect to an appeal under any of the specified laws, because these listed programs (subdivision (c)(1) through (4)), are those programs which are now subject to the jurisdiction of OTA. Specifically, pursuant to Government Code sections 15600, 15672, and 15674, OTA now hears all appeals of

these types of actions, and the board lacks jurisdiction to take any action with respect to such an appeal. Subdivision (d) goes on to provide that the board's Rules for Tax Appeals shall not apply to an appeal before OTA, and instead, OTA's Rules for Tax Appeals shall apply to such an appeal.

5600. DEFINITIONS, BOARD HEARING PROCEDURES; TAXES AFFECTED BY THIS CHAPTER.

The draft amendments to Regulation 5600 clarify the scope of reimbursement claims over which the board and OTA, respectively, have jurisdiction. Subdivision (b) is amended to clarify that Chapter 6 of the board's Rules for Tax Appeals applies to reimbursement claims submitted under the Alcoholic Beverage Tax, and Private Railroad Car Tax, because these programs are retained by the board pursuant to Government Code section 15600, subdivision (b). The remaining tax and fee programs were deleted from subdivision (b) of Regulation 5600, because these programs are not constitutional functions of the board as provided in subdivision (b) of Government Code section 15600. Former subdivision (c), dealing with fuel tax, was deleted because the board no longer administers taxes on fuel. Instead, a new subdivision (c) is proposed, which specifies that on or after January 1, 2018, the board will not conduct appeals or tax any other action with respect to an appeal under any of the specified laws, because these listed programs (subdivisions (c)(1) through (4)), are those programs which are now subject to the jurisdiction of OTA. Specifically, pursuant to Government Code sections 15600, 15672, and 15674, OTA now hears all appeals of these types of actions, and the board lacks jurisdiction to take any action with respect to such an appeal. Subdivision (d) goes on to provide that the board's Rules for Tax Appeals shall not apply to an appeal before OTA, and instead, OTA's Rules for Tax Appeals shall apply to such an appeal.

California Code of Regulations, title 18, division 2.1, Chapter 4: Appeals from Actions of the Franchise Tax Board (Regulation sections 5410 through 5465).

The proposed regulatory action also repeals Chapter 4: Appeals from Actions of the Franchise Tax Board, in its entirety from the board's Rules for Tax Appeals because, pursuant to Government Code sections 15600, 15672, and 15674, OTA now hears all appeals from such actions, and the board lacks jurisdiction to take any action with respect to such an appeal.

CONSISTENCY AND COMPATIBILITY WITH EXISTING FEDERAL LAW OR REGULATIONS

OTA has determined that there are no comparable federal regulations or statutes.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OTA has determined that the adoption of the proposed regulatory action, including the adoption of proposed regulations, proposed amendments to existing regulations, and proposed repeal of existing regulations, hereinafter "proposed regulatory action," will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement pursuant to title 2, division 4, part 7 (commencing with section 17500) of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY OR SCHOOL DISTRICT

OTA has determined that the adoption of proposed regulatory action will result in no direct or indirect cost or savings to any state agency and will result in no cost or savings in federal funding to the State of California. OTA also determined that the adoption of the proposed regulatory action will result in no direct or indirect cost to any local agency or school district that is required to be reimbursed under title 2, division 4, part 7 (commencing with section 17500) of the Government Code, and will result in no other non-discretionary cost or savings imposed on local agencies.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

OTA has made an initial determination that adoption of the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESS

The adoption of the proposed regulatory action might affect small business.

NO KNOWN COST IMPACTS TO PRIVATE PERSONS OR BUSINESS

OTA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3(b)

OTA has determined that the proposed adoption of the regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, OTA has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. OTA has determined that the adoption of the proposed regulatory action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, OTA has determined that the adoption of the proposed regulatory action will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment. As discussed in greater detail, above, OTA anticipates that the adoption of the proposed regulatory action will benefit OTA, FTB, CDTFA, local entities, taxpayers, representatives, and the general public by creating a comprehensive set of procedural regulations which cover, clarify, and explain all of OTA's administrative review functions with regard to conducting an appeal, and thereby improving the public's understanding of the administrative review process, and ensuring transparency and fairness in the conduct of appeals before OTA.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed regulatory action will not have a significant effect on housing costs.

STATEMENT REGARDING ALTERNATIVES

OTA must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory pol-

icy or other provision of law than the proposed regulatory action.

OTA invites interested persons to present statements with respect to alternatives to the proposed regulatory action during the written comment period.

CONTACT PERSONS

Written comments for OTA's consideration, requests, and any other inquiries concerning the proposed regulatory action should be directed to Ms. Myriam Bouaziz, Deputy Director Legislation, by email at regulations.ota@ota.ca.gov or Myriam.Bouaziz@ota.ca.gov; or by telephone at (916) 926-3918; or by fax at (916) 492-2089; or by mail to Office of Tax Appeals, Attn: Myriam Bouaziz, P.O. Box 989880, West Sacramento, CA 95798-9880.

The backup contact person for these inquiries is Andrew Kwee, Administrative Law Judge III, who may be reached by email at regulations.ota@ota.ca.gov or Andrew.Kwee@ota.ca.gov; or by telephone at (916) 292-1158; or by fax at (916) 492-2089; or by mail to Office of Tax Appeals, Attn: Andrew Kwee, P.O. Box 989880, West Sacramento, CA 95798-9880.

WRITTEN COMMENT PERIOD

Any person interested, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OTA. Comments may also be submitted via email to the following email address: regulations.ota@ota.ca.gov. Comments may also be submitted to Myriam Bouaziz at the postal address, email address, or fax number provided above, prior to the close of the written comment period. The written comment period closes at 5:00 p.m. on August 27, 2018. OTA will consider only comments received at OTA's offices by that time.

AVAILABILITY OF TEXT OF PROPOSED REGULATIONS, INITIAL STATEMENT OF REASONS, AND RULEMAKING FILE

OTA has prepared a copy of the text of the proposed regulatory action illustrating its express terms. The proposed Office of Tax Appeals — Rules for Tax Appeals are not illustrated in underline or italics format because California Code of Regulations, title 1, section 8, subdivision (b) provides that “[u]nderline or italic is not required for the adoption of a new regulation or set of regulations if the final text otherwise clearly indicates that all of the final text submitted to OAL for filing is added to the California Code of Regulations.” OTA has also prepared an initial statement of reasons for the adoption of the proposed regulatory action, which includes the

economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information upon which the proposed regulatory action is based are available to the public upon request.

OTA will have the entire rulemaking file available for public inspection throughout the rulemaking process at its offices located at 400 R Street, Sacramento, CA, 95811. Copies may be obtained by contacting the contact persons identified above. Alternatively, the express terms of the proposed regulatory action and the rest of the rulemaking file are also available on the OTA's Website at ota.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

OTA may adopt the proposed regulatory action with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, OTA will make the full text of the proposed regulatory action, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulations will be mailed to those interested parties who commented on the original proposed regulations orally or in writing or who asked to be informed of such changes. The text of the resulting regulations will also be available to the public by contacting the designated contact persons identified above. OTA will consider written comments on the resulting regulations that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If OTA adopts the proposed regulatory action, OTA will prepare a final statement of reasons, which will be made available for public inspection throughout the rulemaking process at its offices located at 400 R Street, Sacramento, CA, 95811, and will also be available on OTA's Website at ota.ca.gov.

EFFECTIVE DATE

It is anticipated that OTA's emergency regulations will expire on December 31, 2018, and it is further anticipated that the proposed regulatory action will become effective January 1, 2019. OTA may request an early effective date pursuant to Government Code sec-

tion 11343.4 to ensure that the proposed regulatory action is effective on January 1, 2019.

TITLE 22. OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

TITLE 22, DIVISION 7, CHAPTER 9.5: PRESCRIPTION DRUG PRICING FOR PURCHASERS

Sections 96060, 96061, 96062, 96065, 96070, 96071, 96075, 96076, 96077, 96078, 96080, 96081, 96082, 96083, 96084, 96085, 96086, and 96087

The Office of Statewide Health Planning and Development (OSHPD) proposes adding new Chapter 9.5. Prescription Drug Pricing for Purchasers (Sections 96060–96087) to Title 22 of the California Code of Regulations. Chapter 9.5 will implement Chapter 9. Prescription Drug Pricing for Purchasers (Health and Safety Code section 127675 et seq.) added by Senate Bill (SB) 17 (Chapter 603, Statutes of 2017). The Office proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

SB 17 made a number of changes to California law to address prescription drug costs. The bill affects several state agencies. One major component of the Legislation added Chapter 9. Prescription Drug Pricing for Purchasers, to Part 2 of Division 107 of the Health and Safety Code (section 127675 et seq.). Chapter 9. Prescription Drug Pricing for Purchasers establishes a new, statutorily mandated program for OSHPD. Health and Safety Code section 127676 includes the following statements: "The Legislature finds and declares that the State of California has a substantial public interest in the price and cost of prescription drugs. . . . It is the intent of the Legislature in enacting this chapter to provide notice and disclosure of information relating to the cost and pricing of prescription drugs in order to provide accountability to the state for prescription drug pricing." The bill authorizes OSHPD to adopt regulations or issue guidance for the implementation of Chapter 9.

The program has two basic components. Prescription drug manufacturers, as defined, must notify OSHPD within three days of introducing a new drug at a wholesale acquisition cost that exceeds the specified threshold. Within 30 days of this notification, manufacturers must report additional information to OSHPD. Additionally, prescription drug manufacturers, as defined, are required to report to OSHPD information on the rationale for existing prescription drug cost increases that meet identified thresholds.

I. PUBLIC HEARING

OSHPD has scheduled a public hearing on this proposed action. The public hearing will be held on August 29, 2018 from 2:00 to 3:00 p.m. at 2020 West El Camino Avenue, Sacramento, CA 95833.

II. WRITTEN PUBLIC COMMENT PERIOD AND CONTACT PERSON

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. All comments must be received by OSHPD by 5:00 p.m. on August 29, 2018.

Inquiries and written comments regarding the proposed action should be addressed to the primary contact person named below. Comments delivered by email are suggested. Comments may also be faxed, hand delivered, or mailed.

Ty Christensen, Manager
Information Services Division
Office of Statewide Health Planning
and Development
Fax: (916) 322-1442
Tel: (916) 326-3856
Email: ty.christensen@oshpd.ca.gov
Mailing address: 2020 West El Camino Avenue,
Suite 1100
Sacramento, CA 95833-1880

Inquiries and comments may also be directed to the backup contact person at the same mailing address:

Starla Ledbetter, Branch Chief
Information Services Division
Office of Statewide Health Planning
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III. AUTHORITY AND REFERENCE

Authority: California Health and Safety Code, Section 127685.

Reference: California Health and Safety Code, Sections 127675, 127677, 127679, and 127681.

IV. INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

a. Summary of Existing Laws and Regulations

This proposed rulemaking is intended to implement a new statutorily mandated program, Chapter 9. Prescrip-

tion Drug Pricing for Purchasers (Health and Safety Code section 127675 et seq.), added by SB 17 (Chapter 603, Statutes of 2017).

b. Policy Statement Overview/Specific Benefits of Proposed Regulations

OSHPD proposes adding new Chapter 9.5. Prescription Drug Pricing for Purchasers to Title 22 of the California Code of Regulations. Chapter 9.5 will implement Chapter 9. Prescription Drug Pricing for Purchasers (Health and Safety Code section 127675 et seq.) added by SB 17 (Chapter 603, Statutes of 2017).

