GAVIN NEWSOM, GOVERNOR

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PROPOSED ACTION ON REGULATIONS

(Continued on next page)

Time-Dated Material

SUMMARY OF REGULATORY ACTIONS

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

Information contained in this document is published as received from agencies and is not edited by Thomson Reuters.

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

AMENDMENT

MULTI–COUNTY: Dublin San Ramon Services District
Midpeninsula Regional Open Space District
San Bernardino Community College District
Sierra Joint Community College District

STATE AGENCY: Government Operations Agency
Workforce Development Board

ADOPTION

MULTI–COUNTY: Cosumnes Groundwater Authority

A written comment period has been established commencing on November 18, 2022 and closing on January 3, 2023. Written comments should be directed to the Fair Political Practices Commission, Attention Daniel Vo, 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 his 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 his 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 January 3, 2023. 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 Daniel Vo, 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 Daniel Vo, Fair Political Practices Commission, 1102 Q Street, Suite 3000, Sacramento, California 95811, telephone (916) 322–5660.

TITLE 2. GOVERNMENT OPERATIONS AGENCY

AMEND THE CONFLICT–OF–INTEREST CODE OF THE GOVERNMENT OPERATIONS AGENCY

NOTICE IS HEREBY GIVEN that the **Government Operations Agency,** pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict–of–interest code. A comment period has been established commencing on November 18, 2022, and closing on January 3, 2023. All inquiries should be directed to the contact listed below.

The **Government Operations Agency** proposes to amend its conflict–of–interest code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

Changes to the conflict–of–interest code include: the addition of new positions, including Chief Administrative Officer, Chief Equity Officer, Chief Privacy Officer, Senior Advisor, Special Advisor, and Language Access Manager; the retitling of several positions, including Chief Counsel, Information Officer, Staff Services Manager II, and Staff Services Manager I; the abolition of an obsolete position, the Director of Performance Improvement; and also makes other technical and grammatical changes.

The proposed amendment and explanation of the reasons can be obtained from the agency's contact.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than January 3, 2023, or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than December 9, 2022.

The **Government Operations Agency** has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are 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 costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Michael Palmisano, Assistant General Counsel, Government Operations Agency, (916) 938–0813.

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

HEALTH RISK MITIGATION AND VOLATILE ORGANIC COMPOUND EMISSION REDUCTION FOR 1,3–DICHLOROPROPENE DPR REGULATION NUMBER 22–005

PROPOSED OZONE STATE IMPLEMENTATION PLAN AMENDMENT REGARDING PESTICIDE EMISSIONS IN THE SACRAMENTO METRO, SAN JOAQUIN VALLEY, SOUTH COAST, SOUTHEAST DESERT, AND VENTURA NONATTAINMENT AREAS

The Department of Pesticide Regulation (DPR) proposes to adopt sections 6448.3 and 6448.4; amend sections 6448, 6449.1, 6452, 6452.2, 6624, 6626, and 6881; and adopt new section 6448.1, and renumber and amend previous section 6448.1 as section 6448.2 of Title 3, California Code of Regulations. In summary, the proposed action will restrict the use of 1,3–dichloropropene (1,3–D) to mitigate the potential 72–hour

acute risk and 70–year lifetime cancer risk to non–occupational bystanders. The proposed mitigation measures will also further reduce the emissions of 1,3–D as a volatile organic compound (VOC). The proposed action will allow the use of 1,3–D only for the production of agricultural commodities, effectively prohibiting other uses that are not currently registered; establish mandatory setbacks (distances from occupied structures where 1,3–D cannot be applied); set limits on the application rate and acres treated for individual field soil fumigations; place restrictions on multiple field soil fumigations that do not meet distance or time separation criteria; limit the allowed methods to apply 1,3–D, including establishing criteria for acceptable types of tarpaulins that can be used; require an annual report from DPR that includes evaluations of 1,3–D use and air monitoring results; and require the inclusion of certain information in existing pesticide use records and pesticide use reports. DPR also proposes to incorporate "1,3–Dichloropropene Field Fumigation Requirements, Est. January 1, 2024" by reference in proposed sections 6448, 6448.2, 6624, and 6626. A copy of this document is included in the rulemaking file and is available upon request.

DPR will conduct a public hearing to accept comments on these amendments that may become part of the ozone state implementation plan (SIP). The federal Clean Air Act requires each state with nonattainment areas to submit a SIP for achieving and maintaining federal ambient air quality standards for ozone. California's SIP contains an element to reduce pesticidal sources of VOCs. These proposed regulations amend and add to regulations that were previously submitted to the U.S. Environmental Protection Agency (U.S. EPA) to support commitments made in the 2022 State Strategy for the SIP. Opportunity to comment and a hearing on the proposed regulations as part of the SIP amendment are being provided in conjunction with this rulemaking. If adopted, DPR will provide these amendments to the California Air Resources Board to submit to U.S. EPA as a revision to the California SIP.

WRITTEN COMMENT PERIOD

Any interested person may present comments in writing about the proposed action to the agency contact person named below. The public comment period for this regulatory action will begin on November 18, 2022. DPR will accept written comments that are submitted via U.S. mail and postmarked no later than January 18, 2023. Comments regarding this proposed action may also be transmitted via e–mail to dpr22005@cdpr.ca.gov or by facsimile at 916–324–1491 and must be received no later than 5:00 p.m. on January 18, 2023.

PUBLIC HEARING

A public hearing has been scheduled for the date and time stated below to receive oral and/or written comments regarding the proposed action.[1] This public hearing will occur in a hybrid format with both a physical location and an option to participate from a remote location.

DATE: January 18, 2023
TIME: 9:30 a.m.
PLACE: **Physical Location:**
CalEPA Headquarters Building
Byron Sher Auditorium
1001 I Street, 2nd Floor
Sacramento, California 95814

Remote Location:
Zoom
Webinar ID: 826 1358 3257
Password: 045724
Direct link to join the meeting from a web browser or Zoom client:
https://us02web.zoom.us/j/82613583257?pwd=UGJ0WkxtbFlFYUdrQmJYb3V3QyszUT09
One tap to join from a mobile phone:
+16699009128,,82613583257#,,,,*045724#
Or call from a landline:
+1 669 900 9128 — and enter the Webinar ID and Password (above) when prompted

The hearing will also be accessible via public webcast for persons who would like to watch this hearing without participating. The public webcast can be accessed by visiting the following web address: https://video.calepa.ca.gov/#/.

A DPR representative will preside at the hearing. Persons who wish to speak at the physical location will be asked to register before the hearing. The registration of speakers will be conducted at the physical location from 8:00 a.m. to 9:00 a.m. Persons who are participating from a remote location and wish to speak will be asked to utilize Zoom's "raise hand" feature. Persons at the physical location will be called upon first, followed by persons participating from a remote location. Generally, registered persons at the physical location will be heard in the order of their registration and persons participating from a remote location will

[1] If you have questions, comments, or require additional information, please contact the contact person named below. If you require reasonable accommodation or language assistance to participate, please provide notice at least 10 business days before the public meeting by contacting DPR's Reasonable Accommodation Coordinator at 916–322–4553. TTY/TDD speech–to–speech users may dial 7–1–1 for the California Relay Service.

be heard in the order that they raised their hands in Zoom. Any other person who wishes to speak during the hearing will be afforded the opportunity to do so after persons who have registered at the physical location or who have raised their hands in Zoom have been heard. If a person participating from a remote location experiences technical difficulties during the hearing, they may e–mail written comments to dpr22005@cdpr.ca.gov. DPR will also accept written comments that are submitted via U.S. mail and postmarked on the day of the hearing. If the number of persons in attendance warrants, the hearing officer may limit the time for each oral comment in order to allow everyone wishing to speak the opportunity to be heard. Oral comments presented at a hearing carry no more weight than written comments.

Participants will be given instructions on how to provide oral comment once they have accessed the hearing. The hearing will continue on the date noted above until all testimony is submitted. DPR requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony via e–mail.

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

DPR's mission is to protect public health and the environment by regulating pesticide sales and use, and by fostering reduced–risk pest management. DPR's oversight includes product evaluation and registration; statewide licensing of commercial and private applicators, pest control businesses, dealers, and advisers; enforcement; and continuous evaluation of registered pesticides to ensure the protection of human health and the environment. DPR's program of continuous evaluation includes environmental monitoring and data collection. DPR also performs human health risk assessments of registered pesticides to carry out its statutory responsibilities. Upon completion of a risk assessment, DPR determines whether the use of a particular pesticide results in an unacceptable risk to human health or the environment, and may implement additional mitigation or control measures on the pesticide's sale, distribution and use through a variety of regulatory tools, such as conditions on registration, passing regulations, or cancellation. This statutory scheme is set forth primarily in Food and Agricultural Code (FAC) Divisions 6 and 7.

1,3–D is a fumigant used to control nematodes, insects, and disease organisms in soil. Under existing regulations, 1,3–D is designated as a restricted material (3 CCR section 6400(e)). As a restricted material, the purchase and use of 1,3–D is allowed only under a restricted materials permit from the local county agricultural commissioner (CAC). Before issuing a permit, the CAC must evaluate the permit application to determine whether the intended use may cause a substantial adverse environmental impact based on local conditions at the application site. Depending on the results of this review, the CAC may deny the permit or impose permit conditions including the use of specific mitigation measures. As part of the permit for any restricted material, applicators must provide a notice of intent to the CAC before any application. The notice of intent includes application–specific information, such as the number of acres being treated and date the application is intended to commence.

Additionally, 1,3–D is listed as a toxic air contaminant (TAC) in 3 CCR section 6860(b) based on its designation as a hazardous air pollutant under the federal Clean Air Act. As a TAC and hazardous air pollutant for which a risk assessment has been completed, DPR must determine the "need for and appropriate degree of control measures" pursuant to FAC section 14023(f). Control or mitigation measures that DPR develops for TACs must follow the requirements specified by FAC section 14024, including consulting with specified agencies.

1,3–D is also a VOC and its emissions to the air contribute to the formation of ozone, a major air pollutant in California. Currently, 3 CCR sections 6448 and 6448.1 specify VOC requirements for 1,3–D field soil fumigations. The VOC requirements are mandated by the pesticide element of the ozone SIP for the federal Clean Air Act. The pesticide SIP element pertains to five regions in California that exceed the federal ozone standard (nonattainment areas) during the May–October peak ozone season.

To mitigate the 1,3–D cancer risk to non–occupational bystanders, DPR currently implements a "township cap" program that includes a yearly use limit within designated 6×6 mile areas. The township cap program includes six elements that address non–occupational bystander exposure. First, a notice of intent must be submitted to the CAC at least 48 hours before the fumigation begins. Second, the CAC will deny the notice of intent if the proposed application exceeds the township cap. Third, use reports for 1,3–D must include the field fumigation method code. Fourth, 1,3–D field soil fumigations are prohibited within 100 feet of any occupied structure, measured from the perimeter of the application block to any occupied residences, onsite employee housing, schools, convalescent homes, hospitals, or other similar sites identified by the CAC. If a structure is within 100 feet of the application block, no person shall be present at

this structure at any time during the application and during the seven consecutive day period after the application is complete. 1,3–D product labels have a similar but less stringent occupied structure requirement. Fifth, field soil fumigations in December are prohibited. And finally, the maximum application rate is 332 pounds active ingredient per acre. The 1,3–D township cap program, intended to mitigate cancer risk to non–occupational bystanders, was successfully challenged in court by petitioners Juana Vasquez, Californians for Pesticide Reform, and Pesticide Action Network North America. As a result, DPR is proposing regulations that will address acute and cancer risks to non–occupational bystanders from the use of 1,3–D.

The proposed regulations will place additional and more stringent restrictions on the use of 1,3–D for production agricultural purposes by establishing mandatory setbacks (distances from occupied structures where 1,3–D cannot be applied for a specified period of time); setting limits on the application rate and acres treated for individual applications; placing additional restrictions on seasonal applications and multiple applications that do not meet distance or time separation criteria; requiring more stringent soil moisture content for applications; and limiting applications to specific fumigation methods with corresponding setbacks and restrictions.

The broad objectives of the proposed regulations are to mitigate the potential 72–hour acute risk and 70–year lifetime cancer risk to non–occupational bystanders from the use of 1,3–D, and to reduce VOC emissions from 1,3–D field soil fumigations. Adoption of these regulations will provide a benefit to public health and the environment by mitigating the potential acute and lifetime cancer risk to non–occupational bystanders from 1,3–D use, and by reducing VOC emissions to reduce ozone levels.