SB 17 made a number of changes to California law to address prescription drug costs. The bill affects several state agencies. One major component of the Legislation adds Chapter 9. Prescription Drug Pricing for Purchasers, to Part 2 of Division 107 of the Health and Safety Code (section 127675 et seq.). Chapter 9. Prescription Drug Pricing for Purchasers establishes a new, statutorily mandated program for OSHPD. Health and Safety Code section 127676 includes the following statements: "The Legislature finds and declares that the State of California has a substantial public interest in the price and cost of prescription drugs. . . . It is the intent of the Legislature in enacting this chapter to provide notice and disclosure of information relating to the cost and pricing of prescription drugs in order to provide accountability to the state for prescription drug pricing," which creates a positive impact to the health and safety of Californians. The bill authorizes OSHPD to adopt regulations or issue guidance for the implementation of Chapter 9.

The program has two basic components. Prescription drug manufacturers, as defined, must notify OSHPD within three days of introducing a new drug at a wholesale acquisition cost that exceeds the specified threshold. Within 30 days of this notification, manufacturers must report additional information to OSHPD. Additionally, prescription drug manufacturers, as defined, are required to report to OSHPD information on the rationale for existing prescription drug cost increases that meet identified thresholds.

c. Determination of Inconsistency/Incompatibility with Existing State Regulations

As required by Government Code section 11346.5(a)(3)(D), OSHPD evaluated the language contained in the proposed regulations. OSHPD has determined that these proposed regulations are not inconsistent with or incompatible with existing state regulations. These regulations are necessary to implement a new statutorily mandated program.

d. Documents Incorporated by Reference

Format and File Specifications for Submission of Prescription Drug Reports Version 1.0, dated June 30, 2018.

V. DISCLOSURES REGARDING THE PROPOSED ACTION

OSHPD has made the following initial determinations:

- a. Mandate on local agencies and school districts: None.
- b. Cost or savings to any state agency: OSHPD has identified costs of \$500,000 in fiscal year 2018–19, and \$800,000 in fiscal year 2019–20 and ongoing to implement the requirements of SB 17. Potential penalties up to \$23 million for late reporting of the required information by drug manufacturers are a potential revenue to the Managed Health Care Fund.
- c. Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- d. Other nondiscretionary cost or savings imposed on local agencies: None.
- e. Cost or savings in federal funding to the state: None.
- f. Cost impact on a representative person or business: New regulations are required to implement Chapter 9. Prescription Drug Pricing for Purchasers (Health and Safety Code section 127675 et seq.). Drug manufactures may incur up to \$200 per year to upload the statutorily required information to the online portal prescribed by these proposed regulations.
- g. Statewide adverse economic impact directly affecting businesses and individuals: The Office has made an initial determination that the regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- h. Significant effect on housing costs: None.
- i. Cost impact on small business: This proposed action does not affect small business because no entities regulated under the proposed action are small businesses. OSHPD is not aware of any manufacturer of a prescription drug that qualifies as a small business.

VI. STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS (EIA)

New regulations are required to implement Chapter 9. Prescription Drug Pricing for Purchasers (Health and Safety Code section 127675 et seq.). OSHPD has nar-

rowly tailored the proposed regulations to implement the statutory requirements for the new program. The proposed regulations impose only minor additional reporting or other requirements on any businesses, organizations, or individuals.

Therefore, OSHPD concludes that:

- (1) this regulatory action will not create jobs within the state;
- (2) this regulatory action will not eliminate jobs within the state;
- (3) this regulatory action will not create new businesses;
- (4) this regulatory action will not eliminate existing businesses;
- (5) this regulatory action will not affect the expansion of businesses currently doing business in the state; and
- (6) The benefits of the regulations to the health and welfare of California residents, worker safety, and the state’s environment are to achieve the goals of SB 17, as related to Chapter 9. Prescription Drug Pricing for Purchasers. Health and Safety Code section 127676 includes the following statements: “The Legislature finds and declares that the State of California has a substantial public interest in the price and cost of prescription drugs. . . . It is the intent of the Legislature in enacting this chapter to provide notice and disclosure of information relating to the cost and pricing of prescription drugs in order to provide accountability to the state for prescription drug pricing.”

VII. REASONABLE ALTERNATIVES

OSHPD must determine that no reasonable alternative considered by OSHPD or that has otherwise been identified and brought to the attention of OSHPD would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

VIII. AVAILABILITY OF EXPRESS TERMS, INITIAL STATEMENT OF REASONS, AND INFORMATION UPON WHICH PROPOSED RULEMAKING IS BASED

The Office will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the address given for the contact persons. As of the date this notice is published in the Notice Register, the rulemaking file consists of this

notice, the text of the proposed regulations, and information upon which proposed rulemaking is based. Additionally, the Format and File Specifications document incorporated by reference, the initial statement of reasons, and an economic impact analysis contained in the initial statement of reasons are also available.

IX. AVAILABILITY OF SUBSTANTIAL CHANGES TO ORIGINAL PROPOSAL

After considering all timely and relevant comments received, OSHPD may adopt the proposed regulations substantially as described in this notice. If OSHPD makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before OSHPD adopts the regulations as revised.

Please send requests for copies of the modified text to the listed contact person. The modified text will also be available on the website at <http://www.oshpd.ca.gov/Laws-Regs.html>. OSHPD will accept written comments on the modified regulations for 15 days after the date on which they are made available.

X. AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons, including all of the comments and responses, will be available, after its completion, through the OSHPD website at <http://www.oshpd.ca.gov/Laws-Regs.html>. The Final Statement of Reasons will also be available for review from the designated contact person.

XI. AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, the text of the proposed regulations, and the Format and File Specifications for Submission of Prescription Drug Reports Version 1.0 can be accessed through the OSHPD website at <http://www.oshpd.ca.gov/Laws-Regs.html>.

TITLE 24. BUILDING STANDARDS COMMISSION

NOTICE OF PROPOSED ACTION TO BUILDING STANDARDS OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD) REGARDING AMENDMENTS TO THE 2016 CALIFORNIA BUILDING CODE AND 2016 CALIFORNIA RESIDENTIAL CODE CALIFORNIA CODE OF REGULATIONS, TITLE 24, PARTS 2 AND 2.5

(HCD-EF 01/18)

Notice is hereby given that the California Building Standards Commission (CBSC) on behalf of the Department of Housing and Community Development (HCD) proposes to adopt, approve, codify, and publish changes to building standards contained in the California Code of Regulations (CCR), Title 24, Parts 2 and 2.5. HCD is proposing amendments to building standards in the 2016 California Building Code (CBC) and 2016 California Residential Code (CRC) related to Emergency Housing.

PUBLIC COMMENT PERIOD

Reference: Government Code Section 11346.5(a)(17).

A public hearing has not been scheduled; however, written comments will be accepted from July 13, 2018, until 5:00 p.m. on August 27, 2018.

Please address your comments to:

California Building Standards Commission
Attention: Mia Marvelli, Executive Director
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

Written comments may be emailed to CBSC@dgs.ca.gov.

Any interested person, or his or her duly authorized representative, may request no later than 15 days prior to the close of the written comment period that a public hearing be held.

The public will have an opportunity to provide both written and/or oral comments regarding the proposed action on building standards at a public meeting to be conducted by the CBSC to be scheduled at a date near the end of the current adoption cycle. A meeting notice will be issued announcing the date, time and location of the public meeting.

POST-HEARING MODIFICATIONS TO THE TEXT OF THE REGULATIONS

Reference: Government Code Section 11346.5(a)(18).

Following the public comment period, CBSC may adopt the proposed building standards substantially as proposed in this notice or with modifications that are sufficiently related to the original proposed text and notice of proposed changes. If modifications are made, the full text of the proposed modifications, clearly indicated, will be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). CBSC will accept written comments on the modified building standards during the 15-day period.

NOTE: To be notified of any modifications, you must submit written/oral comments or request that you be notified of any modifications.

AUTHORITY AND REFERENCE

Reference: Government Code Section 11346.5(a)(2).

The California Building Standards Commission proposes to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5. The purpose of these building standards is to implement, interpret, or make specific the provisions of Health and Safety Code Sections 17000–17062.5, 17910–17995.5, 18200–18700, 18860–18874, and 19960–19997; Civil Code Sections 1101.4 and 1101.5; and Government Code Sections 12955.1 and 12955.1.1.

HCD is proposing this regulatory action based on Health and Safety Code Sections 17040, 17050, 17920.9, 17921, 17921.5, 17921.6, 17921.10, 17922, 17922.6, 17922.12, 17922.14, 17927, 17928, 18300, 18552, 18554, 18620, 18630, 18640, 18670, 18690, 18691, 18865, 18871.3, 18871.4, 18873, 18873.1, 18873.2, 18873.3, 18873.4, 18873.5, 18938.3, 18944.11, and 19990; and Government Code Section 12955.1.

INFORMATIVE DIGEST

Reference: Government Code Section 11346.5(a)(3).

Summary of Existing Laws

Health and Safety Code Section 17921 and Government Code Section 12955.1 require HCD to propose the adoption, amendment, or repeal of building standards by the CBSC.

Health and Safety Code Section 17922 requires that the building standards be essentially the same as the most recent editions of the uniform industry codes with

any additions or deletions by HCD. The CBSC is authorized to adopt these building standards under the authority granted by Health and Safety Code Section 18949.5.

Health and Safety Code Section 19990 requires HCD to adopt building standards for factory-built housing.

Health and Safety Code Sections 18300 and 18865 require HCD to adopt building standards for mobile-home parks and special occupancy parks.

HSC Section 18937 provides that a proposing agency can propose a finding of emergency in accordance with Government Code Sections 11346.1 and 11346.5.

HSC Section 18938 requires the filing of emergency standards with the Secretary of State by CBSC only after they have been approved by the commissioners. It requires that the standards become effective when filed with Secretary of State or at a later date specified in the standards, and that they be published in California Code of Regulations, Title 24.

Government Code Section 11346.1(e) states that no regulation, amendment, or order of repeal initially adopted as an emergency regulatory action shall remain in effect more than 180 days unless the adopting agency has complied with Sections 11346.2 to 11347.3, inclusive, either before adopting an emergency regulation or within the 180-day period. The adopting agency, prior to the expiration of the 180-day period, shall transmit to the office for filing with the Secretary of State the adopted regulation, amendment, or order of repeal, the rulemaking file, and a certification that Sections 11346.2 to 11347.3, inclusive, were complied with either before the emergency regulation was adopted or within the 180-day period.

Summary of Existing Regulations

The 2016 CBC and 2016 CRC, Parts 2 and 2.5 of Title 24 of the California Code of Regulations (CCR), also known as the California Building Standards Code, adopted by reference the 2015 International Building Code (IBC) and 2015 International Residential Code (IRC) with California amendments, effective on January 1, 2017.

Summary of Effect

HCD proposes to amend the 2016 edition of the CBC and CRC, Title 24, Parts 2 and 2.5, of the California Code of Regulations. The proposed action will make permanently effective, upon approval of adoption, approval by the commissioners, and filing with Secretary of State, the addition of Appendix N in Title 24, Part 2, and Appendix X in Title 24, Part 2.5. Although adopted by HCD, the proposed appendices are voluntary, and will be mandatory only if adopted by a local jurisdiction.

The proposed appendices are intended to provide a consistent and available standard by which local agen-

cies may develop emergency housing or shelter ordinances and provide a minimum set of building standards for compliance. The proposed emergency regulations also provide a consistent standard for HCD to review, provide recommendations, and approve local emergency housing or shelter ordinances that are submitted to HCD for review. The formal adoption of these standards into the CBC and CRC also protects HCD from use and enforcement of underground regulations not formally adopted in accordance with the Building Standards Law.

Comparable Federal Statute or Regulations

There are no comparable federal statutes or regulations.

Policy Statement Overview

Assembly Bill (AB) 932 (Chapter 786, Statutes of 2017) authorizes the Cities of Berkeley, Emeryville, Los Angeles, Oakland, and San Diego, the County of Santa Clara, and the City and County of San Francisco to adopt, by ordinance, reasonable local standards and procedures for design, site development and operation of homeless shelters and structures and facilities within. AB 932 also requires HCD to review the city/county draft ordinance to ensure it meets minimum health and safety standards. Currently, there are no standards in the 2016 CBC or 2016 CRC specifically addressing all types of shelters that are suitable for use as emergency housing.

AB 2176 (Chapter 691, Statutes of 2016) authorized the City of San Jose to adopt, by ordinance, reasonable local standards for the design, site development, and operation of emergency bridge housing communities and structures and facilities within. AB 2176 also provided specific requirements for emergency sleeping cabins (as defined) which addressed lighting, heating, ventilation, single electrical receptacle, forms of egress, locks, accessibility, and smoke alarms. The provisions of AB 2176 are operative until January 1, 2022, and effective until conforming standards are approved for the CBSC.

HCD finds that provisions currently being amended to the 2016 CBC and CRC are critical and that there should be no undue delay in enacting measures to provide construction guidance to local agencies for emergency housing as well as minimum standards for reviewing and evaluating draft local ordinances for HCD approval or disapproval.

Evaluation of Consistency

HCD has determined that the proposed regulations are not inconsistent or incompatible with existing state regulations.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

Reference: Government Code Section 11346.5(a)(4)

None.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

Reference: Government Code Section 11346.5(a)(5)

HCD has determined that the proposed regulatory action would not impose a mandate on local agencies or school districts. HCD's proposal does not mandate state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

ESTIMATE OF COST OR SAVINGS

Reference: Government Code Section 11346.5(a)(6)

See HCD's "Economic and Fiscal Impact Statement" (Form 399)

- A. Cost or Savings to any state agency: **NO**.
Health and Safety Code Section 17921 requires HCD to propose the adoption, amendment or repeal of building standards to CBSC pursuant to the provisions of Chapter 4 (commencing with Section 18935) of Part 2.5 of the Government Code. Part 2.5 of the Government Code requires state agencies to ensure that regulatory language meets the requirements of clarity and non-duplication. This proposed rulemaking incorporates specific provisions into one location with the CBC and CRC to meet these requirements. This action will result in a minimal cost to HCD which will be absorbed in the current budget.
- B. Cost to any local agency required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**.
Health and Safety Code Section 17951 provides that local enforcement agencies may prescribe fees to defray the costs of enforcement of the State Housing Law including compliance with these regulations.
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**.
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**.
- E. Cost or savings in federal funding to the state: **NO**.

Estimate: HCD believes that any additional expenditure resulting from this proposed action will be minimal and will be able to be absorbed within existing budgets and resources.

INITIAL DETERMINATION OF SIGNIFICANT
STATEWIDE ADVERSE ECONOMIC IMPACT
ON BUSINESSES

Reference: Government Code Section 11346.5(a)(7)

HCD has made an initial determination that the adoption/amendment/repeal of these regulations will not have a significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with business in other states.

DECLARATION OF EVIDENCE

Reference: Government Code Section 11346.5(a)(8)

HCD has determined that there are minimal facts, evidence, documents, testimony, or other evidence upon which the agency relied to support its initial determination of no effect pursuant to Government Code Section 11346.5(a)(8). The public is welcome to submit any information, facts or documents either supporting HCD's initial determination or finding to the contrary.

FINDING OF NECESSITY FOR THE PUBLIC'S
HEALTH, SAFETY, OR WELFARE

Reference: Government Code Section 11346.5(a)(11)

N/A. HCD has made an assessment of the proposal regarding the economic impact of recordkeeping and reporting requirements and has determined that a report pursuant to Government Code Section 11346.3(c) is not required.

COST IMPACT ON REPRESENTATIVE PRIVATE
PERSON OR BUSINESS

Reference: Government Code Section 11346.5(a)(9)

Describe all cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. If no cost impact, provide the following statement:

HCD is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF EFFECT OF REGULATIONS
UPON JOBS AND BUSINESS EXPANSION,
ELIMINATION OR CREATION

Reference: Government Code Section 11346.5(a)(10)

HCD has assessed whether and to what extent this proposal will affect the following:

A. The creation or elimination of jobs within the State of California.

These regulations will not affect the creation, or cause the elimination, of jobs within the State of California.

B. The creation of new businesses or the elimination of existing businesses within the State of California.

These regulations will not affect the creation or the elimination of businesses within the State of California.

C. The expansion of businesses currently doing business within the State of California.

These regulations will not affect the expansion of businesses currently doing business within the State of California.

D. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment.

These regulations will update and improve building standards related to the construction and maintenance of emergency housing.

ESTIMATED COST OF COMPLIANCE OF
STANDARDS THAT WOULD IMPACT HOUSING

Reference: Government Code Section 11346.5(a)(12)

HCD has made an initial determination that this proposal would not have a significant effect on housing costs. The CBSC contact person designated below will make HCD's initial evaluation of the effect of the proposed regulatory action on housing costs available upon request. (See Economic Impact of the Proposed California Building Code Regulations on Private Persons and Businesses in the State of California in the rulemaking file.)

CONSIDERATION OF ALTERNATIVES

Reference: Government Code Section 11346.5(a)(13)

HCD has determined that no reasonable alternative considered by HCD or that has otherwise been identified and brought to the attention of HCD would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed

action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

AVAILABILITY OF
RULEMAKING DOCUMENTS
Reference: Government Code Sections
11346.5(a)(16) and 11346.5(a)(20)

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting CBSC. This notice, the express terms and initial statement of reasons can be accessed from the CBSC website: <http://www.bsc.ca.gov/>.

In addition, rulemaking documents will be posted on HCD's website: <http://www.hcd.ca.gov/building-standards/building-code/index.shtml>

Reference: Government Code Section 11346.5(a)(19).

Interested parties may obtain a copy of the final statement of reasons, once it has been prepared, by making a written request to the contact person named below or at the CBSC website: www.bsc.ca.gov.

Reference: Government Code Section 11346.5(a)(21).

HCD shall provide, upon request, a description of proposed changes included in the proposed action, in the manner provided by Government Code Section 11346.6, to accommodate a person with a visual or other disability for which effective communication is required under state or federal law and that providing the description of proposed changes may require extending the period of public comment for the proposed action.

CBSC CONTACT PERSON FOR PROCEDURAL
AND ADMINISTRATIVE QUESTIONS
Reference: Government Code Section 11346.5(a)(14)

General questions regarding procedural and administrative issues should be addressed to:

Gary Fabian
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Telephone: (916) 263-0916

PROPOSING STATE AGENCY CONTACT
PERSON FOR SUBSTANTIVE AND/OR
TECHNICAL QUESTIONS ON THE PROPOSED
CHANGES TO BUILDING STANDARDS

Specific questions regarding the substantive and/or technical aspects of the proposed changes to the building standards should be addressed to:

Stoyan Bumbalov, Codes and Standards
Administrator I
Department of Housing and Community
Development
Division of Codes and Standards
Telephone: (916) 263-4715
Email: Stoyan.Bumbalov@hcd.ca.gov
Fax: (916) 327-4712

Emily Withers, Codes and Standards
Administrator II
Department of Housing and Community
Development
Division of Codes and Standards
Telephone: (916) 263-2998
Email: Emily.Withers@hcd.ca.gov
Fax: (916) 327-4712

GENERAL PUBLIC INTEREST

**DEPARTMENT OF FISH AND
WILDLIFE**

CESA CONSISTENCY DETERMINATION
REQUEST FOR
Ash Hill Broadband Communication Tower Project
2080-2018-006-06
San Bernardino County

The California Department of Fish and Wildlife (CDFW) received a notice on June 26, 2018 that Inter-Connect Towers, LLC proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The proposed project involves the construction, operation and maintenance of a multi-carrier communications facility on approximately 0.23 acres of land and the use of up to 5.77 miles of a largely existing Bureau of Land Management designated open access route off Highway 66. Proposed activities will include, but are not limited to, grading, clearing and excavation of the site; laying of foundations; and construction of the communications tower, equipment shelter, and solar arrays. The proposed project will occur approximate 7.8 miles east of Ludlow, California, just south of the Interstate 40 Right-of-Way.

The U.S. Fish and Wildlife Service (Service) issued a federal biological opinion (Service Ref. No. 1-8-97-F-17) in a memorandum to the U.S. Bureau of Land Management on August 22, 1997, which considered the effects of small projects in Imperial, Inyo,

Kern, Los Angeles, Riverside and San Bernardino Counties on the state and federally threatened desert tortoise (*Gopherus agassizii*).

Pursuant to California Fish and Game Code section 2080.1, InterConnect Towers, LLC is requesting a determination that the Biological Opinion (BO) and its associated Incidental Take Statement (ITS) are consistent with CESA for purposes of the proposed project. If CDFW determines the BO and its associated ITS are consistent with CESA for the proposed project, InterConnect Towers, LLC will not be required to obtain an incidental take permit under Fish and Game Code section 2081 subdivision (b) for the proposed project.

DEPARTMENT OF FISH AND WILDLIFE

CONSISTENCY DETERMINATION NO. 2080-2018-005-03

Project: Critical Repairs Conducted under Phase III of the 2017 Storm Damage Department of Water Resources Emergency Rehabilitation (SDDER) Project

Location: Yolo, Sacramento, and Solano Counties

Applicant: California Department of Water Resources

Background

The California Department of Water Resources (Applicant) proposes to repair nine levee sites within the State Plan of Flood Control (SPFC) that were impacted from erosion and other damage to the levee and facilities during the winter storms of 2016/2017. The Critical Repairs Conducted under Phase III of the 2017 SDDER Project (Project) includes repair of levees within Yolo, Sacramento, and Solano counties. The site names are (1) Site 31, Elk Slough, LMA-119; (2) Site 32, Elk Slough, LMA-122; (3) Site 33, Elk Slough, LMA-139; (4) Site 34, Elk Slough, LMA-140; (5) Site 35, Cache Slough, LMA-216; (6) Site 36, Lindsey Slough, LMA-191; (7) Site 37, Steamboat Slough, LMA-147; (8) Site 38, Irrigation Canal W near Yolo Bypass, LMA-283; and (9) Site 39, Irrigation Canal W near Yolo Bypass, LMA-285.

The Project will include the following activities at each location: (1) mobilization — site access and staging areas, (2) site preparation, (3) construction sequencing, and (4) demobilization — restoration and cleanup.

Mobilization includes creation of temporary access roads, if needed; securing the site; and transporting equipment and materials to the site for later repair phases

(e.g. clearing and grubbing, and construction of the repair). Site preparation includes marking vegetation identified for protection, vegetation removal, installation of turbidity curtains, trash removal, clearing, and grubbing. Construction includes excavation of existing rock and levee soils disturbed by failure, grading, excavation of key trenches, placement of geotextile and rock material, hauling away of excavated material, and re-seeding. Demobilization includes removal of equipment and materials from the repair sites and disposal of excess materials. Applicant will rip, seed for revegetation, and restore to pre-Project conditions staging areas and temporary access roads. Applicant will clean and clear rubbish from all areas. Equipment required for levee repair work will include a bobcat, compactors, water truck, excavator, barges, loader, bulldozer, dump trucks, pick-up trucks, and/or a barge crane. The Project will occur throughout the summer and fall of 2018 (i.e., July through October). Each site will require approximately two to four weeks of active construction. All work will take place during daylight hours and no nighttime lighting will be required.