During the process of developing these regulations, DPR conducted a search of any similar regulations on this topic and concluded that these proposed regulations are not inconsistent or incompatible with existing state regulations. DPR is the only state agency that has the authority to regulate the use of pesticides.

Document Incorporated By Reference:

1,3–Dichloropropene Field Fumigation Requirements, Est. January 1, 2024

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the state pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code, because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts are expected to result from the proposed regulatory action.

CAC offices will be the local agencies responsible for enforcing the proposed regulations. DPR anticipates that there will be no fiscal impact to these agencies. DPR negotiates an annual work plan with the CACs for enforcement activities. CACs currently evaluate, condition, and enforce 1,3–D restricted materials permits, and the proposed regulations should result in a similar permitting workload.

COSTS OR SAVINGS TO STATE AGENCIES

The proposed regulatory action is anticipated to result in costs to DPR. Under the proposed regulations, DPR will be required to develop and maintain a list of approved totally impermeable film (TIF) tarpaulins; monitor and analyze the use of 1,3–D in each township; conduct a detailed analysis of use in the top ten townships in different counties; and develop an annual report describing the outcome of the analysis and solicit public feedback. DPR estimates that this will result in a cost of $195,000 in the 2023–2024 Fiscal Year (FY), and a total of $390,000 in the two subsequent FYs (2024–2025 and 2025–2026).

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the state will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

DPR has made an initial determination that adoption of these 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.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

In reasonable compliance with the proposed action, growers using 1,3–D for the production of an

agricultural commodity are anticipated to incur costs. Under the proposed regulations, growers will need to comply with a combination of requirements regarding application rate, application method, setbacks to occupied structures, and maximum application block size, which may result in switching to a different application method or reducing the size of their application block. The average total cost for all growers using 1,3–D for the production of an agricultural commodity to comply with these regulations is estimated to be $1,365,832 per year. The initial cost is estimated to be to $849–$2,187 to each impacted grower, regardless of whether the grower is a small business. The annual cost is estimated to be $2,187 to each grower who is impacted annually, regardless of whether the grower is a small business. Costs to each grower will vary based on whether annual or perennial crops are grown. Annual crops are reoccurring, so those businesses will have initial and annual ongoing costs. However, businesses planting perennial crops will only use it once in the lifetime of the orchard, so those businesses will only have an initial cost since perennials are one–time applications.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on the Creation, Elimination, or Expansion of Jobs/Businesses: DPR determined it is not likely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California. DPR proposes to establish setbacks and fumigation method restrictions for each 1,3–D application, and the proposed requirements are similar to current requirements for other fumigants. As with other fumigants, DPR anticipates businesses will manage the setbacks by shifting to fumigation methods with lower emissions and/or breaking up large fields into smaller blocks and fumigate sequentially over several days. The proposed regulations require minimal changes in processes, services, and equipment for compliance, and the changes can easily be achieved by existing businesses.

The Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed action is designed to reduce and mitigate the potential acute and cancer risk of 1,3–D to non–occupational bystanders and reduce VOC emissions to reduce ozone levels. While the proposed regulations will reduce the health risk, the reduction will vary depending on several factors including a person's distance from a 1,3–D application, the amount of 1,3–D applied, and weather conditions during applications. DPR is not aware of any methods to quantify the health benefits or monetary value of actions to reduce acute or cancer risk to pesticides. Moreover, the uncertainties in evaluating risk make estimating benefits even more difficult. For example, while DPR has established specific target concentrations, exceeding the targets increases the probability that adverse health effects might occur, not that they will occur. Quantifying the benefits for 1,3–D is particularly difficult because DPR's risk characterization document indicates that the 55 ppb regulatory target concentration for acute risk is to mitigate a potential decrease in weight gain for infants and children. While other health impacts might be associated with this effect, the direct benefits of avoiding this effect are uncertain.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, 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 or businesses 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 the law.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 11456, 12976, 14005, and 14024.

REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 11501, 14006, and 14024.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons and the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulations may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulations permanent if they remain substantially the same as described in the Informative Digest. If DPR does make substantial changes to the regulations, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, and the proposed text of the regulations; and inquiries regarding the rulemaking file may be directed to:

Lauren Otani, Senior Environmental Scientist (Specialist)
Department of Pesticide Regulation
1001 I Street, P.O. Box 4015
Sacramento, California 95812–4015
916–445–5781

Note: In the event the contact person is unavailable, questions on the substance of the proposed regulatory action may be directed to the following person at the same address as noted below:

Minh Pham, Environmental Program Manager II
Environmental Monitoring Branch
916–445–0979

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulations are also available on DPR's Internet Home Page http://www.cdpr.ca.gov. Upon request, the proposed text can be made available in an alternate form as a disability–related accommodation.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at http://www.cdpr.ca.gov.

TITLE 4. GAMBLING CONTROL COMMISSION

SUBPOENAS
CGCC–GCA–2022–06–R

NOTICE IS HEREBY GIVEN that the California Gambling Control Commission (Commission) is proposing to take the action described in the Informative Digest after consideration of all relevant public comments, objections, and recommendations received concerning the proposed action. Comments, objections, and recommendations may be submitted as follows:

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Commission at any time during the 45–day public comment period, which closes on **January 3, 2022**. Written comments relevant to the proposed regulatory action may be sent by mail, facsimile, or e–mail, directed to one of the individuals designated in this notice as a contact person. To be eligible for the Commission's consideration, all written comments must be **received at its office no later than midnight on January 4, 2022. Comments sent to persons and/or addresses other than those specified under Contact Persons, or received after the date and time specified above, will be included in the record of this proposed regulatory action, but will not be summarized or responded to regardless of the manner of transmission.**

PUBLIC HEARING

The Commission has not scheduled a public hearing on this matter. Any interested person, or his or her authorized representative, may request a hearing pursuant to Government Code section 11346.8. A request for a hearing should be directed to the person(s) listed under *Contact Persons* no later than 15 days prior to the close of the written comment period.

ADOPTION OF PROPOSED ACTION

After the close of the public comment period, the Commission, upon its own motion or at the instance of any interested party, may thereafter formally 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 oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by sections 19811, 19823(a), 19824(h), 19840, and 19841, of the Business and Professions Code, and section 11450.5(b), of the Government Code; and to implement, interpret or make specific sections 19840, 19870, and 19871 of the Business and Professions Code, sections 1985, 1985.1, 1985.2, 1985.3, and 1985.4, of the Code of Civil Procedure, sections 1560 and 1561, of the Evidence Code, and sections 11450.05, 11450.20, 11450.30, 11450.50, and 11455.10 of the Government Code, the Commission is proposing to adopt the following changes to Chapter 1 of Division 18 of Title 4 of the California Code of Regulations:

INFORMATIVE DIGEST AND POLICY STATEMENT

Introduction:

The Commission is the state agency charged with the administration and implementation of the Gambling Control Act (Act). The Commission is authorized to adopt regulations governing applications for licenses, permits, registrations, findings of suitability, or other approvals, including in connection with the consideration of an application at an evidentiary hearing.

The Commission's regulations provide comprehensive procedures for evidentiary and non–evidentiary hearings and related topics. At a Commission meeting, the Commission may, among other actions, issue or deny a license, temporary license, interim license, registration, permit, finding of suitability, renewal, or other approval; or it may elect to hold an evidentiary hearing if issues are identified that require additional information or consideration related to an applicant's suitability for licensure. For evidentiary hearings on applications, the regulations require the hearing to be conducted as a Gambling Control Act hearing (GCA hearing), unless the Commission determines the hearing should be conducted as an Administrative Procedure Act hearing (APA hearing).

This proposed regulatory action adds requirements to the service of subpoenas and will clarify discover related procedures available to parties to a GCA hearing. They include:

1. Clarifying that all subpoenas and subpoenas duces tecum must be served in the manner provided by Government Code section 11450.20 and requiring that a copy be served on the presiding officer.
2. Allowing the presiding officer to order, on their own motion, to enforce, modify, or quash a subpoena or subpoena deuces tecum.
3. Clarifying the exclusive right to and method of discovery between the applicant and complainant to a GCA hearing, and that discovery is not permitted upon a member of the Commission or an advisor of the Commission.

Existing Law:

Section 19824, subdivision (h) of the Business and Professions Code provides authority for the issuance of subpoenas and subpoenas duces tecum, and states that the Commission may "issue subpoenas to compel attendance of witnesses and production of documents and other material things at a meeting or hearing of the commission or its committees, including advisory committees."

Section 11450.05, subdivision (b) of the Government Code states that "An agency may use the subpoena procedure provided in this article [Article 4.5] in an adjudicative proceeding not required to be conducted under Chapter 5 (commencing with Section 11500), in which case all the provisions of this article apply including, but not limited to, issuance of a subpoena at the request of a party or by the attorney of record for a party under Section 11450.20."

Effect of Regulatory Action:

The proposed action has been prepared to modify existing subpoena regulations to clarify discovery related procedures available to parties to a GCA hearing. They include:

1. Clarifying that all subpoenas and subpoenas duces tecum must be served in the manner provided by Government Code section 11450.20 and requiring that a copy be served on the presiding officer.
2. Allowing the presiding officer to order, on their own motion, to enforce, modify, or quash a subpoena or subpoena deuces tecum.
3. Clarifying the exclusive right to and method of discovery between the applicant and complainant to a GCA hearing, and that discovery is not permitted upon a member of the Commission or an advisor of the Commission.

Anticipated Benefits of Proposed Regulation:

This proposed action will avoid needless consumption of time to deal with unwarranted subpoena and subpoenas duces tecum. In addition, it makes additional clarifications regarding the exclusive right to and method of discovery between the applicant and complainant to a GCA hearing, which will avoid discovery disputes and clarify that discovery is not permitted

upon a member of the Commission or an advisor of the Commission except in limited circumstances.

Specific Proposal:

This proposed action will make changes within the California Code of Regulations, Title 4, Division 18 as follows:

CHAPTER 1 GENERAL PROVISIONS

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Amend 12014. Subpoenas.

Section 12014 provides to the Commission's guidelines for subpoenas and subpoenas duces tecum.

Subsection (a) provides that the issuance and enforcement of a subpoena or subpoena duces tecum in any adjudicative proceeding held pursuant to the Act for which a notice of hearing has been issued will be in accordance with Article 11 (commencing with section 11450.05) and Article 12 (commencing with section 11455.10), respectively, of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. Further, the issuance of a subpoena or subpoena duces tecum may be on the form entitled "Subpoena," CGCC–CH1–02 (New 05/20), or in a manner that otherwise complies with Article 11 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. Lastly, all subpoenas and subpoenas duces tecum must be served at least 30 days prior to the date specified for commencement of the hearing in the notice of hearing, or the date specified in the subpoena for the appearance of a witness or the production of records.

Subsection (a) has been revised to provide updates to the requirements of how a subpoena and/or subpoena duces tecum is served. Specifically, it requires service pursuant to Government Code section 11450.20 with a copy to the presiding officer.

Subsection (b) provides that any motion made pursuant to subdivision (a) of section 11450.30 of the Government Code must be filed with the presiding officer no later than 15 days prior to the date specified for appearance or for the production of records. The party bringing the motion must serve copies of the motion on all parties and persons who are required by law to receive notice of the subpoena. Any response to the motion must be filed with the presiding officer and served no later than 5 days before the motion is scheduled to be heard. Upon a timely motion of a party or a witness, after notice to the parties and an opportunity to be heard, upon a showing of good cause, the presiding officer may order the quashing of a subpoena or subpoena duces tecum entirely, may modify it, or may direct compliance with it upon other terms and conditions.

This provision, has been revised to provide that the presiding officer may, on their own motion (*suo moto*), order the quashing of a subpoena or subpoena duces tecum entirely, may modify it, or may direct compliance with it upon other terms and conditions.

Amend 12052. Commission Meeting; General Procedures; Scope; Notice; Rescheduling of Meeting.

Section 12052 provides information on how the Commission issues notices for the consideration of applications.

Subsection (c) provides what the Commission will include in a notice for any license, permit, finding of suitability, renewal, or other approval. Subparagraph (B) of paragraph (2) provides that if the application is to be scheduled at an evidentiary hearing, information must be provided regarding the date, time, and location of the pre–hearing conference. This section is modified to update a reference due to a provision being moved.

ARTICLE 2. PROCEDURES FOR HEARINGS AND MEETINGS ON APPLICATIONS

Amend 12060. GCA Hearings.

Section 12060 provides the specifics of a GCA hearing.