The Project activities described above are expected to incidentally take¹ giant garter snake (*Thamnophis gigas*) (GGS) (Site 38, Irrigation Canal W near Yolo Bypass, LMA-283 and Site 39, Irrigation Canal W near Yolo Bypass, LMA-285) and Delta Smelt (*Hypomesus transpacificus*) where those activities take place within and adjacent to the specific Project sites at Elk Slough, Lindsey Slough, Steamboat Slough, and Irrigation Canal W near Yolo Bypass. In particular, GGS and Delta Smelt could be incidentally taken as a result of the clearing, grubbing, grading, excavating, installation of rock material, soil compaction, and crushing by equipment or vehicles. GGS and Delta Smelt are designated as threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and as threatened (GGS) and endangered (Delta Smelt) species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subds. (b)(4)(E) and (a)(2)(O), respectively.)

GGS individuals are documented as present less than two (2) miles from the two (2) Project sites (site 38, Irrigation Canal W near Yolo Bypass, LMA-283 and site 39, Irrigation Canal W near Yolo Bypass, LMA-285) and there is suitable GGS habitat within and adjacent to the Project sites. The repair sites are on a canal that

¹ Pursuant to Fish and Game Code section 86, “‘Take’ means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” See also *Environmental Protection Information. Center v. California Department of Forestry and Fire Protection* (2008) 44 CAL.4th 459,507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), “‘take’ . . . means to catch, capture or kill”).

serves as aquatic habitat for GGS with upland habitat along the bank and levee slope. Delta Smelt individuals are documented as present year round at Cache and Lindsey Sloughs (Site 35, Cache Slough, LMA-216 and Site 36, Lindsey Slough, LMA-191) and the other sites at Elk Slough and Steamboat Slough are used when Delta Smelt move into the upper reaches of the system in winter and spawn. Larval smelt move west in the spring and summer. Because of the proximity of the nearest documented GGS and Delta Smelt, dispersal patterns of GGS and Delta Smelt, and the presence of suitable GGS and Delta Smelt habitat within the Project site, the United States Fish & Wildlife Service (Service) determined that GGS and Delta Smelt are reasonably certain to occur within the Project site and that Project activities are expected to result in the incidental take of GGS and Delta Smelt.

According to the Service, the Project will result in the permanent loss 1.001 acres of upland GGS habitat and 0.522 acres of aquatic Delta Smelt habitat, totaling 1.523 acres of permanent habitat loss.

Because the Project is expected to result in take of a species designated as threatened under the federal ESA, the United States Army Corps of Engineers (USACE) consulted with the Service as required by the ESA. On April 18, 2018, the Service issued a biological opinion (BO) (Service file No. 08ESMF00-2018-F-1716) to the USACE. On May 2, 2018, the Service issued a revised biological opinion (Service file No. 08ESMF00-2018-F-1716-R001; hereafter BO) to the USACE. The BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures. The BO also requires the Applicant to implement and adhere to measures contained within the Project Biological Assessment and Essential Fish Habitat Assessment.

On May 31, 2018, the Director of the Department of Fish and Wildlife (CDFW) received a notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO and its related ITS are consistent with CESA for purposes of the Project and GGS and Delta Smelt. (Cal. Reg. Notice Register 2018, No. 22-Z, p. 874.)

Determination

CDFW has determined that the BO, including the ITS, is consistent with CESA as to the Project, GGS, and Delta Smelt because the mitigation measures contained in the BO and ITS as well as the conditions in the Biological Assessment and Essential Fish Habitat Assessment, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of GGS and

Delta Smelt will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO, ITS, Biological Assessment, and Essential Fish Habitat Assessment will minimize and fully mitigate the impacts of the authorized take, are roughly proportional in extent to the impact of the authorized taking, and are capable of successful implementation; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of GGS and Delta Smelt. The mitigation measures in the BO, ITS, Biological Assessment, and Essential Fish Habitat Assessment include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- Any areas that cannot be restored, the Applicant shall compensate through the purchase of compensatory mitigation credits from a Service- and CDFW-approved bank at a ratio of 1:1 for permanent impact areas where earthen fill is applied, 2:1 ratio for permanent impact areas where geotextile fabric is applied and 0.5:1 for temporary impact areas within 200 feet of aquatic habitat (see below). Applicant shall purchase a total of 1.594 acres of GGS habitat credits.
- Where shallow water habitat cannot be feasibly avoided and is filled or otherwise impacted, then the Applicant will secure shallow water habitat (smelt) credits at a Service- and CDFW-approved mitigation bank for impacts at the emergency repair areas, at a ratio of either 1:1 or 3:1 depending on site-specific conditions (see below). Construction at the seven (7) sites will affect a total of 0.522 acre of shallow water habitat. Applicant shall purchase a total of 1.074 acres of credits.
- When possible, the Applicant will complete emergency work activities in GGS upland habitat between May 1 and October 1. If it is not possible to complete the work by October 1, work may continue past October 1 provided earthwork has been begun by September 16, ambient air temperatures exceed 75° F during work, and maximum daily air temperatures have exceeded 75° F for at least three consecutive days immediately preceding work. The Applicant will notify the Service and CDFW of work in these locations. The Applicant will include a justification for the request and any additional information the Service or CDFW deem necessary. The Service and CDFW may require the Applicant to apply additional conservation measures.

- If GGS are observed in an emergency work area, the Applicant will stop work in the immediate area until the snake is out of the Project area and will notify the qualified biologist immediately. If possible, the Applicant will allow the snake to leave on its own, and the qualified biologist will remain in the area until the biologist deems his or her presence no longer necessary to ensure that the snake is not harmed. If the snake does not leave the emergency work area on its own volition, the Applicant will consult CDFW and the Service to identify next steps. This may include the capture and relocation of the snake unharmed to a suitable habitat at least 200 feet from the emergency work area by a qualified biologist. The Applicant will notify CDFW and the Service by telephone or e-mail within 24 hours of a GGS observation during emergency activities.
- The Applicant shall install turbidity curtains or similar methods during in-channel work to control silt and sediment.
- In areas where the Applicant places rock to provide slope protection, the Applicant will place clean soil to fill voids above the water surface, which could potentially provide favorable habitat for nonnative predatory fish species.
- The Applicant shall ensure that a qualified biologist is onsite during all grading, vegetation removal, and trenching activities. A qualified biologist shall be onsite and monitor all locations where emergency repairs will alter GGS hibernacula/refugia.
- The Applicant shall ensure that a qualified biologist surveys areas of planned ground disturbance for burrows, soil cracks, and crevices that may be suitable for use by GGS. The qualified biologist shall complete surveys no more than 3 days before the Applicant conducts any ground-disturbing activities in terrestrial habitat that could support GGS. The qualified biologist will flag or mark any identified burrows, soil cracks, crevices, or other habitat features. If activities stop for more than 14 days, the qualified biologist will repeat the surveys.
- The Applicant shall provide environmental awareness training by a qualified biologist to the construction lead, construction foreman, crew leader, and any contractor personnel working on the construction sites. The training will include descriptions of all special-status fish and wildlife species potentially occurring in the Project area, their habitats, methods of identification, including visual aids. The training will describe activity-specific measures to be followed to avoid impacts.
- The Applicant will use existing staging sites, maintenance roads, and levee crown roads for staging and access to avoid affecting previously undisturbed areas. The Applicant will limit the number of access routes and size of staging and work areas to the minimum number necessary.
- Where it is feasible and practicable (based on the size of the repair area and the repair to be performed), the Applicant shall clearly mark work area limits including access roads, staging and equipment storage areas, stockpile areas for spoil disposal, soils, and materials; fueling and concrete washout areas; and equipment exclusion zones. The Applicant shall ensure that work will occur only within the marked limits.
- The Applicant shall inspect all vehicles for the presence of wildlife (under and around) prior to the start of each workday when equipment is staged overnight. The Applicant shall look for wildlife in all pipes, culverts, and similar structures that have been stored onsite for one or more nights before being buried, capped, or moved.
- The Applicant shall clear vegetation to the minimum necessary, especially native riparian vegetation and native oaks. Where feasible, the Applicant shall avoid removal of native trees with a trunk greater than four inches in diameter at breast height.
- The Applicant shall install erosion control materials that minimize soil or sediment from entering waterways and wetlands. The Applicant shall monitor the erosion control materials for effectiveness and maintain them throughout emergency repairs and monitoring. The Applicant shall immediately repair or replace any erosion control barrier that is not functioning effectively.
- The Applicant shall not use erosion control fabrics with plastic monofilament or cross-joints in the netting that are bound/stitched, which could trap GGS and other wildlife.
- The Applicant shall authorize the qualified biologist to stop emergency repair activities that threaten to cause unanticipated or unpermitted adverse effects on special status species. If the qualified biologist stops repair activities, the qualified biologist will consult with the Service, CDFW, and the National Marine Fisheries Service (NMFS) to determine appropriate measures that the Applicant will implement to avoid adverse effects. The Applicant shall maintain buffers until

there is no longer a threat of disturbance to special status species.

- The Applicant shall immediately notify the qualified biologist if a species is taken or injured by a Project-related activity, or if a species is otherwise found dead or injured within the vicinity of the Project. The initial notification to the Service, CDFW, and NMFS shall include information regarding the location, species, and number of animals taken or injured, and the site number. The Applicant will send a written report within two (2) calendar days. The report shall include the date and time of the finding or incident, the location of the animal or carcass, a photograph, if possible, and an explanation as to the cause of the take or injury.

Monitoring and Reporting Measures

- The Applicant will provide the Service, CDFW, and NMFS with a Final Mitigation Report no later than 45 days after completion of the emergency repairs.

Compensatory Mitigation

- The Applicant provided a funding assurance letter committing to the necessary funds needed to complete all conservation measures and compensatory mitigation consistent with the requirements of CESA, in the form of 1.60 acres of conservation credits for GGS and 1.1 acres of conservation credits for Delta Smelt. The Applicant will provide proof of purchase for GGS credits within 90 days of starting emergency repairs unless the Applicant receives written approval from the Service and CDFW extending this timeline.
- The Applicant shall provide a copy of the bill and sale and payment receipt to CDFW upon the purchase of GGS and Delta Smelt conservation credits.

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of GGS and Delta Smelt, provided the Applicant implements the Project as authorized in the ITS, including adherence to all measures contained therein and in the BO, and complies with the mitigation measures and other conditions described in the BO, ITS, Biological Assessment, and Essential Fish Habitat Assessment. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the Service amends or replaces the BO, ITS, Biological Assessment, or Essential Fish Habitat Assessment, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See

generally Fish & G. Code, §§ 2080.1; 2081, subds. (b) and (c)).

PETITION DECISION

BOARD OF ACCOUNTANCY

June 22, 2018

NOTICE OF DECISION AFTER REQUEST FOR RECONSIDERATION

CALIFORNIA CODE OF REGULATIONS TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS DIVISION 1. STATE BOARD OF ACCOUNTANCY ARTICLE 1. ADMINISTRATION — SECTIONS 5000 et seq.

Petitioner:

JoAnn Henkel

Authority:

Business and Professions Code (BPC) section 5010 provides the California Board of Accountancy (CBA) the authority to “adopt, repeal, or amend such regulations as may be reasonably necessary and expedient for the orderly conduct of its affairs and for the administration of this chapter.” “This Chapter” relates to the licensing and regulation of Certified Public Accountants (CPA) and the practice of public accountancy in the State of California (BPC section 5000 et seq.).