Subsection (f) specifies that the complainant will provide to the applicant, at least 45 calendar days prior to the GCA hearing, and the applicant must provide to the complainant, at least 30 calendar days prior to the GCA hearing, a list of items.

- Subparagraph (4) provides other written comments and writings must be provided. This provision is amended to include "other items" that contain relevant evidence.

New subsection (g) provides that the exclusive right to and method of discovery between the applicant and complainant during a GCA hearing is as provided in subsection (f). Additionally, it provides that discovery is not permitted upon a member of the Commission or an advisor of the Commission except in limited circumstances.

Subsection (l), renumbered to subsection (m), is modified to update a reference due to a provision being moved.

Existing subsections (g) through (n) are renumbered to subsections (h) through (o).

CHAPTER 2 LICENSES AND WORK PERMITS

ARTICLE 1. INITIAL AND RENEWAL LICENSES AND WORK PERMITS

Amend 12118. Objection to Local Work Permits.

Section 12118 provides a series of general provisions that apply to the Commission's ability to object to the issuance of a work permit by a local jurisdiction.

Subsection (c) is modified to update a reference due to a provision being renumbered.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

The Commission has evaluated this regulatory action and determined that the proposed regulations are neither inconsistent nor incompatible with any other existing state regulations.

The proposed action is intended to make changes to the Commission's regulations to improve the Commission's existing processes and in so doing makes them more compatible and internally consistent.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/ Savings in Federal Funding to the State: None

Non–Discretionary Cost or Savings Imposed Upon Local Agencies: None.

Mandate Imposed on Any Local Agency or School District for Which Part 7 (Commencing with Section 17500) of Division 4 of the Government Code Requires Reimbursement: None.

Cost to Any Local Agency or School District for Which Part 7 (Commencing with Section 17500) of Division 4 of the Government Code Requires Reimbursement: None.

Effect on Housing Costs: None.

Impact on Business:

The Commission has determined that this regulatory proposal will not have a significant impact directly affecting business, including the ability to compete. For this purpose, the definition of a small business as defined by the federal Small Business Administration was utilized.

The basis for this determination is that this proposed action imposes no mandatory requirement on businesses or individuals and does not significantly change the Commission's current practices and procedures.

Cost Impact on Representative Private Person or Business:

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

Effect on Small Business:

The Commission has made a determination that the proposed regulatory action would not affect small businesses as the proposed action only modifies existing subpoena requirements.

Results of Economic Impact Assessment/ Analysis Impact on Jobs/New Businesses:

The Commission has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. For this purpose, the definition of a small business as defined by the federal Small Business Administration was utilized.

The basis for this determination is that this proposed action imposes no new mandatory requirement on businesses or individuals and does not significantly change the Commission's current practices and procedures. The proposed action modifies existing subpoena requirements.

Benefits of Proposed Regulation:

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by aiding and preserving the integrity of controlled gambling.

Health and Welfare of California Residents:

It has been determined that the proposed action will protect the health, safety, and general welfare of California residents by aiding and preserving the integrity of controlled gambling.

Worker Safety:

It has been determined that the proposed action will not affect worker safety because it does not pertain to working conditions or worker safety issues.

State's Environment:

It has been determined that the proposed action will not affect the State's environment because it does not pertain to environmental issues.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission or that has otherwise been identified and brought to the attention of the Commission 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.

INITIAL STATEMENT OF REASONS, INFORMATION AND TEXT OF PROPOSAL

The Commission has prepared an Initial Statement of Reasons and the exact language for the proposed action and has available all the information upon which the proposal is based. Copies of the language and of the Initial Statement of Reasons, and all of the

information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Commission at 2399 Gateway Oaks Drive, Suite 220, Sacramento, CA 95833–4231.

AVAILABILITY AND LOCATION OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS

All the information upon which the proposed action is based is contained in the Rulemaking File that will be available for public inspection and copying at the Commission's office throughout the rulemaking process. Arrangements for inspection and/or copying may be made by contacting the primary contact person named below.

You may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to one of the contact persons named below or by accessing the Commission's website listed below.

CONTACT PERSONS

All comments and inquiries concerning the substance of the proposed action should be directed to the following ***primary*** contact person:

Joshua Rosenstein, Legislative and Regulatory Specialist
Legislative and Regulatory Affairs Division
California Gambling Control Commission|
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833–4231
Telephone: (916) 274–5823
Fax: (916) 263–0499
E–mail: jrosenstein@cgcc.ca.gov

Requests for a copy of the Initial Statement of Reasons, proposed text of the regulation, modified text of the regulation, if any, or other technical information upon which the proposed action is based should be directed to the following ***backup*** contact person:

Alex Hunter, Legislative and Regulatory Specialist
Legislative and Regulatory Affairs Division
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833–4231
Telephone: (916) 263–1301
Fax: (916) 263–0499
E–mail: ahunter@cgcc.ca.gov

WEBSITE ACCESS

Materials regarding this proposed action are also available on the Commission's website at www.cgcc.ca.gov.

TITLE 4. POLLUTION CONTROL FINANCING AUTHORITY

Pursuant to Section 44520 of the Health and Safety Code, the regulations being amended herewith by the California Pollution Control Financing Authority ("CPCFA" or the "Authority") are, by legislative mandate, necessary to carry out its powers and duties.

PROPOSED REGULATORY ACTION

The Authority proposes to amend Section 8035 of Title 4, Division 11, Article 4 of the California Code of Regulations (the "Amended Regulations") concerning the administration of the California Pollution Control Financing Authority's Bond Program. These Amended Regulations are necessary to implement, interpret and make specific Article 4 of the California Pollution Control Financing Authority Act (the "Act").

AUTHORITY AND REFERENCE

Authority: Sections 44520(a) and 44548(a)(3) Health and Safety Code. Section 44520(a) authorizes the Authority to adopt these proposed regulations to carry out its powers and duties. Section 44548(a)(3) allows the Authority to adopt regulations which provide for differential fees from participating parties based upon factors determined to be relevant by the Authority.

Reference: Section 44519, 44520, 44525, 44537.5, 44537.5 and 44548, of the Health and Safety Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes the Authority to adopt all necessary rules and regulations to carry out its powers and duties under this division pursuant to Section 44520 of the Health and Safety Code.

Background of Section 8035.

During the late 1970s and early 1980s, the U.S. Small Business Administration (SBA) administered a special pollution control loan guarantee program for small businesses. The program offered SBA loan guarantees for federally issued tax–exempt bonds. The SBA discontinued the program in 1981, which left small business borrowers with inadequate resources for securing cost–effective tax–exempt financing.

In order to fill the void created by the discontinuation of the SBA program and offset certain costs of is-

suance and letter of credit fees associated with tax–exempt bond issuance, the State Legislature established the collection of the Small Business Assistance Fund (SBAF) fees from large businesses obtaining conduit bond financing from the Authority in 1985. Under this legislation, large businesses began paying into SBAF to support the Authority's programs that benefit small business borrowers.

Eligible small business (A small business is defined as 500 employees or less.) borrowers can receive up to $210,000 towards its eligible costs of issuance, based on a sliding scale dependent on the Par amount of the transaction.

Currently, the Authority awards SBAF funds to eligible small business borrowers at the close of a transaction. SBAF funds may be used to pay certain transaction costs of issuance and certain post issuance requests. Acceptable SBAF subsidy uses include, but are not limited to, bond counsel fees, underwriter or placement agent fees or discount and related expenses, printing fees, fees due to other state agencies, accounting fees, consultant's fees, other expenses directly related to the issuance of bonds that are normally paid from bond proceeds at the time of closing, and post issuance requests related to a change in a national interest rate index (eg. LIBOR to SOFR). Currently, the Authority maintains approximately $14.95 million, available for use to qualified small business borrowers, in the SBAF account.

Need for an amendment to Section 8035

In early 2013, the Authority waived the SBAF fee for large businesses and between 2013 and 2015, there were 5 large businesses that successfully issued tax–exempt bonds with the Authority. Then, the Authority extended the waiver for an additional six months until December 31, 2016, and waived half of the fee from January 1, 2017, to June 30, 2017. Between June 30, 2016, and June 30, 2017, one large business issued bonds with the Authority. In the last four years, only two large businesses have issued bonds with the Authority.

Staff anticipates that the temporary fee suspension will entice large businesses to once again finance with the Authority. Suspension of the SBAF fee noticeably reduces a portion of the cost of issuance. The fee waiver could also make the Authority competitive in an increasingly high borrowing cost environment and incentivize national companies to focus investment in California.

With the current SBAF balance of approximately $14.95 million, the temporary SBAF fee suspension will not affect the availability of SBAF assistance to small businesses. During the previous four years, the SBAF received fees from two large businesses and all eligible small businesses received SBAF assistance. See table on page 2 of the Initial Statement of Reasons which outlines the number of companies and amounts paid into and out of the SBAF over the past four years.

ANTICIPATED BENEFITS FROM THIS REGULATORY ACTION

CPCFA anticipates that the temporary fee waiver will entice large businesses to issue bonds by noticeably reducing a portion of the cost of issuance. The fee reduction could also serve as an incentive for national companies to focus investment in California while their fees are lowered. CPCFA will also continue to utilize the current balance of the SBAF fund to help small businesses pay for the costs of issuance of tax–exempt bonds.

The proposed amendment to the current regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business within California.

After conducting a review for any related regulations in this area, the Executive Director has determined that these are the only regulations concerning the SBAF fee paid by large businesses. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Regulations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: None.

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

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

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

Significant effect on housing costs: None.

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

Small Business: The Amended Regulations will not have an adverse impact on small business in California and will not affect small business since they do not impose additional restrictions or cost on small business.

Significant, statewide, adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the Amended Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Assessment regarding effect on jobs/businesses: The Amended Regulations will not have a significant effect on the creation or elimination of jobs in California, significantly affect the creation of new businesses or elimination of existing businesses within California, or significantly affect the expansion of businesses currently doing business in California.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment: The proposed amendments to sections 8035 will open more financing opportunities to businesses involved in pollution control projects. These types of projects will benefit the environment and the public health and safety.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13) the Authority must determine that no reasonable alternative to the Amended Regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Amended Regulations are 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 provision of law.

The Authority invites interested parties to present statements with respect to alternatives to the Amended Regulations during the written comment period.

AGENCY CONTACT PERSON

Written comments, inquiries and any questions regarding the substance of the Amended Regulations shall be submitted or directed to:

Andrea Gonzalez, Associate Governmental Program Analyst
California Pollution Control Financing Authority
915 Capitol Mall, 5th Floor
Sacramento, CA 95814
Telephone: (916) 651–7284
Fax: (916) 657–4821
Email: andrea.gonzalez@treasurer.ca.gov

Deanna Hamelin, Staff Services Manager I
California Pollution Control Financing Authority
915 Capitol Mall, 5th Floor
Sacramento, CA 95814
Telephone: (916) 651–6503
Fax: (916) 657–4821
Email: dhamelin@treasurer.ca.gov

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the Amended Regulations to the Authority. The written comment period on the Amended Regulations ends at **5:00 p.m. on January 4, 2023**. All the comments must be submitted in writing to the Agency Contact Person identified in the Notice by that time in order for them to be considered by the Authority.

In the event that substantial changes are made to the proposed regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for fifteen (15) calendar days after the date on which such regulations, as changed or modified are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency contact person identified in this Notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 801 Capitol Mall, Room 266, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this notice, the Initial Statement of Reasons and the proposed text of the Adopted Regulations. Copies of these items and all the information upon which the proposed rulemaking is based are available upon request from the Agency Contact Person designated

in this Notice or at the Authority's website located at http://www.treasurer.ca.gov/cpcfa/index.asp.

PUBLIC HEARING

CPCFA does not intend to conduct a Public Hearing on the matter of these regulations, unless requested. Any interested person may submit a written request for a public hearing no later than 15 days prior to the close of the written comment period.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the proposed Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or found at the Authority's website at http://www.treasurer.ca.gov/cpcfa/index.asp.

TITLE 16. BOARD OF ACCOUNTANCY

SALE, TRANSFER, OR DISCONTINUANCE OF LICENSEE'S PRACTICE

NOTICE IS HEREBY GIVEN that the California Board of Accountancy (CBA) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

California Board of Accountancy
2450 Venture Oaks Way, Suite 420
Sacramento, CA 95833
January 10, 2023
10:00 a.m.

Written comments, including those sent by mail, facsimile, or e–mail to the addresses listed under *Contact Person* in this Notice, must be received by the CBA at its office no later than **January 3, 2023**, or must be received by the CBA at the hearing. The CBA, upon its own motion or at the request 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.

Authority and Reference: Pursuant to the authority vested by Sections 5010 and 5018 of the Business and Professions Code (BPC), and to implement, interpret, or make specific sections 5018 and 5063.3 of said Code and Civil Code section 1798.81, the CBA is considering adding section 54.3 and 54.4 to Division 1 of Title 16 of the California Code of Regulations[1] (CCR) as follows:

INFORMATIVE DIGEST

A. *Informative Digest*

BPC section 5018 authorizes the CBA to adopt regulations to prescribe or amend rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession.

Existing law, BPC section 5063.3, prohibits licensees from disclosing a client or prospective client's confidential information, except under certain specified circumstances. Existing CBA regulation, section 54, defines confidential information and indicates that it includes all information obtained by a licensee in their professional capacity regarding a client or prospective client, except information obtained from a prospective client who does not subsequently become a client, as long as certain conditions are met. Existing CBA regulation, CCR section 54.1, states that licensees are generally prohibited from disclosing a client or potential client's confidential information, except in specified circumstances. BPC sections 5063.3 and CCR section 54.1 generally permit disclosures of con-

[1] All California Code of Regulations references are to title 16, unless otherwise indicated.

fidential client information in connection with the sale or merger of a business.

Existing law, BPC section 5018, requires licensees to adhere to the rules and standards of professional conduct adopted by the CBA, which are set forth in Title 16, Division 1, Article 9, of the CCR. Existing regulation, CCR section 58, requires licensees to comply with all applicable professional standards, which includes the Code of Professional Conduct developed by the American Institute of Certified Public Accountants[2] (AICPA) ["Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards"]. The Code of Professional Conduct is a set of principles, rules and interpretations that guides Certified Public Accountants (CPAs) in the performance of their professional responsibilities.

Existing law, BPC section 5097, governs a licensee's maintenance of audit documentation.

Existing law, Civil Code section 1798.81 governs the appropriate destruction of customer records.

In October 2016, the AICPA Professional Ethics Executive Committee (PEEC) adopted new and revised interpretations (Interpretations) of the AICPA Code of Professional Conduct. As indicated above, pursuant to CCR section 58, the CBA requires its licensees to comply with all applicable professional standards, including the Code of Professional Conduct developed by the AICPA.

The CBA's proposal would add two new sections to Article 9 of Division 1 of Title 16 to address new Interpretation 1.400.205 (Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice) and revised Interpretation 1.700.050 (Disclosing Client Information in Connection With a Review or Acquisition of Member's Practice). CCR section 54.3 would address the sale or transfer of all or part of a licensee's practice to a successor person and CCR section 54.4 would address notification to clients when a licensee's practice is discontinued without a sale or transfer of the practice to a successor person. Both sections would establish requirements to ensure licensees are handling client records appropriately.

Specifically, this proposal would do the following:

Section 54.3

This proposed section specifies various steps a licensee would be required to take regarding notifying clients when selling or transferring all or part of the licensee's practice, the circumstances under which the licensee would be permitted to transfer client records to the successor person, the documents the licensee would be required to retain and how long to retain them.

Section 54.4

This proposed section would establish requirements that licensees must follow when discontinuing their practice without a sale or transfer of the practice to a successor person, including providing written notice to the client, returning records to the client, what to do if the licensee is unable to return the client's records, and proper manner of disposing client records.

B. *Policy Statement Overview/Anticipated Benefits of Proposal*

This regulatory proposal would establish requirements for licensees to follow when selling, transferring, or discontinuing their practice and provides guidance regarding the proper disposal of client records. The CBA anticipates that the proposed regulations would benefit licensees by providing them with clear direction for notifying clients and appropriately handling client records when selling, transferring or discontinuing their accountancy practice. The CBA also anticipates that this proposal would benefit consumers by ensuring that clients are notified when a licensee sells, transfers, or discontinues their practice and provides an opportunity for the client to obtain their records. It would also ensure the confidentiality of client records by establishing requirements for licensees to follow when transferring them to a successor person or properly disposing of them.

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the CBA has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

None.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The CBA does not anticipate additional workload or costs resulting from the proposed regulations.

The CBA would ensure compliance with the proposed regulation through enforcement and investigation measures, which would typically be conducted in response to a consumer complaint related to the client's inability to receive their records.

However, the CBA notes over the past two years it received 7,143 total complaints (2,729 in 2020–21 and 4,414 in 2021–22) of which, zero percent were related

[2] The AICPA is the world's largest member association representing the accounting profession with a history of serving the public interest since 1887. It sets ethical standards for the accounting profession and U.S. auditing standards for private companies, nonprofit organizations, and federal, state and local governments.

to violations of the proposed regulations. As a result, no additional workload or costs are anticipated.

The regulations do not result in costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies:

None.

Local Mandate:

None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement:

None.

Economic Impact:

The regulations will require licensees to notify clients of the sale or transfer of the practice via first–class or certified mail, or via electronic transmission. If sent by first–class or certified mail, it may result in costs of $0.60 (domestic) and $1.40 (international) per notification, or $4.00 per notification for certified mail. The CBA cannot provide an estimate of the total future costs related to notifying clients because the number of notifications would depend on unknown variables including: 1) the number of future sale or transfers of practices, 2) the number and location of clients impacted, and 3) the method of notification.

Licensees would also be required to either transfer client records to the successor person or to the client, as specified, or retain the records, as specified. Because any client record transfer and/or retention costs would also depend on these same unknown variables, the CBA cannot provide an estimate of these transfer or retention costs.

However, the CBA notes that most client records are typically retained by the licensee in digital format and any transfer or retention of these records would occur digitally, which would not likely result in additional costs.

The CBA further notes a typical licensee opting to sell or transfer their practice would likely be averse to significant record transfer or retention costs. As a result, these individuals would probably choose to digitize any records as part of their normal course of business and complete the digitizing of records prior to the sale or transfer to eliminate these potential costs.

Business Impact:

The CBA has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:

Pursuant to CBA Regulations section 58, all licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, which includes the AICPA Code of Professional Conduct. The AICPA Code of Professional Conduct contains standards regarding the sale, transfer and discontinuance of a practice and changes to these standards is the basis for this rulemaking action. The CBA's proposed regulations provide added detail regarding how licensees can meet the existing standards relating to sale, transfer, or discontinuance of a practice. As licensees would already be subject to any costs associated with meeting the standards, pursuant to CBA Regulations section 58, the proposed regulations specific to the sale, transfer and discontinuance (54.3 and 54.4) will not create an additional significant economic impact for licensees.

Cost Impact on Representative Private Person or Business:

The cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the CBA are mailing costs to notify or provide records to a client. The cost impact in providing records to a client would be dependent on the volume of records the licensee has for that client. For example, a licensee with fewer and/or smaller clients with fewer records to maintain would incur less cost than a licensee with many and/or larger clients with a larger volume of records to maintain. Additionally, depending on whether the records are stored in a hardcopy or electronic format, storage of said records may incur costs, and such costs would vary based on the volume of records being maintained.

Effect on Housing Costs:

None.

EFFECT ON SMALL BUSINESS

The CBA has determined that the proposed regulations would affect small businesses. Specifically, any licensee who is a small business and decides to sell, transfer, or discontinue their practice will need to notify their clients via a written notification and based on the response (or non–response) to that notification, must follow specific requirements for transfer, return, or storage of the records. Ultimately, in cases where the licensee must retain a client's records, they will also be required to dispose of the records, following a specific timeframe, in a manner that will ensure confidentiality.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The CBA has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses, or the elimination of jobs or

existing businesses, or the expansion of businesses in the State of California.

Benefits of Regulation:

The CBA has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and state's environment:

This proposal would benefit the welfare of California residents because it would require licensees to follow specified procedures intended to protect consumers and their client records when a licensee sells, transfers, or discontinues a public accountancy practice.

This regulatory proposal does not affect worker safety because it has nothing to do with worker safety.

This regulatory proposal does not affect the state's environment because it has nothing to do with the environment.

CONSIDERATION OF ALTERNATIVES

The CBA must determine that no reasonable alternative it considered to the regulation or that has otherwise been 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 proposal described in this Notice, or would be more cost–effective to affected private persons and equally effecive in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above–mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The CBA has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the CBA at 2450 Venture Oaks Way, Suite 300, Sacramento, California, 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You 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 by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Sarah Fletcher
Address: 2450 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Telephone Number: (916) 561–1706
Fax Number: (916) 263–3678
E–Mail Address: regulations@cba.ca.gov

The backup contact person is:

Name: Corey Faiello–Riordan
Address: 2450 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Telephone Number: (916) 561–4345
Fax Number: (916) 263–3678
E–Mail Address: regulations@cba.ca.gov

Website Access:

Materials regarding this proposal can be found at https://www.dca.ca.gov/cba/about/laws–and–rules.shtml.

TITLE 18. DEPARTMENT OF TAX AND FEE ADMINISTRATION

PROPOSED ADOPTION OF DIVISION 5, CHAPTER 5, COUNTY REVENUE PROTECTION FUND REGULATIONS, AND SECTION 35401, REGISTRATION, REPORTING, AND REIMBURSEMENT

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to the authority in section 2.3 of article XIII A of the California Constitution, proposes to adopt chapter 5, County Revenue Protection Fund Regulations, and section (Regulation or Reg.) 35401, Registration, Reporting, and Reimbursement, in chapter 5 of division 5 of title 18 of the California Code of Regulations (CCR). (All further section references are to sections in article XIII A of the Cal. Const., unless otherwise specified.) Proposed Regulation 35401 requires each county to register with the Department to report the gains it is required to annually determine

for the county and each local agency in the county under subdivision (a) of section 2.3. It clarifies the determination periods for which the gains shall annually be determined under subdivision (a) of section 2.3. It specifies the dates by which the gains shall annually be determined as required by subdivision (a) of section 2.3. It requires each county to report the gains it annually determines under subdivision (a) of section 2.3 to the Department by specified reporting due dates every three years. It also clarifies how the Department will use the gains reported by the counties to determine each county's and local agency's aggregate gain every three years and provide reimbursement to each county and local agency with an aggregate negative gain under subdivision (c) of section 2.3.

AUTHORITY

Section 2.3.

REFERENCE

Section 2.3.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws

Base Year Value

As relevant here, section 1 generally limits the maximum amount of ad valorem taxes on real property to one percent of the full cash value of that property and requires the one percent tax to be collected by the counties and apportioned according to law to the districts within the counties. Section 2 generally defines full cash value as the appraised value of the real property when purchased, newly constructed, or a change in ownership has occurred. It authorizes the full cash value base to be adjusted by an annual inflationary rate not to exceed two percent. It also authorizes the full cash value to be reduced to reflect substantial damage, destruction, or other factors causing a decline in value.

For purposes of section 2, subdivisions (a) and (b) of Revenue and Taxation Code (RTC) section 110.1 generally provide that the base year value for real property is the "full cash value" or fair market value of the property as determined pursuant to RTC section 110 on the 1975 lien date or the date of the most recent change in ownership of the property or the date of completion of new construction. Subdivision (f) of RTC section 110.1 requires the base year value of real property to be adjusted by an inflation factor for each lien date after the lien date in which the base year value is determined, and that adjusted value is known as the adjusted base year value. RTC section 51 prohibits the inflation factor from exceeding two percent of the prior year's value. RTC section 51 further provides, for purposes of section 2, that for each lien date after the lien date in which the base year value is determined, the taxable value of real property is generally the lesser of: (1) the adjusted base year value; or (2) its full cash value, as defined in RTC section 110, as of the lien date, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property, or other factors causing a decline in value. The lien date is the first day of January preceding the fiscal year for which the taxes are levied, unless otherwise provided. (RTC, § 2192.)

Base Year Value Transfers

Subdivision (a) of section 2 authorizes the Legislature to enact legislation that allows a person over 55 years of age or any severely and permanently disabled person residing in property eligible for the homeowner's exemption to transfer the property's adjusted base year value to a replacement dwelling of equal or lesser value located in the same county or another county that has adopted an ordinance allowing in–bound base year value transfers from other counties that is purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. The Legislature enacted RTC section 69.5 to allow those base year value transfers when certain conditions are met. As of November 7, 2018, the following 10 counties had ordinances enabling these types of intercounty base year value transfers: Alameda, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Tuolumne, and Ventura. (See www.boe.ca.gov/proptaxes/prop60–90_55over.htm.)