Contact Person:

Please direct any inquiries regarding this action to Aaron Bone, Information and Planning Officer, 2450 Venture Oaks Way, Suite 300, Sacramento, CA 95833.

Availability of Petition:

The petition for adoption of a regulation is available upon request directed to the CBA’s contact person.

INTRODUCTION

On March 22, 2018, Ms. Henkel (Petitioner) provided to the CBA eight separate petitions requesting amendments to certain CBA regulations¹ and the Accountancy Act. The CBA denied the petitions in a No-

¹All section references are to the CBA’s Regulations set forth in Title 16 of the California Code of Regulations, unless otherwise specified.

tice of Decision on Petition to Amend Regulations, dated April 23, 2018 (Decision) pursuant to Government Code, section 11340.7.

On May 24, 2018, the CBA received a petition from Ms. Henkel outlining eight separate “appeals,” seeking reconsideration of the CBA’s Decision; however, some of the “appeals” were not included in the March 22, 2018 request. Petitioner’s submission is treated as a Request for Reconsideration pursuant to Government Code section 11340.7(c) to the extent that each numbered “appeal” requests reconsideration of one of the eight petitions identified in the March 22, 2018 request; any “appeal” identified in Petitioner’s submission that did not appear in the March 22, 2018 petition is considered a new request.

Section 5018 of the BPC authorizes the CBA, by regulation, to prescribe, amend, or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the CPA profession. The CBA has no authority to amend statutes.

This Notice of Decision After Request for Reconsideration addresses each “appeal” as identified in the May 24, 2018 petition.

APPEAL NO. 1

Discussion

Appeal No. 1 requests the CBA amend Section 58 to read as follows (new language in bold):

Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards **and code of professional conduct (ethics).**

Licensees shall not engage in act of discrimination or act in violation of code of professional conduct against disabled person and senior citizen clients(s) or disabled persons and senior citizen estate/trust beneficiaries.

Proposed Regulation Amendment Does Not Meet Requirements of the Administrative Procedures Act (APA)

Necessity

When pursuing a rulemaking, an agency must satisfy the “necessity” requirement of the APA by demonstrating that the provisions of the regulations being proposed are necessary. Government Code (GC) section 11349(a) states, in relevant part, that:

“Necessity” means the record of the rulemaking proceeding demonstrates by substantial evidence

the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record.

Under Section 58, a licensee is subject to all applicable professional standards, including the American Institute of Certified Public Accountants (AICPA) code of professional conduct. For this reason, the CBA would be unable to comply with the necessity requirement of the APA.

Section 125.6(a)(1) of the BPC is a law enforced by the CBA and prohibits discrimination in the performance of a licensed activity. Specifically, this law provides that anyone who holds a license under the BPC is subject to disciplinary action by their licensing entity if the licensee, “makes any discrimination, or restriction in the performance of the licensed activity” because of any characteristic in Civil Code section 51(b) or (e), including but not limited to sex, race, color, religion, ancestry, national origin, disability, medical condition, and genetic information. Because licensees are prohibited from discriminating against individuals in the performance of a licensed activity under BPC section 125.6, the CBA would be unable to comply with the necessity requirement of the APA.

Nonduplication

When pursuing a rulemaking, an agency must satisfy the “nonduplication” requirement of the APA. GC section 11349(f) states, in relevant part, that:

“Nonduplication” means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication.

Section 12(a) of title 1 of the California Code of Regulations provides that a regulation serves the same purpose when it repeats or rephrases a statute or regulation.

The proposed amendment to Section 58 would be duplicative of current law. For this reason, the CBA would be unable to comply with the nonduplication requirement of the APA.

Decision

For the reasons stated above, this appeal is denied.

APPEAL NO. 2

Dissussion

Appeal No. 2 requests Section 52(a) be amended to read as follows (new language in bold):

(a) A licensee shall respond to any inquiry by the Board or its appointed representatives within 30 days. The response shall include making available all files, working papers and other documents requested. **(2) A licensee who refuses to make available all files, working papers, and other documents may or may not receive discipline.**

Nonduplication Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the “nonduplication” requirement of the APA. GC section 11349(f) states, in relevant part, that:

“Nonduplication” means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication.

Section 12(a) of title 1 of the California Code of Regulations provides that a regulation serves the same purpose when it repeats or rephrases a statute or regulation.

The proposed amendment to Section 52(a) would be duplicative of current law because under BPC section 5100(g), the board may revoke, suspend, or refuse to renew any permit for “willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.” The Petitioner has not provided sufficient evidence that indicates how adding the requested language to Section 52(a) meets the nonduplication requirement of the APA.

Decision

For the reasons stated above, this appeal is denied.

APPEAL NO. 3

Discussion

Appeal No. 3 requests the CBA amend Section 58 to read as follows (new language in bold):

Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards **and code of professional conduct (ethics).**

Licensees shall not engage in act of discrimination or act in violation of code of professional conduct against disabled person and senior citizen clients(s) [sic] or disabled persons and senior citizen estate/trust beneficiaries.

Necessity Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the “necessity” requirement of the APA. Government

Code (GC) section 11349(a) states, in relevant part, that:

“Necessity” means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record.

Under Section 58, a licensee is subject to all applicable professional standards, including the AICPA’s code of professional conduct. For this reason, the CBA would be unable to comply with the necessity requirement of the APA.

Section 125.6(a)(1) of the BPC is a law enforced by the CBA and prohibits discrimination in the performance of a licensed activity. Specifically, this law provides that anyone who holds a license under the BPC is subject to disciplinary action by their licensing entity if the licensee, “makes any discrimination, or restriction in the performance of the licensed activity” because of any characteristic in Civil Code section 51(b) or (e), including but not limited to sex, race, color, religion, ancestry, national origin, disability, medical condition, and genetic information. Because licensees are prohibited from discriminating against individuals in the performance of a licensed activity under BPC section 125.6, the CBA would be unable to comply with the necessity requirement of the APA.

Nonduplication Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the “nonduplication” requirement of the APA. GC section 11349(f) states, in relevant part, that:

“Nonduplication” means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication.

The proposed amendment to Section 58 would be duplicative of current law. For this reason, the CBA would be unable to comply with the nonduplication requirement of the APA.

Decision

For the reasons stated above, this appeal is denied.

APPEAL NO. 4

Discussion

Appeal No. 4 proposes to amend Section 57 to read as follows (new language in bold):

A licensee shall not concurrently engage in the practice of public accountancy and in any other

business or occupation which impairs the licensee's independence, objectivity, or creates a conflict of interest in rendering professional services **for clients, and for client's estate/trust beneficiaries to include disabled person beneficiaries and senior citizen beneficiaries.**

Necessity Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the "necessity" requirement of the APA. GC section 11349(a) states, in relevant part, that

"Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record.

Section 57 implements, interprets or makes specific BPC section 5018, which authorizes the CBA to prescribe the rules of professional conduct appropriate to the accountancy profession. Under Section 57, a licensee is prohibited from engaging in activity that impairs his or her independence, objectivity, or creates a conflict of interest in rendering professional services. This prohibition encompasses professional services rendered to all clients, including those mentioned by Petitioner in the proposed amendments. For this reason, the CBA would be unable to comply with the necessity requirement of the APA.

Nonduplication Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the "nonduplication" requirement of the APA. GC section 11349(f) states, in relevant part, that:

"Nonduplication" means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication.

This proposed amendment to Section 57 would be duplicative of current law. Petitioner has not provided sufficient evidence that indicates how adding the requested language to Section 57 meets the nonduplication requirement of the APA.

Decision

For the reasons stated above, this appeal is denied.

APPEAL NO. 5

Discussion

Appeal No. 5 requests the CBA amend Section 58 to read as follows (new language in bold):

Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards **and code of professional conduct (ethics).**

Licensees shall not engage in act of discrimination or violation of generally accepted accounting principles, generally accepted auditing standards, and code of professional conduct in act perpetrated against disabled person and senior citizen clients(s) or disabled persons and senior citizen estate/trust beneficiaries.

Necessity Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the "necessity" requirement of the APA. Government Code (GC) section 11349(a) states, in relevant part, that:

"Necessity" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record.

Under Section 58, a licensee is subject to all applicable professional standards, including the AICPA's code of professional conduct. For this reason, the CBA would be unable to comply with the necessity requirement of the APA.

Section 125.6(a)(1) of the BPC is a law enforced by the CBA and prohibits discrimination in the performance of a licensed activity. Specifically, this law provides that anyone who holds a license under the BPC is subject to disciplinary action by their licensing entity if the licensee, "makes any discrimination, or restriction in the performance of the licensed activity" because of any characteristic in Civil Code section 51(b) or (e), including but not limited to sex, race, color, religion, ancestry, national origin, disability, medical condition, and genetic information. Because licensees are prohibited from discriminating against individuals in the performance of a licensed activity under BPC section

125.6, the CBA would be unable to comply with the necessity requirement of the APA.

Nonduplication Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the “nonduplication” requirement of the APA. GC section 11349(f) states, in relevant part, that:

“Nonduplication” means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication.

The proposed amendment to Section 58 would be duplicative of current law because Section 58 as currently promulgated addresses the issue Petitioner is attempting to address with the proposed amendment to the same section. For this reason, the CBA would be unable to comply with the nonduplication requirement of the APA.

Decision

For the reasons stated above, this appeal is denied.

APPEAL NO. 6

Discussion

Petitioner’s Appeal No. 6 requests amendments to the CBA’s mission and vision statements; however, only the vision statement is included in the petition. The proposed language is as follows (new language in bold):

The Vision of the California Board of Accountancy is that all consumers are well-informed of the accountancy act, professional standards, code of professional conduct, and consumer rights on the CBA website, and receive quality accounting services from licenses they can trust.

The CBA’s mission and vision statement may be changed without regulations through the development of its strategic plan. GC Section 11810 through Section 11817 sets forth the State Government Strategic Planning and Performance Review Act of 1993.

Decision

For the reasons stated above, this appeal is denied.

APPEAL NO. 7

Discussion

Appeal No. 7 proposes to amend Section 98 to read as follows (new language in bold):

98.(a) To verify correct and accurate discipline procedure is followed, the Board shall conduct periodic review of the office procedures to ensure that consumer complaint letters, emails, records, documents, and paperwork process both from consumer to CBA office, and from CBA office to consumer, are accurate and maintained in an organized manner to protect a consumer’s right to be informed, integrity of evidence consumer submits, and historical record—keeping accuracy.

(b) In reaching a decision on a disciplinary action under the . . . [sic]

Clarity Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the “clarity” requirement of the APA. GC section 11349(c) states, in relevant part, that:

“Clarity” means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

The Petitioner’s amendments to Section 98 are unclear. For this reason, the CBA would be unable to comply with the clarity requirement of the APA.

Decision

For the reasons stated above, this rulemaking petition is denied.

Additionally, the Petitioner requests an amendment to page 3 of the CBA’s Committee Member Resource Guide dated October 5, 2017 (Resource Guide), related to the CBA’s Enforcement Advisory Committee (EAC), as follows (new language in bold):

To assist the CBA in an advisory nature with its enforcement activities by:

- **EAC will conduct periodic review of office procedures to verify that consumer complaint letters, emails, records, documents, and paperwork process both from consumer to CBA office, and from CBA office to consumer, are accurate and maintain in an organized manner to protect consumer’s right to be informed, integrity of evidence submitted, and historical record—keeping accuracy.**

The California Legislature created the EAC to provide technical expertise to the CBA. The CBA’s Resource Guide is consistent with existing statute. Although the description in the Resource Guide is not in regulation, the CBA is unable to modify the EAC’s purpose to exceed the statutory authority.

Decision

For the reasons stated above, this rulemaking petition is denied.