Subdivision (e) of section 2 requires the Legislature to enact legislation that allows the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, to be transferred to comparable property within the same county that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property. Subdivision (e) of section 2 also authorizes the Legislature to enact legislation authorizing counties to adopt ordinances allowing similar in–bound base year value transfers if the replacement property is of equal or less value and acquired or newly constructed within three years of the substantial damage or destruction to the original property. The Legislature enacted RTC sections 69 and 69.3 to allow these intra–county and intercounty base year value transfers, respectively. As of May 6, 2021, the following 14 counties had adopted ordinances enabling these types of intercounty base year value transfers: Contra Costa, Glenn, Los Angeles, Modoc, Orange, San Diego, San Francisco, Santa Clara, Solano, Sonoma, Sutter, Ventura, Yolo, and Yuba. (See www.boe.ca.gov/proptaxes/disaster–relief.htm#FAQs.)

Parent–Child and Grandparent–Grandchild Transfer Exclusions

Subdivision (h) of section 2 provides that the purchase or transfer of the principal residence and the first one million dollars of the full cash value of other real property of a transferor, in the case of a transfer between parents and their children or between grandparents and their grandchildren if all the parents of those grandchildren are deceased, is not a "purchase" or "change in ownership" for purposes of determining the "full cash value" of property under section 2. The Legislature enacted RTC section 63.1 to implement the parent–child and grandparent–grandchild transfer exclusions from reassessment and it generally provides that the full cash value of other real property is its adjusted base year value immediately prior to the date of its purchase or transfer. (RTC, § 63.1, subd. (c).)

Proposition 19

Assembly Constitutional Amendment Number 11 (Stats. 2020, chapter 31), the Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act, was placed on the ballot as Proposition 19, approved by the voters at the November 3, 2020, statewide general election, and added sections 2.1, 2.2, and 2.3 effective December 16, 2020. As relevant here, subdivision (b) of section 2.1 expanded base year value transfers by authorizing an owner of a primary residence who is over fifty–five years of age, severely disabled, or a victim of a wildfire or natural disaster to transfer the taxable value of their primary residence to a replacement primary residence located anywhere in the state, beginning April 1, 2021, regardless of the location or value of the replacement primary residence, that is purchased or newly constructed as that person's principal residence within two years of the sale of the original primary residence. Also, for any transfer of taxable value to a replacement primary residence of greater value than the original primary residence, subdivision (b) of section 2.1 requires the taxable value of the replacement primary residence to be calculated by adding the difference between the full cash value of the original primary residence and the full cash value of the replacement primary residence to the taxable value of the original primary residence.

Subdivision (c) of section 2.1 provides new parent–child and grandparent–grandchild transfer exclusions that apply to purchases and transfers on and after February 16, 2021, and subdivision (d) of section 2.1 makes the parent–child and grandparent–grandchild transfer exclusions discussed above inoperative as to any purchase or transfer occurring on or after February 16, 2021. The exclusions provided by subdivision (c) only apply to purchases or transfers of a family home or family farm and require the property to continue as the family home or family farm of the transferee. Also, subdivision (c) provides that the new taxable value of the family home or family farm is the sum of the taxable value of that property, subject to adjustment as authorized by section 2, determined as of the date immediately prior to the date of the purchase by, or transfer to, the transferee ("prior taxable value"), plus the amount by which the value of the family home or family farm exceeds the sum of the prior taxable value and one million dollars. Due to the provisions of subdivisions (c) and (d), partial parent–child and grandparent–grandchild transfer exclusions may only be allowed on the purchase or transfer of family homes or family farms with an assessed value of over one million dollars. (See www.boe.ca.gov/prop19/#FAQs for an example of a partial exclusion due to the taxable value calculation.) Also, there is no longer a parent–child or grandparent–grandchild transfer exclusion that applies to the sale or transfer of real property that is not a family home or family farm.

Section 2.2 created the California Fire Response (CFR) Fund and the County Revenue Protection (CRP) Fund in the State Treasury. Section 2.2 requires the Director of Finance to calculate the additional revenues and savings that accrued to the state from the implementation of section 2.1 during the prior fiscal year ending June 30 on or before September 1, 2022, and each subsequent September 1 thereafter. Section 2.2 requires the Controller to transfer 75 percent and 15 percent of the amount calculated by the Director of Finance from the General Fund to the CFR Fund and CRP Fund, respectively, by September 15, 2022, and each subsequent September 15 thereafter. Section 2.2 also continuously appropriates moneys in the CRP Fund for the purposes of reimbursing counties and local agencies that incur a negative gain and paying the Department's administrative costs, in accordance with section 2.3 (discussed below).

Subdivision (a) of section 2.3 requires each county to annually determine the gain for the county and for each local agency in the county resulting from the implementation of section 2.1 by adding the following amounts:

1. The revenue increase resulting from the sale and reassessment of original primary residences for outbound intercounty transfers pursuant to subdivision (b) of section 2.1;
2. The revenue decrease, which shall be expressed as a negative number, resulting from the transfer of taxable values of original primary residences located in other counties to replacement primary residences located within the county for inbound intercounty transfers pursuant to subdivision (b) of section 2.1; and
3. The revenue increase resulting from subdivision (c) of section 2.1.

So, the gains the counties determine under subdivision (a) may be positive or negative. Also, subdivision (a) requires the Department to adopt a regulation pursuant to section 2.3 that specifies the date by which the counties annual determinations shall be made.

Subdivision (b) of section 2.3 makes a county or local agency in the county that has a positive gain for a determination period, as determined pursuant to subdivision (a), ineligible to receive reimbursement from the CRP Fund for that period. Subdivision (b) also deems a county or any local agency that has a negative gain for a determination period, as determined pursuant to subdivision (a), eligible to receive reimbursement from the CRP Fund for that period.

Subdivision (f) of section 2.3 provides that an "eligible local agency" is a county, a city, a city and county, a special district, or a school district as determined pursuant to subdivision (o) of Section 42238.02 of the Education Code as it read on January 8, 2020, that has a negative gain as determined pursuant to section 2.3. Subdivision (c) of section 2.3 requires the Department to determine each eligible local agency's aggregate gain every three years, based on the amounts determined by the counties under subdivision (a), and provide each county and local agency with an aggregate negative gain reimbursement equal to that amount from the CRP Fund. If there is insufficient money in the CRP Fund to cover the total amount of reimbursements, subdivision (c) requires the Department to allocate a pro rata share of the money in the fund to each county and local agency based on the amount it is eligible to be reimbursed relative to the total amount all the counties and local agencies are eligible to be reimbursed for the aggregation period.

Subdivision (d) of section 2.3 requires the Controller to transfer any remaining balance in the CRP Fund to the General Fund after the Department has reimbursed each county and local agency that has experienced a negative gain during an aggregation period to be available for appropriation for any purpose. Subdivision (e) of section 2.3 requires the Department to adopt regulations to implement section 2.3 pursuant to the rulemaking provisions in the Administrative Procedure Act (APA) (Gov. Code (GC), § 11340 et seq.). The Legislature has not enacted Legislation to further implement section 2.3.

Effect, Objective, and Benefits of the Proposed Chapter and Regulation

The Department determined that section 2.3 created an issue because it requires the Department to adopt a regulation specifying the date by which each county must annually determine the gain for the county and for each local agency in the county resulting from the implementation of section 2.1. The Department determined that section 2.3 created issues because section 2.3 does not specify the period for which each annual determination shall be made and the provisions of subdivisions (c) and (d) of section 2.1 became operative in the middle of February 2021, rather than the beginning of a month, or a calendar year, or the state's fiscal year, which is the same as the fiscal year for property tax purposes. The Department determined that section 2.3 also created issues because it requires the Department to determine each eligible county's and local agency's aggregate gain every three years, based on the gains determined by the counties, and provide reimbursement to each county and local agency with an aggregate negative gain from the CRP Fund. However, it does not provide procedures for the Department to obtain the information it needs to make the aggregate gain computations and send reimbursement to the counties and local agencies with an aggregate negative gain every three years. Also, it does not specify when the Department will make the aggregate gain computations, determine if there is sufficient money in the CRP Fund to fully reimbursement the counties and local agencies with an aggregate negative gain, and then provide full or pro rata reimbursement from the CRP Fund. As a result, the Department drafted new chapter 5 to be added to division 5 of title 18 of the CCR and Regulation 35401 to be included in new chapter 5 to have the effect and accomplish the objective of addressing these issues. As further explained below, proposed Regulation 35401:

- Requires each county to register with the Department to report the gains it is required to annually determine for the county and each local agency in the county under subdivision (a) of section 2.3;
- Clarifies the determination periods for which the gains shall annually be determined under subdivision (a) of section 2.3;
- Specifies the dates by which the gains shall annually be determined as required by subdivision (a) of section 2.3;
- Requires each county to report the gains it annually determines under subdivision (a) of section 2.3 to the Department by specified reporting due dates every three years; and
- Clarifies how the Department will use the gains reported by the counties to determine each county's and local agency's aggregate gain every three years and provide reimbursement to each county and local agency with an aggregate negative gain from the money in the CRP Fund under subdivision (c) of section 2.3.

In addition, Department recognizes that section 2.3 created additional issues for the counties because it requires each county to determine specified property tax revenue increases and decreases to annually determine the gain for the county and each local

agency in the county. However, it does not impose that requirement on any specific part or parts of each county's government (e.g., Assessor, Auditor–Controller, Board of Supervisors) and it does not clarify how each county is supposed to calculate the specified property tax revenue increases and decreases for the county and each local agency in the county. The Department is not aware of any other law that addresses those issues, and it appears that each county will annually require detailed information from their Assessor's office about section 2.1's impacts on adjusted base year values and detailed information from the office of their Auditor–Controller, Auditor and Controller, Controller, or Director of Finance about how those impacts on adjusted base year values affect the property tax revenues for the county and each local agency in the county to determine gains under section 2.3.

Furthermore, the State Board of Equalization assesses state–assessed property for property taxes purposes (Cal. Const., art. XIII, § 19), prescribes rules and regulations to govern county assessors when assessing property taxes (GC, § 15606), and conducts surveys of the county assessors' assessment practices (GC, § 15640 et seq.). The Controller's office meets with the county auditors at the Annual State Controller's Conference with County Auditors (https://www.sco.ca.gov/ard_state_controllers_conference_with_county_auditors.html) "for the purpose of discussion of problems dealing with county budget procedure, reporting of financial transactions of the counties, allocation of property tax revenues, including the Special District Augmentation Fund, and to promote uniformity of procedure in all matters pertaining to the duties of county auditors, throughout the state." (GC, § 12422.) However, the Department does not have a role in the administration of property taxes.

As a result, the Department held an interested parties meeting on May 21, 2021, to discuss general issues related to section 2.3 with the counties. The Department conducted surveys with the counties in May 2021 and January 2022 so the Department could answer questions related to proposed Regulation 35401 and the counties' initial questions about how to calculate gains under section 2.3 based on the general consensus drawn from the counties' survey responses. The Department also posted a Proposition 19 guide on its website (www.cdtfa.ca.gov/taxes–and–fees/Prop–19–Home–Protection–Act.htm#Overview) that provides background information about Proposition 19, the counties' duties to annually determine gains under section 2.3, answers to frequently asked questions about calculating and reporting gains that are based on the responses from the surveys, and the results of both surveys. However, the Department is not planning to send additional surveys to the counties and cannot provide further guidance about how the counties should calculate gains under section 2.3 at this time. The Department also recommends that the counties contact the California Assessors Association and/or California State Association of County Auditors if they have new questions about how to calculate gains that are not addressed in the guide, and work with those associations to establish uniform answers to those questions.

Proposed Regulation 35401

Subdivision (a) of proposed Regulation 35401 defines important terms used in the regulation, including "contact information," "county," "County Revenue Protection Fund Account," "Department," "fiscal year," "gain," "identifying information," "local agency," "negative gain," "representative information," and "state holiday." Subdivision (a) clarifies that the term "county," as used in the proposed regulation, is limited to a county in this state because only counties in this state are required to calculate gains under subdivision (a) of section 2.3, and that the term "county" includes a "city and county," as provided in GC section 19, to avoid confusion. Subdivision (a) clarifies that the term "fiscal year," as used in the proposed regulation, means a one–year period beginning on July 1 and ending on June 30 because fiscal years can begin and end on different dates for different purposes and that is the fiscal year for property tax purposes. (RTC, § 75.6.) Subdivision (a) clarifies that the term "gain," as used in the proposed regulation, means the amount determined by adding the revenue increases and decreases specified in subdivision (a) of section 2.3, rounded to the nearest whole dollar, and that the term "negative gain," as used in the proposed regulation, means a gain that is less than zero. Subdivision (a) clarifies that the term "local agency" means a city, a special district, or a school district as determined pursuant to subdivision (o) of section 42238.02 of the Education Code as that subdivision read on January 8, 2020, based on the definition of eligible local agency in subdivision (f) of section 2.3. Subdivision (a) also clarifies that the term "state holiday," as used in the proposed regulation, means a state holiday listed in GC section 6700, including every Sunday.

Subdivision (b) of proposed Regulation 35401 incorporates the requirement that each county annually determine the gain for the county and each local agency in the county from subdivision (a) of section 2.3. It also clarifies that a negative gain shall be expressed as a negative number.

Subdivision (c) of proposed Regulation 35401 requires each county to electronically register for a County Revenue Protection Fund Account through the Department's online services portal, and provide its "contact information," as defined in subdivision (a), which includes the information the Department needs to identify and communicate with the county's autho-

rized representatives, and the counties "identifying information," as defined in subdivision (a), which includes the information the Department needs to specifically identify and reimburse the county and each local agency in the county. Subdivision (c) also requires each county to update their registration information in a reasonable and timely manner. The Department determined that it is necessary for each county to register with the Department for a County Revenue Protection Fund Account so that each county can report the gains it determines under subdivision (a) of section 2.3 to the Department and the Department can use the gains to determine each county's and local agency's aggregate gain every three years, as required by subdivision (c) of section 2.3. The Department determined that, as part of the registration process, it is necessary for each county to provide the information the Department needs to specifically identify the county and each local agency in the county, identify and communicate with each county's authorized representatives, and send reimbursement to the counties and local agencies with aggregate negative gains. The Department also determined it would be more effective and efficient for the counties to register through the Department's online services portal, than complete and submit hard copy forms.

Subdivision (d)(1) of proposed Regulation 35401 clarifies that the initial determination period is the period beginning on February 16, 2021, and ending on June 30, 2022, as suggested in a response to the Department's May 2021 survey, and each subsequent determination period is a fiscal year beginning July 1 and ending on June 30, commencing with the fiscal year beginning on July 1, 2022, and ending on June 30, 2023. (The responses to the May 2021 survey are available at www.cdtfa.ca.gov/formspubs/cdtfa814.pdf.) There are no provisions in section 2.3 that specify which periods' revenue should be included in the counties' annual determinations. However, subdivision (a) of section 2.3 requires each county to include the revenue increases from section 2.1's limitations on the parent–child and grandparent–grandchild transfer exclusions, which became operative February 16, 2021, in its annual determinations. Therefore, the Department determined that it is necessary for the counties' initial determination period to begin on February 16, 2021. Also, the Department understands that property tax is assessed on a fiscal–year basis, counties determine their property tax revenue using a fiscal year that begins on July 1 and ends on June 30, and a substantial majority of the counties that responded to the Department's survey would prefer that their annual determinations be made using the same fiscal year periods. The Department recognizes that the intent of sections 2.2 and 2.3, when read together, was for the Department to issue its first reimbursements to the eligible counties and local agencies after the Director of Finance has calculated the additional revenues and savings that accrued to the state from the implementation of section 2.1 for three consecutive fiscal years, beginning with the fiscal year ending on June 30, 2022, and the Controller has transferred 15 percent of that money into the CRP fund. The Department also recognizes that the intent of sections 2.2 and 2.3 was for the first reimbursements to compensate the counties and local agencies with aggregate negative gains for their revenue losses from the implementation of section 2.1 for the same fiscal years. Therefore, the Department determined that it is necessary for the end of the counties' initial determination period to coincide with the end of the fiscal year ending on June 30, 2022, and for each subsequent determination period to be a fiscal year that begins on July 1 and ends on June 30.

Subdivisions (d)(2) of proposed Regulation 35401 specifies the date by which the counties annual determinations shall be made in accordance with subdivision (a) of section 2.3. It provides that on or before January 31, 2023, each county shall determine the gain for the county and each local agency in the county for the initial determination period ending on June 30, 2022. It also provides that on or before January 31, 2024, and each subsequent January 31 each county shall determine the gain for the county and each local agency in the county for the determination period ending on the preceding June 30. Also, subdivision (d)(3) of Regulation 35401 clarifies that if any January 31 specified in subdivision (d)(2) falls on a Saturday or state holiday, then each county shall determine the gain for the county and each local agency in the county on or before the next business day following that January 31. The Department's May 2021 survey asked the counties when the due date should be for them to determine the gain for the county and each local agency in the county for the prior fiscal year ending June 30 so the Department could identify a reasonable due date that would be the least burdensome for all the counties. The counties' responses indicated that it would be feasible for them to make their determinations for the prior fiscal year ending on June 30 by the following January 31, if not sooner. Therefore, the Department determined that an annual determination date of January 31 is reasonable and will provide the counties sufficient time to obtain the necessary data to make their determinations for the determination period ending on the preceding June 30. Also, when the last day to perform an act falls on a Saturday or state holiday, California law generally permits that act to be performed on the next business day (see, e.g., GC, § 6707). Therefore, the Department determined that it is reasonable to allow the counties to make their determinations on the next business day when the last day

to make their determinations falls on a Saturday or state holiday, including a Sunday.

Subdivision (e) of proposed Regulation 35401 permits a county to change any gain timely determined under subdivision (d)(2) for any reason before the gain is required to be reported to the Department. The Department understands that subdivision (a) of section 2.3 requires the counties to make their annual determinations based upon the data available on or before each determination date. The Department also understands that there may be situations where a county wants to correct errors in or otherwise update the gain determined for a county or local agency before it is reported to the Department and used to calculate the county's or local agency's aggregate gain. Therefore, the Department determined that it is reasonable to allow the counties to make changes to timely determined gains before they are required to be reported. Also, the Department's original draft of Regulation 35401 only permitted a county to correct errors in or update a gain timely determined under subdivision (d)(2) based on more accurate or current information. The Department discussed that draft with the counties during an interested parties meeting on September 8, 2021, and some counties indicated that they thought the reference to correcting errors was intended to refer to making assessment roll corrections for property tax purposes. Therefore, the Department reconsidered the proposed language and determined that it is necessary to allow the counties to change their timely determined gains for any reason to avoid confusion and ensure that any issues with a timely determined gain may be addressed before that gain is required to be reported to the Department.

Subdivision (f)(1) of proposed Regulation 35401 generally requires each county to report the gains for the county and each local agency in the county for each of the three preceding determination periods, through the Department's online services portal, on or before January 31, 2025, and every third January 31 thereafter, beginning with January 31, 2028. Subdivision (f)(1) includes an example to illustrate the reporting dues dates. Also, subdivision (f)(2) of the proposed regulation clarifies that the Department will not accept any gain, unless it is reported through the Department's online services portal before the expiration of any extensions of the reporting due granted by the Department. The Department's May 2021 survey also asked the counties when the due date should be for them to report the gains for the county and each local agency in the county for the prior fiscal year ending June 30 so the Department could identify a reasonable reporting due date that would be the least burdensome for all the counties. The counties' responses indicated that it would also be feasible for them to report the gains for the prior fiscal year ending on June 30 by the following January 31, if not sooner. However, the Department only needs the counties to report their gains after the end of each aggregation period so that the Department can use them to calculates each county's and local agency's aggregate gain. Therefore, the Department determined that it would be less burdensome for the counties to report their gains for the same aggregation period at one time, rather than three separate times, and that allowing them to do so gives the counties additional time to change their timely determined gains for the first two determination periods in each aggregation period before they are required to be reported to the Department.

Subdivision (g)(1) of proposed Regulation 35401 automatically grants each county a one–month extension of the reporting due date specified in subdivision f)(1). There are provisions that allow the Department to grant extensions for good cause in many of the tax and fee laws administered by the Department, including RTC section 6459 in the Sales and Use Law. Also, section 535.050 of the Department's Compliance Policy and Procedures Manual specifies, in part, that "a general one–month extension, pursuant to RTC section 6459, is granted to all municipalities, school districts and other political subdivisions of this state." Therefore, the Department determined that is it reasonable to provide a similar automatic one–month extension of the deadline for the counties to report their gains to the Department to be consistent with Department's existing policies.

Subdivisions (g)(2) of proposed Regulation 35401 provides for the Department to grant any county an extension of the reporting due date specified in subdivision (f)(1) to the following April 30 if a state of emergency due to a disaster, as proclaimed by the Governor pursuant to GC section 8625, is in effect in the county at any time during the two–month period from the January 1 immediately preceding the reporting due date specified in subdivision (f)(1) to the extended reporting due date specified in subdivision (g)(1). It also provides that such an extension shall be granted if a request therefor is electronically filed with the Department on or before the April 30 following the reporting due date specified in subdivision (f)(1). The Department recognizes that there may be states of emergency due to disasters that could potentially prevent affected counties from reporting their gains for an aggregation period by the January 31 reporting deadline, as automatically extended for one month by subdivision (g)(1). Therefore, subdivision (f)(2) of the proposed regulation provides an additional extension of the reporting due date specified in subdivision (f)(1) to help ensure that counties have enough time to report their gains, and no counties or local agencies are unnecessarily denied reimbursement.

Subdivision (g)(3) of proposed Regulation 35401 also clarifies that if the date by which a county is required to report gains, including any extensions of that due date under subdivisions (g)(1) and (2), falls on a Saturday or state holiday, then the Department shall automatically grant the county an extension to the next business day to report the gains. The Department determined that it is reasonable to allow the counties to report their gains on the next business day when the last day to report their gains falls on a Saturday or state holiday, including a Sunday, for the same reason the Department determined that it is reasonable to allow the counties to make their determinations on the next business day when the last day to make their determinations falls on a Saturday or state holiday, including a Sunday.

Subdivision (h)(1)(A) of proposed Regulation 35401 provides that on May 5, 2025, and on each May 5 every three years thereafter, the Department shall determine each county's and each local agency's aggregate gain, by combining the gains determined by the counties and timely reported to the Department for each of the three preceding determination periods. It also clarifies that each county and local agency with an aggregate negative gain shall be eligible to be reimbursed an amount equal to its aggregate negative gain expressed as a positive number for that three–year aggregation period. For example, if a local agency's aggregate gain was negative one hundred dollars (–$100) for an aggregation period, then the local agency would be eligible to be reimbursed one hundred dollars ($100) for that period. The Department recognizes that the general intent of sections 2.2 and 2.3 was for the Controller to make three annual transfers from the general fund to the CRP fund before the Department uses the money in the CRP fund to reimburse the counties and local agencies with an aggregate negative gain for an aggregation period; for the Controller to return any money in the CRP fund to the general fund after the Department has reimbursed the counties and local agencies with an aggregate negative gain for the first aggregation period; and for the whole process to start over with new annual transfers into the fund for purposes of reimbursing the counties and local agencies with an aggregate negative gain for the next aggregation period. The Department also recognizes that on September 15, 2024, and each September 15 every three years thereafter, all the money available for the Department to provide reimbursement or proportional reimbursement to the counties and local agencies with an aggregate negative gain for the preceding aggregation period should be in the CRP Fund. Therefore, the Department should determine each county's and local agency's aggregate gain for each aggregation period as soon as practical after all the counties are required to report their gains for that period taking into account the potential for some counties to be granted a three month extension of the reporting due date and taking into account that April 30 may fall on a Saturday or state holiday, including Sunday, and some counties may have until the next business day to report their gains in some years. Therefore, the Department determined that May 5, 2025, and each May 5 every three years thereafter should be the aggregation dates to ensure that the aggregation dates never precede a county's extended reporting due date and that the aggregation dates are always as soon as practical after all the counties are required to report their gains.

Subdivision (h)(1)(B) of proposed Regulation 35401 provides that on May 5, 2025, and on each May 5 every three years thereafter, the Department shall also determine if there is money in the CRP Fund and whether it is sufficient to provide each county and local agency the full amount it is eligible to be reimbursed. The Department determined that it is necessary to include this provisions in subdivision (h)(1) because the reimbursement process under subdivision (c) of section 2.3 is dependent upon whether there is money in the CRP Fund at the time the Department determines the counties' and local agencies' aggregate gains for an aggregation period, and whether the money is sufficient to cover the full amount each county and local agency is eligible to be reimbursed.