APPEAL NO. 8

Discussion

Petition No. 8 proposes to amend Section 58 to include references to certain AICPA materials, and read as follows (new language in bold):

Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards **and code of professional conduct (ethics).**

Licensees shall not engage in act of discrimination or violation of code of professional conduct in act perpetrated against disabled person and senior citizen clients(s) or disabled persons and senior citizen estate/trust beneficiaries.

Licensees will use only standard accounting methods and formats for financial reports and statements prepared for disabled person and senior citizen clients, and for disabled person and senior citizen beneficiaries. Licensees will follow California probate code requirements when preparing trust financial reports for disabled person and senior citizen clients, and disabled person and senior citizen beneficiaries.

Necessity Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the “necessity” requirement of the APA. GC section 11349(a) states, in relevant part, that:

“Necessity” means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record.

Under Section 58, a licensee is subject to all applicable professional standards, including the AICPA’s code of professional conduct. For this reason, the CBA would be unable to comply with the necessity requirement of the APA.

Section 125.6(a)(1) of the BPC is a law enforced by the CBA and prohibits discrimination in the performance of a licensed activity. Specifically, this law provides that anyone who holds a license under the BPC is subject to disciplinary action by their licensing entity if

the licensee, “makes any discrimination, or restriction in the performance of the licensed activity” because of any characteristic in Civil Code section 51(b) or (e), including but not limited to sex, race, color, religion, ancestry, national origin, disability, medical condition, and genetic information. Because licensees are prohibited from discriminating against individuals in the performance of a licensed activity under BPC section 125.6, the CBA would be unable to comply with the necessity requirement of the APA.

Nonduplication Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the “nonduplication” requirement of the APA. GC section 11349(f) states, in relevant part, that:

“Nonduplication” means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that an agency proposing to amend or adopt a regulation must identify any state or federal statute or regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication.

Section 12(a) of title 1 of the California Code of Regulations provides that a regulation serves the same purpose when it repeats or rephrases a statute or regulation.

The proposed amendment to Section 58 would be duplicative of current law because Section 58 as currently promulgated addresses the issue Petitioner is attempting to address with the proposed amendment to the same section. For this reason, the CBA would be unable to meet the nonduplication requirement of the APA.

Clarity Requirement of the APA

When pursuing a rulemaking, an agency must satisfy the “clarity” requirement of the APA. GC section 11349(c) states, in relevant part, that:

“Clarity” means written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.

The Petitioner’s amendments to Section 58 are unclear as to the definition of “standard accounting methods and formats for financial reports and statements.” For this reason, the CBA would be unable to comply with the clarity requirement of the APA.

Decision

For the reasons stated above, this rulemaking petition is denied.

/s/

Patti Bowers

Executive Officer

California Board of Accountancy

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2018-0607-03
BOARD OF EQUALIZATION
Permanent Certification

Senate Bill 173 (Stats. 2017, ch. 828), as of July 1, 2018, removes the Bureau of Real Estate (the "Bureau") from the Department of Consumer Affairs and instead makes it a department within the Business, Consumer Services, and Housing Agency and renames the Bureau to the Department of Real Estate. As a change without regulatory effect, the State Board of Equalization (the "Board") is revising a reference to the Bureau in its regulations accordingly. Additionally, the Board is making a non-substantive punctuation change by adding a comma between the words "selling" and "leasing" in the following list: "... engaged in buying, selling leasing or managing real estate ..."

Title 18
AMEND: 283
Filed 07/02/2018
Agency Contact
Christopher Mayfield (916) 322-1923

File# 2018-0521-04
BOARD OF FORESTRY AND FIRE PROTECTION
Class II Watercourses Classification Amendments, 2018

In this rulemaking action, the Board amends sections in Title 14 of the California Code of Regulations to extend the sunset date of the methods for determining Class II watercourse type. The sunset date is extended an additional four years. The amendment also eliminates the Department of Forestry and Fire Protection's annual reporting requirements on Class II Watercourse and Lake Protection Zone (WLPZ). The Department will no longer be required to annually report to the Board on the use and effectiveness of the regulations.

Title 14
AMEND: 916.9, 936.9, 956.9
Filed 07/02/2018
Effective 01/01/2019
Agency Contact: Matt Dias (916) 653-8007

File# 2018-0521-02
BUREAU FOR PRIVATE POSTSECONDARY
EDUCATION
Out-of-State Institution Registration

This action by the Bureau for Private Postsecondary Education (Bureau) makes permanent new section 71396, in title 5 of the California Code of Regulations relating to the registration of out-of-state private postsecondary education institutions, including an "Application for Registration or Re-Registration of Out of State Institutions" form that is incorporated by reference. This action also adopts three new sections pertaining to the registration requirements for out-of-state private postsecondary education institutions. This action is a readoption of emergency action 2017-0519-02E.

Title 5
ADOPT: 71396, 71397, 71398, 71399
Filed 07/03/2018
Effective 07/03/2018
Agency Contact: Kent Gray (916) 246-3907

File# 2018-0621-01
CALIFORNIA DEBT LIMIT ALLOCATION
COMMITTEE
Regulations Revision for Qualified Public Educational Facility Bonds

This is an emergency readoption of regulations that enable the provision of tax-exempt, private activity bond allocations to state and local agencies for the purpose of providing public elementary and secondary schools with financing for the construction or improvement of school facilities.

Title 4
ADOPT: 5700, 5710, 5711, 5720, 5721, 5722, 5730, 5731
AMEND: 5000, 5020, 5100
Filed 07/02/2018
Effective 07/02/2018
Agency Contact: Felicity Wood (916) 651-8484

File# 2018-0522-03
CALIFORNIA SCHOOL FINANCE AUTHORITY
Charter Schools Facilities Program

This rulemaking action by the California School Finance Authority amends and repeals sections to revise, reorganize, and update the Charter Schools Facilities Program.

Title 4

AMEND: 10152, 10153, 10154, 10155, 10158 (amended and renumbered), 10159 (amended and renumbered), 10160 (amended and renumbered).

REPEAL: 10156, 10157

Filed 07/03/2018

Effective 10/01/2018

Agency Contact: Katrina Johantgen (213) 620-2305

File# 2018-0516-02

DEPARTMENT OF CONSERVATION

Requirements for California Underground Gas Storage Projects

This action establishes a comprehensive regulatory framework for Underground Gas Storage (UGS) projects, including standards, specifications, and requirements for well construction, mechanical integrity testing, risk management plans, emergency response plans, UGS project data, monitoring, inspection, and project decommissioning. These regulations are being adopted to implement Senate Bill 887 (Stats. 2016, ch. 673).

Title 14

ADOPT: 1726, 1726.1, 1726.2, 1726.3, 1726.3.1, 1726.4, 1726.4.1, 1726.4.2, 1726.4.3, 1726.5, 1726.6, 1726.6.1, 1726.7, 1726.8, 1726.9, 1726.10

REPEAL: 1724.9

Filed 06/28/2018

Effective 10/01/2018

Agency Contact: Justin Turner (916) 323-2405

File# 2018-0608-02

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Milestone Completion Credit Schedule

In this emergency action, submitted as operationally necessary pursuant to Penal Code section 5058.3, the Department of Corrections and Rehabilitation amends the Milestone Completion Credit Schedule to add new programs, discontinue programs that are no longer available to inmates, amend the amount of credit earned for some programs, and reorganize the schedule.

Title 15

AMEND: 3043.3

Filed 06/28/2018

Effective 07/01/2018

Agency Contact: Josh Jugum (916) 445-2228

File# 2018-0618-01

DEPARTMENT OF FOOD AND AGRICULTURE
Asian Citrus Psyllid Interior Quarantine

This emergency regulation readoption repeals all existing Title 3 California Code of Regulations section

3435(b) quarantine zones for Asian Citrus Psyllid and establishes three nursery-stock and seven bulk-citrus regional quarantine zones and the criteria for determining them. It establishes an appeal process for interested parties to use to challenge inclusion of a county or portion of a county in a specified regional quarantine zone and a list serve subscription for purposes of receiving updates on changes in regional quarantine zones. It also adopts provisions specifying certain exemptions and movement restrictions for host nursery stock and bulk citrus fruit.

Title 3

AMEND: 3435(b)

Filed 06/28/2018

Effective 06/28/2018

Agency Contact: Rachel Avila (916) 403-6813

File# 2018-0619-02

DEPARTMENT OF PUBLIC HEALTH

Skilled Nursing Facilities 3.5 Direct Care Hours

This emergency rulemaking action by the Department of Public Health adopts regulations implementing minimum staffing requirements for skilled nursing facilities as established by statutes 2017, chapter 52 (SB 97).

Title 22

ADOPT: 72329.2

Filed 06/29/2018

Effective 07/01/2018

Agency Contact: Charlet Archuleta (916) 445-9403

File# 2018-0523-01

DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

Covered Electronic Waste Recovery and Recycling Payment Rates

This file and print action amends the standard statewide covered electronic waste (CEW) recovery and recycling payment rates for non-CRT CEW. This regulation is exempt from the Administrative Procedure Act pursuant to Government Code section 11340.9(g).

Title 14

AMEND: 18660.25, 18660.34

Filed 06/28/2018

Effective 07/01/2018

Agency Contact: Meagan Wilson (916) 341-6077

File# 2018-0605-01

FAIR POLITICAL PRACTICES COMMISSION
Statement of Governance

This action by the Fair Political Practices Commission adopts four new sections regarding governance of the Commission, including the authority of the Com-

mission, authority of the Chair, and authority of the Executive Director.

Title 2

ADOPT: 18308, 18308.1, 18308.2, 18308.3

Filed 07/03/2018

Effective 08/02/2018

Agency Contact: Sasha Linker (916) 322-5660

File# 2018-0523-02

FISH AND GAME COMMISSION

Waterfowl 2018-2019

This rulemaking action for waterfowl hunting establishes a new special management area, identified as the Klamath Basin, and the waterfowl species, hunting season, and daily bag and possession limits for that area. It creates three hunting season segments for geese in the Northeastern California Zone. It adjusts the dates for the 2018-2019 season for the various California waterfowl hunting zones, and it increases the daily bag limit for pintail ducks.

Title 14

AMEND: 502

Filed 06/28/2018

Effective 06/28/2018

Agency Contact: Jon Snellstrom (916) 653-4899

File# 2018-0517-02

STATE WATER RESOURCES CONTROL BOARD

TMDLs for Sediment Toxicity and Pyrethroids in Lower Salinas Watershed

On July 14, 2017, the Central Coast Regional Water Quality Control Board adopted Resolution No. R3-2016-0003, which establishes a Total Maximum Daily Load (TMDL), numeric targets, and implementation plan for sediment toxicity and pyrethroid pesticides in the Lower Salinas River Watershed. The State Water Resources Control Board approved the amendment of the Basin Plan in Resolution No. 2018-0013 on March 6, 2018.

Title 23

ADOPT: 3929.16

Filed 06/28/2018

Effective 06/28/2018

Agency Contact: Peter Meertens (805) 549-3869

File# 2018-0518-04

STATE WATER RESOURCES CONTROL BOARD

Santa Ana Basin Plan: Chino-South Groundwater Management Zone

This action under Government Code section 11353 amends the Water Quality Control Plan for the Santa Ana River Basin. On August 4, 2017, the California Regional Water Quality Control Board, Santa Ana Region,

adopted Resolution No. R8-2017-0036 revising the water quality objective for nitrate as nitrogen from 4.2 mg/L to 5.0 mg/L in the Chino South Groundwater Management Zone. The State Water Resources Control Board approved the amendment under Resolution No. 2018-0004 on February 6, 2018.