Subdivision (h)(2) of proposed Regulation 35401 clarifies that if there is sufficient money in the CRP, the Department shall begin the process to provide each county and local agency with the full amount it is eligible to be reimbursed for the current aggregation period in accordance with subdivision (c) of section 2.3. Subdivision (h)(3) of proposed Regulation 35401 further clarifies that if there is money in the CRP Fund, but not sufficient money to provide each county and local agency the full amount it is eligible to be reimbursed for the current aggregation period, the Department shall begin the process to provide a pro rata share of the money in the fund to each county and local agency based on the amount the county or local agency is eligible to be reimbursed relative to the total amount all the counties and local agencies are eligible to be reimbursed for the current aggregation period in accordance with subdivision (c) of section 2.3. Subdivision (h)(3) also includes an example illustrating that if a county is eligible to be reimbursed one percent (1%) of the total amount all the counties and local agencies are eligible to be reimbursed for the current aggregation period, then the Department would provide one percent (1%) of the money in the fund to that county for that period.

Subdivision (h)(4) of proposed Regulation 35401 provides that if any May 5 specified in subdivision (h)(1) falls on a Saturday or state holiday, then the Department shall perform the acts required by subdivi-

sion (h)(1) on the next business day following that May 5. The Department determined that it is necessary to include subdivision (h)(4) in the proposed regulation because the Department's offices are generally closed on Saturdays and state holidays, including Sundays, and when the last day to perform an act falls on a Saturday or state holiday, California law generally permits that act to be performed on the next business day (see, e.g., GC, § 6707). The Department also determined that the due dates and procedures in subdivision (h) will allow the Department to reimburse eligible counties and local agencies with aggregate negative gains from the money in the CRP Fund in a timely manner.

Finally, subdivision (i) of proposed Regulation 35401 provides that if a county fails to report a gain for the county or a local agency in the county for any determination period within an aggregation period before the expiration of the extensions of the reporting due date granted under subdivision (g), the Department will conclusively presume that the county or local agency does not have an aggregate negative gain for the aggregation period and thus is not eligible to be reimbursed from the CRP Fund for that period. The Department cannot accurately determine a county's or local agency's aggregate gain for any aggregation period unless all of its gains for that period were reported to the Department. Also, the Department cannot reimburse a county or local agency for any aggregation period, unless it can determine that it has an aggregate negative gain for that period. Therefore, the Department determined that it is reasonable for the Department to establish such a presumption under such circumstances. Also, the Department determined that it is necessary for the presumption to be conclusive at some point because the appropriation in section 2.2 is limited to the money in the CRP Fund and the Department will have no money left in the fund to make additional reimbursements for a aggregation period after it completes the reimbursement process for that period and the Controller transfers any money left in the CRP Fund to the General Fund.

Determinations

The Department has determined that the adoption of new chapter 5 and proposed Regulation 35401 is reasonably necessary to have the effect and accomplish the objective of addressing the issues discussed above by:

- Requiring each county to register with the Department to report the gains it is required to annually determine for the county and each local agency in the county under subdivision (a) of section 2.3;
- Clarifying the determination periods for which the gains shall annually by determined under subdivision (a) of section 2.3;
- Specifying the dates by which the gains shall annually be determined as required by subdivision (a) of section 2.3;
- Requiring each county to report the gains it annually determines under subdivision (a) of section 2.3 to the Department by specified reporting due dates every three years; and
- Clarifying how the Department will use the gains reported by the counties to determine each county's and local agency's aggregate gain every three years and provide reimbursement to each county and local agency with an aggregate negative gain from the money in the CRP Fund under subdivision (c) of section 2.3.

The Department anticipates that the adoption of proposed Regulation 35401 will promote fairness and benefit counties, local agencies, and the Department by setting the date by which each county must annually determine the gain for the county and each local agency in the county under subdivision (a) of section 2.3; clarifying the periods for which each annual determination shall be made; providing procedures for the Department to obtain the information it needs to make the aggregate gain computations and provide the reimbursement required by subdivision (c) of section 2.3; and establishing when the Department will make the aggregate gain computations, determine if there is sufficient money in the CRP Fund to fully reimburse the counties and local agencies with an aggregate negative gain, and provide full or pro rata reimbursement from the CRP Fund.

The Department has performed an evaluation of whether Regulation 35401 is inconsistent or incompatible with existing state regulations and determined that the proposed regulation is not inconsistent or incompatible with existing state regulations because it is the only state regulation that implements, interprets, or make specific section 2.3. Also, the Department has determined that there is no existing federal regulation or statute that is comparable to Regulation 35401.

MANDATE ON SOME LOCAL AGENCIES, BUT NOT SCHOOL DISTRICTS

The Department has determined that the adoption of proposed Regulation 35401 will impose a mandate on all 58 California counties, which are local agencies as defined in GC section 17518, to register with the Department and report their gains. The Department has also determined that the mandate does not require state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC because the costs to comply with Regulation 35401 are not "costs mandated by the state" as defined in GC section 17514. The Department has determined that the adoption of proposed Regulation 35401 will not

impose a mandate on any other local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

COSTS TO THE DEPARTMENT AND THE COUNTIES, BUT NO OTHER COSTS OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Department has determined that the adoption of new chapter 5 and proposed Regulation 35401 will result in an absorbable $484 one–time cost for the Department to update its website after the proposed regulatory action is completed. The Department has also determined that the adoption of new chapter 5 and proposed Regulation 35401 will result in an additional combined cost of approximately $7,076 to the 58 California counties to register with the Department and report their gains for the first aggregation period, and that this cost is not reimbursable. The Department has determined the adoption of new chapter 5 and proposed Regulation 35401 will not result in any other direct or indirect cost or savings to any state agency, no cost to 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 GC, no other non–discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California during the current fiscal year and two subsequent fiscal years.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has determined that business and individuals will not incur any costs to comply with Regulation 35401 because the regulation only applies to the counties and the Department and does not mandate that businesses or individuals do anything. The Department has also determined that businesses and individuals will not benefit from the adoption of Regulation 35401 because the regulation does not apply to businesses or individuals and does not clarify or further implement any laws that relate to businesses or individuals. Therefore, the Department has made an initial determination that the adoption of new chapter 5 and proposed Regulation 35401 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. The Department has also determined that the adoption of new chapter 5 and proposed Regulation 35401 does not affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Department 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 GC SECTION 11346.3, SUBDIVISION (b)

The Department assessed the economic impact of adopting proposed Regulation 35401 on California businesses and individuals and determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Department prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. In the economic impact assessment, the Department determined that the adoption of proposed Regulation 35401 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California. Furthermore, the Department determined that the adoption of proposed Regulation 35401 will not affect the benefits of the regulation to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of chapter 5 and proposed Regulation 35401 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Department must determine that no reasonable alternative considered by it or that has otherwise been 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 policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed regulation should be directed to Robert Wilke, by telephone at (916) 309–5302, by e–mail at Robert.Wilke@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Robert Wilke, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279–0050.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Kim DeArte, Regulations Coordinator, by telephone at (916) 309–5227, by fax at (916) 322–2958, by e–mail at CDTFARegulations@cdtfa.ca.gov, or by mail to: California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279–0050. Kim DeArte is the designated backup contact person to Robert Wilke.

WRITTEN COMMENT PERIOD

The written comment period ends at 11:59 pm (PDT) on January 2, 2023. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to adopt new chapter 5 and proposed Regulation 35401. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted during the day of and at the public hearing and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted during the day of or at the public hearing before the Department decides whether to adopt new chapter 5 and proposed Regulation 35401.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Department has prepared copies of the text of new chapter 5 and proposed Regulation 35401 illustrating the express terms of the proposed action. The Department has also prepared an initial statement of reasons for the proposed adoption of new chapter 5 and proposed Regulation 35401, which includes the economic impact assessment required by GC section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of new chapter 5 and proposed Regulation 35401, and the initial statement of reasons are also available on the Department's website at www.cdtfa.ca.gov/taxes–and–fees/regscont.htm.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the proposed adoption of new chapter 5 and proposed Regulation 35401. However, any interested person or his or her authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GC SECTION 11346.8

The Department may adopt new chapter 5 and proposed Regulation 35401 with changes that are non–substantial 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, the Department will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Kim DeArte. The Department will consider timely written comments it receives regarding a sufficiently related change.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Department adopts new chapter 5 and proposed Regulation 35401, the Department will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Department's website at www.cdtfa.ca.gov/taxes–and–fees/regscont.htm.

TITLE 18. DEPARTMENT OF TAX AND FEE ADMINISTRATION

AMEND AND ADOPT SECTION 1684.5, MARKETPLACE SALES

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to amend California Code of Regulations, title 18, section (Regulation or Reg.) 1684.5, Marketplaces Sales, and adopt the amended regulation through the regular rulemaking process. Regulation 1684.5 was originally adopted as an emergency regulation and it implements, interprets, and makes specific the sales and use tax provisions in the Marketplace Facilitator Act (MFA) (RTC, § 6040 et seq.) added to the Sales and Use Tax Law (RTC, § 6001 et seq.) by Assembly Bill Number (AB) 147 (Stats. 2019, chapter 5) and amended by Senate Bill Number (SB) 92 (Stats. 2019, chapter 34). The amendments clarify the MFA, but do not make anyone liable for tax as a marketplace facilitator that would not currently be liable.

AUTHORITY

RTC section 7051.

REFERENCE

RTC sections 6041, 6041.1, 6041.5, 6042, 6043, 6044, 6045, 6046, and 6203.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

General Background

RTC section 6014 provides that the term "seller," as used in the Sales and Use Tax Law, includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." Subdivision (a) of RTC section 6015 provides that the term "retailer," as used in the Sales and Use Tax Law, includes "[e]very seller who makes any retail sale or sales of tangible personal property," "every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others," "[e]very person engaged in the business of making sales for storage, use, or other consumption, and every person "in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption." The terms "gross receipts" and "sales price," as used in the Sales and Use Tax Law, generally mean the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction on account of the cost of the property sold or any other expenses. (RTC, §§ 6011, 6012.) Also, if property other than money is exchanged as all or part of the consideration for a retail sale of tangible personal property, the value of the other property in money is generally the amount the buyer and seller agreed to as the allowance for the property, unless the Department finds that the amount stated in the agreement is less than the property's fair market value. (Reg. 1654, Barter, Exchange, "Trade–ins" and Foreign Currency Transactions.)

The Sales and Use Tax Law imposes sales tax on retailers and sales tax applies to retailers' gross receipts from their retail sales of tangible personal property made within California, unless specifically exempted or excluded from tax. (RTC, § 6051.) Whether a retailer may add sales tax reimbursement to the sales price of the tangible personal property sold at retail to a purchaser depends solely upon the terms of the agreement of sale. (Civ. Code, § 1656.1; Reg. 1700, Reimbursement for Sales Tax.)

When sales tax does not apply, the Sales and Use Tax Law generally imposes use tax on tangible personal property purchased from a retailer for storage, use, or other consumption in California and stored, used, or otherwise consumed in the state, and use tax applies to the sales price of the property. (RTC, §§ 6201, 6401.) Use tax applies to taxable purchases from retailers regardless of how the purchases are made (e.g., mail order, telephone, or internet) and the person storing, using, or otherwise consuming the property purchased from a retailer is liable for the tax. (RTC, § 6202.) The state's sales tax and use taxes are mutually exclusive meaning either sales tax or use tax applies to a single transaction, but not both. (See Reg. 1620, Interstate and Foreign Commerce, for a detailed explanation of when sales and use tax applies to sales of goods being shipped into and out of California.)

California consumers are generally required to report and pay the use tax on their taxable purchases to the state. (RTC, § 6202.) However, every "retailer engaged in business in this state," as defined in RTC section 6203, is required to collect the use tax on their taxable sales to California consumers and give the consumers a receipt for the tax. (RTC, § 6203, subd. (a).) Consumers remain liable for the use tax, unless they obtain a receipt from a retailer that is registered with the Department. (RTC, § 6202.) Retailers are also liable for use taxes they are required to collect. (RTC, § 6204.)

In addition, every person engaged in the business of selling tangible personal property in this state of a

kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax is generally required to register with the Department for a seller's permit for each of its places of business in this state under RTC section 6066 in chapter 2 of the Sales and Use Tax Law. (See Reg. 1699, Permits, for more information regarding seller's permits.) Retailers that are engaged in business in this state and selling tangible personal property for storage, use, or other consumption in California are required to register with the Department to collect use tax under RTC section 6226 in chapter 3 of the Sales and Use Tax Law and the Department requires such retailers to register for a Certificate of Registration — Use Tax, unless they are also required to hold a seller's permit. (Reg. 1684, Collection of Use Tax by Retailers.) Retailers who are not engaged in business in this state may also voluntarily apply for a Certificate of Registration — Use Tax. (Reg. 1684, subd. (e)(2).) A holder of this certificate is required to collect use tax from purchasers, give receipts therefore, and pay the tax to the Department in the same manner as a retailer engaged in business in this state. (*Ibid*.)