Title 23

ADOPT: 3979.9

Filed 07/02/2018

Effective 07/02/2018

Agency Contact: Keith Person (951) 782-4997

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN January 31, 2018 TO
July 4, 2018**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

05/21/18 AMEND: 44

Title 2

07/03/18 ADOPT: 18308, 18308.1, 18308.2, 18308.3

06/21/18 AMEND: 1859.190, 1859.194, 1859.195, 1859.198

06/19/18 AMEND: 554.7

05/17/18 ADOPT: 11027.1 AMEND: 11028

05/16/18 ADOPT: 20150, 20151, 20152, 20153, 20154, 20155, 20156, 20157, 20158, 20159, 20160, 20161, 20162, 20163, 20164, 20165

05/09/18 AMEND: 321

05/09/18 AMEND: 11034

04/25/18 AMEND: 18401

04/25/18 AMEND: 18450.1

04/23/18 ADOPT: 1859.90.4 AMEND: 1859.2, 1859.90, 1859.90.2, 1859.90.5

04/16/18 AMEND: 1859.2, 1859.51, 1859.70, 1859.82, 1859.93.1

04/12/18 AMEND: 1859.2, 1859.81

04/04/18 AMEND: 41000

04/02/18 ADOPT: 243, 243.1, 243.2, 243.3, 243.4, 243.5, 243.6, 548.120, 548.120.1, AMEND: 249, 266, 266.1, 266.2, 266.3, 548.121, 548.122, 548.123, 548.124

04/02/18 AMEND: 38000, 38000.5, 38000.10

03/20/18 AMEND: 18746.1, 18746.4
 03/20/18 AMEND: 18746.3
 03/20/18 REPEAL: 18901
 03/14/18 ADOPT: 61200, 61201, 61210, 61211, 61212, 61213, 61214, 61215, 61216, 61217
 03/12/18 AMEND: 586.1(a)
 03/12/18 ADOPT: 599.855
 03/08/18 ADOPT: 20020, 20021, 20022, 20023, 20024, 20025, 20026, 20027
 02/27/18 AMEND: 1181.2, 1181.3, 1182.2, 1182.7, 1182.9, 1182.10, 1182.15, 1183.1, 1183.2, 1183.3, 1183.4, 1183.6, 1183.8, 1183.9, 1183.10, 1183.11, 1183.12, 1183.13, 1183.15, 1183.16, 1183.17, 1184.1, 1185.1, 1185.2, 1185.3, 1185.7, 1185.8, 1186.2, 1186.4, 1187.5, 1187.7, 1187.8, 1187.9, 1187.12, 1187.14, 1187.15, 1190.1, 1190.2, 1190.3, 1190.5
 02/22/18 AMEND: 58100
 02/22/18 AMEND: 59800
 02/13/18 AMEND: 18420.1, 18432.5, 18440, 18531.10, 18533, 18901.1 REPEAL: 18450.4
 02/13/18 AMEND: 18535
 02/13/18 AMEND: 18247.5, 18402, 18420, 18423, 18435, 18450.5, 18521.5 REPEAL: 18225, 18450.3
 02/13/18 AMEND: 11034
 02/07/18 AMEND: 56800

Title 3

06/28/18 AMEND: 3435(b)
 06/21/18 AMEND: 3439(b)
 06/21/18 AMEND: 3591.5
 06/18/18 AMEND: 1280.11
 06/04/18 ADOPT: 8000, 8100, 8101, 8102, 8103, 8104, 8105, 8106, 8107, 8108, 8109, 8110, 8111, 8112, 8113, 8114, 8115, 8200, 8201, 8202, 8203, 8204, 8205, 8206, 8207, 8208, 8209, 8210, 8211, 8212, 8213, 8214, 8215, 8216, 8300, 8301, 8302, 8303, 8304, 8305, 8306, 8307, 8308, 8400, 8401, 8402, 8403, 8404, 8405, 8406, 8407, 8408, 8409, 8500, 8501, 8600, 8601, 8602, 8603, 8604, 8605, 8606, 8607, 8608
 05/30/18 AMEND: 3439(b)
 05/24/18 AMEND: 3439(b)
 05/24/18 AMEND: 6502
 05/18/18 AMEND: 3439(b)
 04/30/18 AMEND: 3439(b)
 04/04/18 AMEND: 3591.15
 03/27/18 AMEND: 3439(b)

03/26/18 AMEND: 3439(b)
 03/13/18 AMEND: 3591.15
 03/01/18 AMEND: 6628
 02/27/18 AMEND: 3439(b)
 02/16/18 AMEND: 3439(b)
 02/12/18 AMEND: 6000, 6739

Title 4

07/03/18 AMEND: 10152, 10153, 10154, 10155, 10158 (amended and renumbered), 10159 (amended and renumbered), 10160 (amended and renumbered). REPEAL: 10156, 10157
 07/02/18 ADOPT: 5700, 5710, 5711, 5720, 5721, 5722, 5730, 5731 AMEND: 5000, 5020, 5100
 05/30/18 AMEND: 10091.1, 10091.2, 10091.3, 10091.4, 10091.5, 10091.6, 10091.7, 10091.8, 10091.9, 10091.10, 10091.12, 10091.13, 10091.14, 10091.15
 05/25/18 AMEND: 5000, 5033, 5035, 5037, 5054, 5060, 5101, 5102, 5120, 5144, 5170, 5191, 5212, 5230, 5240, 5250, 5540 REPEAL: 5259
 05/17/18 AMEND: 12590
 05/15/18 AMEND: 12204, 12220, 12238, 12560
 04/30/18 AMEND: 10170.2, 10170.3, 10170.4, 10170.5, 10170.6, 10170.7, 10170.9, 10170.10
 04/10/18 AMEND: 10179
 04/09/18 ADOPT: 5700, 5710, 5711, 5720, 5721, 5722, 5730, 5731 AMEND: 5000, 5020, 5100
 03/29/18 AMEND: 7051, 7054, 7055, 7056, 7063, 7071
 03/22/18 AMEND: 1699
 03/15/18 ADOPT: 8078.22, 8078.23, 8078.24, 8078.25, 8078.26, 8078.27, 8078.28, 8078.29, 8078.30, 8078.31, 8078.32, 8078.33, 8078.34, 8078.35 AMEND: 8070, 8071, 8072, 8073, 8074, 8076, 8078.3 REPEAL: 8078.1, 8078.2
 03/13/18 AMEND: 5032, 5033, 5170, 5180, 5190, 5193, 5194, 5230, 5240, 5255, 5260, 5342, 5350, 5400, 5700
 03/05/18 AMEND: 10091.1, 10091.2, 10091.3, 10091.4, 10091.5, 10091.6, 10091.7, 10091.8, 10091.9, 10091.10, 10091.12, 10091.13, 10091.14, 10091.15
 02/23/18 ADOPT: 7213, 7214, 7215, 7216, 7217, 7218, 7219, 7220, 7221, 7222, 7223, 7224, 7225, 7227, 7228, 7229
 02/22/18 AMEND: 10302, 10305, 10315, 10317, 10320, 10322, 10325, 10326, 10327,

	10328, 10330, 10335, 10337 REPEAL: 10325.5		95045, 95050, 95070, 95080, 95090, 95100, 95150, 95160, 95170, 95180, 95190, 95200, 95300, 95310, 95320, 95330
02/21/18	AMEND: 1865		
02/21/18	AMEND: 1689, 1689.1		
02/15/18	AMEND: 10302, 10305, 10315, 10317, 10320, 10322, 10325, 10326, 10327, 10328, 10330, 10335, 10337	05/08/18	AMEND: 9789.31, 9789.32, 9789.39
Title 5		04/27/18	AMEND: 9789.25
07/03/18	ADOPT: 71396, 71397, 71398, 71399	03/19/18	AMEND: 344.18
06/21/18	AMEND: 19810	03/09/18	ADOPT: 3345
06/07/18	AMEND: 19810	02/27/18	ADOPT: 2320.11, 2940.11, 2940.12, 2940.13, 2940.14, 2940.15, 2940.16, 2940.17, 2940.18, 2940.19, 2943.1, 2944.1, 3428 AMEND: 2300, 2320.2, 2320.7, 2320.8, 2340.17, 2700, 2887, 2940, 2940.1, 2940.2, 2940.5, 2940.6, 2940.7, 2940.8, 2940.10, 2941, 2941.1, 2943, 2944, 2945, 2946, 2951, 3314, 3389, 3422, 3425, 5156, 8617 REPEAL: 2893
05/18/18	ADOPT: 11301, 11309, 11310, 11311, 11312 AMEND: 11300, 11316 REPEAL: 11301, 11309, 11310	02/07/18	ADOPT: 9788.1, 9788.2, 9788.3, 9788.4, 9788.5, 9788.6
05/08/18	AMEND: 75020	Title 9	
04/30/18	AMEND: 41906.5, 41906.6	06/21/18	AMEND: 4350
04/30/18	AMEND: 42909	05/17/18	AMEND: 3850, 3850.010
02/26/18	ADOPT: 71396	05/14/18	AMEND: 3560, 3560.010, 3560.020, 3705, 3726, 3735, 3750, 3755
02/20/18	ADOPT: 11526 AMEND: 11520, 11524, 11525	05/08/18	ADOPT: 4020, 4020.1
02/20/18	ADOPT: 11534.1 AMEND: 11530, 11533, 11534	03/20/18	AMEND: 7140.5
Title 8		02/12/18	ADOPT: 4020, 4020.1
05/30/18	AMEND: 1618.1	Title 10	
05/17/18	ADOPT: 11770, 11771, 11771.1, 11771.2, 11772, 11773	06/13/18	AMEND: 2498.5
05/08/18	AMEND: 31001, 32020, 32030, 32040, 32050, 32055, 32060, 32075, 32080, 32085, 32090, 32091, 32100, 32105, 32120, 32122, 32130, 32132, 32135, 32136, 32140, 32142, 32145, 32147, 32149, 32150, 32155, 32162, 32164, 32165, 32166, 32168, 32169, 32170, 32175, 32176, 32178, 32180, 32185, 32190, 32200, 32205, 32206, 32207, 32209, 32210, 32212, 32215, 32220, 32230, 32295, 32300, 32305, 32310, 32315, 32320, 32325, 32350, 32360, 32370, 32375, 32380, 32400, 32410, 32450, 32455, 32460, 32465, 32470, 32500, 32602, 32605, 32612, 32615, 32620, 32621, 32625, 32630, 32635, 32640, 32644, 32645, 32647, 32648, 32649, 32650, 32661, 32680, 32690, 32700, 32720, 32721, 32722, 32724, 32726, 32728, 32730, 32732, 32734, 32735, 32736, 32738, 32739, 32740, 32742, 32744, 32746, 32748, 32750, 32752, 32754, 32761, 32762, 32763, 32770, 32772, 32774, 32776, 32980, 32990, 32992, 32993, 32994, 32995, 32996, 32997 REPEAL: 32036, 32037, 32610, 32611, 32806, 32808, 32810, 95000, 95010, 95020, 95030, 95040,	05/31/18	AMEND: 2715, 2728.5, 2752
		05/22/18	AMEND: 2498.6
		04/20/18	ADOPT: 6520, 6522, 6524, 6526, 6528, 6530, 6532, 6534, 6538
		03/27/18	AMEND: 30.60 REPEAL: 30.105
		03/26/18	AMEND: 2318.6, 2353.1, 2354
		03/26/18	AMEND: 2318.6, 2353.1
		03/22/18	AMEND: 3525, 3527, 3561, 3569, 3570, 3575, 3602, 3603, 3681
		03/20/18	AMEND: 3541
		03/07/18	AMEND: 6656, 6657, 6660, 6664
		02/23/18	AMEND: 2644.18, 2644.20
		Title 11	
		06/21/18	AMEND: 1005
		06/18/18	AMEND: 1005, 1007, 1008, 1052
		06/13/18	ADOPT: 51.32
		06/05/18	AMEND: 1005, 1007, 1008
		06/05/18	ADOPT: 49.18
		05/21/18	ADOPT: 5505, 5506, 5507, 5508, 5509, 5510, 5511, 5512, 5513, 5514, 5515, 5516, 5517, 5518, 5519, 5520, 5521, 5522
		04/11/18	ADOPT: 118.1
		04/03/18	AMEND: 51.26

04/03/18	ADOPT: 51.30	renumbered as 206.64, and 181.00
03/29/18	AMEND: 2021	renumbered as 206.66
03/13/18	AMEND: 1045	02/13/18 AMEND: 553.70
03/07/18	AMEND: 115.1	02/01/18 AMEND: 1212.5, 1218, 1239, 1264
03/07/18	AMEND: 115.2	Title 14
03/07/18	AMEND: 115.3	07/02/18 AMEND: 916.9, 936.9, 956.9
03/07/18	AMEND: 115.4	06/28/18 ADOPT: 1726, 1726.1, 1726.2, 1726.3, 1726.3.1, 1726.4, 1726.4.1, 1726.4.2, 1726.4.3, 1726.5, 1726.6, 1726.6.1, 1726.7, 1726.8, 1726.9, 1726.10
03/07/18	AMEND: 115.5	REPEAL: 1724.9
02/27/18	AMEND: 1951, 1953, 1954, 1955, 1956, 1959, 1960	06/28/18 AMEND: 18660.25, 18660.34
02/22/18	AMEND: 1009	06/28/18 AMEND: 502
02/22/18	AMEND: 1001, 1005, 1008	06/25/18 AMEND: 7.50
02/22/18	ADOPT: 80.4	06/07/18 AMEND: 1760, 1774, 1774.1, 1774.2
Title 13		05/24/18 ADOPT: 3803.1, 3803.2, 3803.3
06/12/18	ADOPT: 1231.3 AMEND: 1212.5, 1218, 1239, 1264	AMEND: 3802, 3803
05/30/18	ADOPT: 125.19 AMEND: 125.00, 125.02 REPEAL: 127.06	05/16/18 AMEND: 131
05/07/18	AMEND: 423.00	05/10/18 ADOPT: 29.11
04/26/18	AMEND: 1153	05/09/18 AMEND: 18660.5, 18660.10, 18660.21, 18660.34
04/18/18	AMEND: 1151.9.1	05/01/18 ADOPT: 650 AMEND: 703 REPEAL: 650
03/12/18	AMEND: Appendix (Article 2.0)	04/24/18 AMEND: 131
02/27/18	ADOPT: 1267.1 AMEND: 1201, 1217, 1232, 1242, 1268, 1269	04/19/18 AMEND: 4800
02/26/18	ADOPT: 227.38, 227.40, 227.42, 228.00, 228.02, 228.04, 228.06, 228.08, 228.10, 228.12, 228.14, 228.16, 228.18, 228.20, 228.22, 228.24, 228.26, 228.28 AMEND: 227.02, 227.04, 227.12, 227.14, 227.16, 227.18, 227.20, 227.22, 227.24, 227.26, 227.28, 227.30, 227.32, 227.34, 227.36, 227.38, 227.40, 227.42, 227.44, 227.46, 227.48, 227.50, 227.52, 227.54	04/02/18 AMEND: 265
02/15/18	AMEND: 170.00 renumbered as 206.00, 170.02 renumbered as 206.02, 170.04 renumbered as 206.04, 170.06 renumbered as 206.06, 170.08 renumbered as 206.08, 170.10 renumbered as 206.10, 170.12 renumbered as 206.12, 171.00 renumbered as 206.20, 171.02 renumbered as 206.22, 172.00 renumbered as 206.30, 172.05 renumbered as 206.35, 172.10 renumbered as 206.40, 173.00 renumbered as 206.50, 173.02 renumbered as 206.52, 173.04 renumbered as 206.54, 173.06 renumbered as 206.56, 173.08 renumbered as 206.58, 174.00 renumbered as 206.60, 180.00 renumbered as 206.62, 180.02	04/02/18 ADOPT: 749.9
		03/29/18 AMEND: 29.15
		03/27/18 AMEND: 1038, 1299.03, 1666.0
		03/02/18 AMEND: 120.7, 705
		03/02/18 ADOPT: 197
		02/27/18 ADOPT: 1.18, 2.05 AMEND: 1.05, 1.11, 1.61, 2.10, 2.25, 5.35, 5.41, 5.88, 7.00, 7.50, 8.00 REPEAL: 1.60
		02/27/18 AMEND: 150, 150.02, 150.03, 705
		02/22/18 ADOPT: 131
		02/20/18 AMEND: 13800
		02/07/18 AMEND: 3697, 3698, 3699
		02/06/18 AMEND: 1038
		Title 15
		06/28/18 AMEND: 3043.3
		06/14/18 AMEND: 3000, 3075.1, 3075.2, 3075.3, 3521.1, 3521.2, 3720, 3763 REPEAL: 3800, 3800.1, 3800.2, 3800.3
		06/13/18 ADOPT: 3087, 3087.1, 3087.2, 3087.3, 3087.4, 3087.5, 3087.6, 3087.7, 3087.8, 3087.9, 3087.10, 3087.11, 3087.12
		06/07/18 ADOPT: 3371.1 AMEND: 3043.7, 3044 REPEAL: 3371.1
		05/15/18 AMEND: 3000, 3030, 3190, 3269
		05/01/18 ADOPT: 2449.1, 2449.2, 2449.3, 2449.4, 2449.5, 2449.6, 2449.7, 3043.1, 3043.2, 3043.3, 3043.4, 3043.5, 3043.6, 3490,

	3491, 3492, 3493 AMEND: 3043, 3043.5 (renumbered to 3043.7), 3043.6 (renumbered to 3043.8), and 3044 REPEAL: 2449.2, 2449.3, 2449.5, 3042, 3043.1, 3043.2, 3043.3, 3043.4, 3043.7		5805, 5806, 5807, 5808, 5809, 5810, 5811, 5812, 5813, 5814
04/17/18	ADOPT: 2240 REPEAL: 2240	05/15/18	AMEND: 1399.395
04/09/18	AMEND: 3016, 3315	04/20/18	AMEND: 1749
03/05/18	ADOPT: 3378.9, 3378.10 AMEND: 3000, 3023, 3043.8, 3044, 3084.9, 3269, 3335, 3337, 3341, 3341.2, 3341.3, 3341.5, 3341.6, 3341.8, 3341.9, 3375, 3375.1, 3375.2, 3376, 3376.1, 3378, 3378.1, 3378.2, 3378.3, 3378.4, 3378.5, 3378.6, 3378.7, 3378.8 REPEAL: 3334	03/19/18	AMEND: 4422
		03/14/18	AMEND: 1805.1, 1811
03/01/18	ADOPT: 3349.1, 3349.2, 3349.3, 3349.4, 3349.5, 3349.6, 3349.7, 3349.8, 3349.9 AMEND: 3349	03/05/18	AMEND: 2070, 2071
02/07/18	ADOPT: 3999.24	03/01/18	AMEND: 9.1, 12, 12.1, 12.5, 15.1, 16, 19, 20, 43, 45, 87.9
02/05/18	AMEND: 1006, 1062		
02/01/18	ADOPT: 3087, 3087.1, 3087.2, 3087.3, 3087.4, 3087.5, 3087.6, 3087.7, 3087.8, 3087.9, 3087.10, 3087.11, 3087.12	Title 17	
Title 16		06/07/18	AMEND: 30400, 30413, 30417, 30418, 30419, 30420, 30427.2 (re-numbered to 30427), 30435, 30442, 30443, 30447, 30461, 30467
06/18/18	AMEND: 1735.2	06/04/18	ADOPT: 40100, 40101, 40102, 40115, 40116, 40118, 40126, 40128, 40129, 40130, 40131, 40133, 40135, 40137, 40150, 40155, 40156, 40159, 40162, 40165, 40167, 40169, 40175, 40177, 40178, 40180, 40182, 40200, 40205, 40220, 40222, 40223, 40225, 40232, 40234, 40236, 40238, 40240, 40242, 40250, 40252, 40254, 40256, 40258, 40260, 40262, 40264, 40266, 40268, 40270, 40272, 40275, 40277, 40280, 40282, 40290, 40292, 40300, 40305, 40306, 40310, 40400, 40401, 40403, 40405, 40406, 40408, 40410, 40411, 40412, 40415, 40500, 40510, 40512, 40513, 40515, 40517, 40525, 40550, 40601
06/14/18	REPEAL: 1399.620, 1399.621, 1399.622, 1399.623	05/30/18	AMEND: 95835, 95911
06/07/18	AMEND: 321, 364	05/23/18	ADOPT: 51101, 51102, 51103, 51104, 51105, 51106
06/04/18	ADOPT: 5000, 5001, 5002, 5003, 5004, 5005, 5006, 5007, 5008, 5009, 5010, 5011, 5012, 5013, 5014, 5015, 5016, 5017, 5018, 5019, 5020, 5021, 5022, 5023, 5024, 5025, 5026, 5027, 5028, 5029, 5030, 5031, 5032, 5033, 5034, 5035, 5036, 5037, 5038, 5039, 5040, 5041, 5042, 5043, 5044, 5045, 5046, 5047, 5048, 5049, 5050, 5051, 5052, 5053, 5054, 5055, 5300, 5301, 5302, 5303, 5304, 5305, 5306, 5307, 5308, 5309, 5310, 5311, 5312, 5313, 5314, 5315, 5400, 5401, 5402, 5403, 5404, 5405, 5406, 5407, 5408, 5409, 5410, 5411, 5412, 5413, 5414, 5415, 5416, 5417, 5418, 5419, 5420, 5421, 5422, 5423, 5424, 5425, 5426, 5500, 5501, 5502, 5503, 5504, 5505, 5506, 5600, 5601, 5602, 5603, 5700, 5701, 5702, 5703, 5704, 5705, 5706, 5707, 5708, 5709, 5710, 5711, 5712, 5713, 5714, 5715, 5716, 5717, 5718, 5719, 5720, 5721, 5722, 5723, 5724, 5725, 5726, 5727, 5728, 5729, 5730, 5731, 5732, 5733, 5734, 5735, 5736, 5737, 5738, 5739, 5800, 5801, 5802, 5803, 5804,	05/07/18	ADOPT: 98201, 98202, 98203
		04/20/18	AMEND: 6000, 6025, 6035, 6040, 6045, 6050, 6051, 6055, 6060, 6065, 6070, 6075 REPEAL: 6015, 6020
		04/13/18	ADOPT: 40127, 40132, 40190, 40191, 40192, 40194, 40196
		03/15/18	AMEND: 30145, 30145.1, 30205, 30231, 30275, 30278.1, 30309, 30310, 30311, 30314, 30336.8, 30408, 30409, 30456.8, 30535
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		05/08/18	ADOPT: 30100, 30101, 30102, 30201, 30202, 30203, 30204, 30205, 30301, 30302, 30303, 30304, 30305, 30401, 30402, 30403, 30501, 30502, 30601, 30602, 30603, 30604, 30605, 30606, 30701, 30702, 30703, 30704, 30705,

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05/09/18	AMEND: 25705	06/25/18	AMEND: 44-316, 44-350
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02/05/18	AMEND: 25705		
02/01/18	AMEND: 27000		