Retailer Engaged in Business in This State

In *Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274 (*Complete Auto Transit*), the U.S. Supreme Court held that a tax challenged under the U.S. Constitution's Commerce Clause will be sustained when the tax: (1) is applied to an activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the state. In *Quill Corp. v. North Dakota* (1992) 504 U.S. 298 (*Quill*), the U.S. Supreme Court held that a retailer does not have a substantial nexus with a taxing state for purposes of the U.S. Constitution's Commerce Clause, unless it has a physical presence in the state. In *Quill*, the Court also affirmed the "sharp distinction," established in *National Bellas Hess, Inc. v. Department of Revenue of Illinois* (1967) 386 U.S. 753 (*Bellas Hess*), "between mail–order sellers with retail outlets, solicitors, or property within a State" that can be required to collect the state's sales or use tax, "and those who do no more than communicate with customers in the State by mail or common carrier as a part of a general interstate business" that cannot be required to collect the state's sales or use tax. California followed the U.S. Supreme Court's holding in *Quill*, so RTC section 6203 has historically defined the term "retailer engaged in business in this state" so only retailers with a physical presence in this state have been historically required to collect and remit California use tax.

Wayfair Decision

To challenge *Quill*, South Dakota enacted a law requiring a seller that does not have a physical presence in South Dakota to collect South Dakota's sales tax if during the previous or current calendar year the seller's gross revenue from sales into South Dakota exceeded $100,000 or the seller made sales into South Dakota in 200 or more separate transactions. On June 21, 2018, the U.S. Supreme Court issued its decision in *South Dakota v. Wayfair, Inc., et al* (*Wayfair*), which held that South Dakota's law satisfied the substantial nexus requirement from *Complete Auto Transit* and overruled the holdings in *Quill* and *Bellas Hess*.

AB 147

On April 25, 2019, the Legislature enacted AB 147 to modernize California law to include economic nexus provisions that are consistent with the *Wayfair* decision. As relevant here, AB 147 added a new subdivision (c)(4) to RTC section 6203 to provide that the term "retailer engaged in business in this state" includes "[a]ny retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property for delivery in this state by the retailer and all persons related to the retailer that exceed five hundred thousand dollars ($500,000)," operative April 1, 2019. Subdivision (c)(4) also currently provides that "a person is related to another person if both persons are related to each other pursuant to Section 267(b) of the Internal Revenue Code and the regulations thereunder." (The Department amended Reg. 1684 to implement subd. (c)(4) of RTC, § 6203.)

AB 147 added the MFA to the Sales and Use Tax Law to address sales of tangible personal property through marketplaces. The MFA became operative October 1, 2019. The MFA defines the terms "marketplace," "marketplace facilitator," "marketplace seller," "related person," and "delivery network company." (RTC, §§ 6041, 6041.2, 6041.5.) Subdivision (b) of RTC section 6041 expressly provides that:

(b) "Marketplace facilitator" means a person who contracts with marketplace sellers to facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale of the marketplace seller's products through a marketplace operated by the person or a related person and who does both of the following:

  (1) Directly or indirectly, through one or more related persons, engages in any of the following:

    (A) Transmitting or otherwise communicating the offer or acceptance between the buyer and seller.

    (B) Owning or operating the infrastructure, electronic or physical, or technology that brings buyers and sellers together.

    (C) Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller.

(D) Software development or research and development activities related to any of the activities described in paragraph (2), if such activities are directly related to a marketplace operated by the person or a related person.

(2) Directly or indirectly, through one or more related persons, engages in any of the following activities with respect to the marketplace seller's products:

(A) Payment processing services.

(B) Fulfillment or storage services.

(C) Listing products for sale.

(D) Setting prices.

(E) Branding sales as those of the marketplace facilitator.

(F) Order taking.

(G) Providing customer service or accepting or assisting with returns or exchanges.

The MFA also provides that a delivery network company is not a marketplace facilitator. (RTC, § 6041.5.)

Amongst its key provisions, the MFA provides that a marketplace facilitator is considered the seller and retailer for each sale facilitated through its marketplace for purposes of determining whether the marketplace facilitator is required to register with the Department under chapter 2 or chapter 3 of the Sales and Use Tax Law, in addition to each sale for which the marketplace facilitator is the seller or retailer or both under chapter 1 of the Sales and Use Tax Law. (RTC, § 6042.) The MFA requires a marketplace facilitator to include all sales for delivery in this state, including sales made on its own behalf, sales by all related persons, and sales facilitated on behalf of marketplace sellers, for purposes of determining whether the marketplace facilitator has total combined sales of tangible personal property for delivery in this state that would make it a retailer engaged in business in this state. (RTC, § 6044.) The MFA also provides that any marketplace facilitator that is registered or required to register with the Department under chapter 2 or 3 that facilitates a retail sale of tangible personal property on behalf of a marketplace seller is the retailer selling or making the sale of the tangible personal property sold through its marketplace for purposes of the Sales and Use Tax Law (RTC, § 6043), which makes the marketplace facilitator the retailer required to pay any sales tax and collect any use tax due on the sale, unless the marketplace facilitator qualifies for relief under RTC section 6046 (discussed below).

The MFA provides that a marketplace seller must register with the Department under chapter 2 or chapter 3 of the Sales and Use Tax Law, "as required, for retail sales made on its own behalf and not facilitated through a registered marketplace facilitator." (RTC, § 6045.) The MFA also requires a marketplace seller to include all sales of tangible personal property for delivery in this state, including sales made on its own behalf and sales facilitated through any marketplace facilitator's marketplace, for purposes of determining whether the marketplace seller has total combined sales of tangible personal property for delivery in this state that would make it a retailer engaged in business in this state. (RTC, § 6044.)

In addition, the MFA includes RTC sections 6046 and 6047, which provide a marketplace facilitator relief from liability under specified circumstances. As relevant here, RTC section 6046 makes an unrelated marketplace seller the retailer responsible for paying any sales taxes and collecting any use taxes due on a retail sale, instead of the marketplace facilitator, if the marketplace facilitator demonstrates to the satisfaction of the Department that the marketplace facilitator has made a reasonable effort to obtain accurate and complete information from the unrelated marketplace seller about the retail sale and that the failure to remit the correct amount of tax was due to incorrect or incomplete information provided to the marketplace facilitator by the unrelated marketplace seller. RTC section 6047 relieves a marketplace facilitator from sales and use tax due on retail sales facilitated for unrelated marketplace sellers prior to January 1, 2023, if the marketplace facilitator failed to collect sales tax reimbursement or use tax on the sales due to a good faith error other than an error in sourcing the sale for district tax purposes. The relief provided by RTC section 6047 is capped at:

- 7 percent of a marketplace facilitator's sales and use taxes due on sales facilitated for unrelated marketplace sellers during calendar years 2019 or 2020;
- 5 percent of a marketplace facilitator's sales and use taxes due on sales facilitated for unrelated marketplace sellers during calendar year 2021; and
- 3 percent of a marketplace facilitator's sales and use taxes and other specified fees due on sales facilitated for unrelated marketplace sellers during calendar year 2022.

AB 147 also authorized the Department to adopt emergency regulations during the 2019–2020 fiscal year to implement the MFA. (AB 147, § 7.)

SB 92

On June 27, 2019, the Legislature enacted SB 92. As relevant here, SB 92 added subdivision (c) to RTC section 6041.5 to authorize a delivery network company to elect to be deemed a marketplace facilitator in accordance with regulations adopted by the Department.

SB 92 also amended RTC section 6041.1 to provide that, "Newspapers, internet websites, and other entities that advertise tangible personal property for sale, refer purchasers to the seller by telephone, internet link, or other similar means to complete the sale, and do not participate further in the sale are not facilitating a sale under [the MFA]."

Regulation 1684.5

The Department determined that the following issues (or problems) with the MFA needed to be addressed through the adoption of an emergency regulation:

- The MFA contains undefined terms and phrases that can create confusion;
- Marketplace facilitators and marketplace sellers may have trouble understanding their new registration requirements beginning October 1, 2019;
- Marketplace facilitators and marketplace sellers may have trouble determining who is the retailer responsible for paying sales tax or collecting use tax on marketplace sales on and after October 1, 2019; and
- The MFA requires the Department to adopt regulations that establish the criteria for a delivery network company to obtain and retain an election to be a marketplace facilitator.

Therefore, the Department adopted Regulation 1684.5, Marketplace Sales, as an emergency regulation to have the effect and accomplish the objective of addressing those issues (or problems) and emergency Regulation 1684.5 became operative June 29, 2020. The emergency regulation defines terms and phrases used in the MFA and clarifies the registration requirements for marketplace facilitators and marketplace sellers on and after October 1, 2019. It clarifies when a marketplace facilitator is the seller and retailer for purposes of the sale of tangible merchandise facilitated for a marketplace seller and provides procedures for a delivery network company to elect to be a marketplace facilitator. It also includes examples illustrating how its provisions apply.

Effects, Objectives, and Benefits of the Proposed Regulation

Comments from Interested Parties

The Department sent an email to the interested parties on December 9, 2020, asking whether they had any outstanding issues or concerns regarding the language in emergency Regulation 1684.5 so that the Department could consider those issues before proposing to adopt Regulation 1684.5 though the regular rulemaking process. The Department received comments from interested parties regarding emergency Regulation 1684.5 in January 2021 and determined that it was necessary to amend Regulation 1684.5 based on the Department's understanding of the MFA and the emergency regulation and some of the comments received from interested parties.

The Department distributed the proposed amendments to Regulation 1684.5 to the interested parties along with a Discussion Paper dated January 5, 2022, providing background regarding the emergency regulation, describing the interested parties' January 2021 comments and the Department's responses, and explaining all the proposed amendments. The Department also posted both documents on its website.

The Department conducted an interested parties meeting to discuss the proposed amendments to Regulation 1684.5 on January 26, 2022. The Department also received comments from interested parties regarding emergency Regulation 1684.5 and the proposed amendments in February 2022 and determined that it was necessary to make additional changes to some of the proposed amendments to Regulation 1684.5 based on the Department's understanding of the MFA and some of the comments received from interested parties.

Proposed Regulation

The Department is now proposing to adopt Regulation 1684.5 with the amendments through the regular rulemaking process to have the effect and accomplish the objectives of avoiding confusion and ensuring that the MFA is implemented in accordance with the Legislature's intent. The Department is also proposing to adopt Regulation 1684.5 through the regular rulemaking process to have the effect and accomplish the objective of providing procedures for a delivery network company to elect and retain an election to be deemed a marketplace facilitator.

The Department determined that it was necessary to include the statutory definitions of the key terms used in the MFA in subdivision (a) of Regulation 1684.5 so that readers would not need to refer to the underlying statutes and to make it easier to clarify the meaning of those terms as they are used in the regulation. As such, the Department included the statutory definitions of the following terms in subdivision (a): delivery network company, delivery services, local merchant, local product, marketplace, marketplace facilitator, marketplace seller, and related person. The Department determined that it was necessary to clarify in subdivision (a) that a delivery network company is not a marketplace facilitator, unless it makes an election to be deemed a marketplace facilitator pursuant to subdivision (e) of the regulation and that nothing precludes a delivery network company from being a retailer as defined in RTC section 6015 (discussed above). The Department determined that it was necessary to clarify in subdivision (a) that a marketplace is a place where "marketplace sellers sell or offer to sell" tangible personal property and include examples of websites that are and are not marketplaces. The De-

partment determined that it was necessary to clarify in subdivision (a) that the provisions of subdivision (b)(1)(B) of RTC section 6041 apply when a person owns or operates the infrastructure or technology that brings buyers and sellers together "in a marketplace." The Department also determined that it was necessary to clarify in subdivision (a) that a person that engages in any of the activities in subdivision (b)(2)(B) through (G) of RTC section 6041 with respect to a marketplace seller's products is not required to provide payment processing services to be a marketplace facilitator.

The Department determined that it was necessary to define and clarify many of the undefined terms and phrases used within the definition of marketplace facilitator in subdivision (a) of Regulation 1684.5 including branding sales as those of the marketplace facilitator, facilitate, fulfillment or storage services, listing products for sale, order taking, payment processing services, providing customer service or accepting or assisting with returns or exchanges, setting prices, and virtual currency. The Department determined that it was necessary to define these terms and phrases in a manner that gives each part of the MFA the meaning and effect which it appears the Legislature intended based on the context in which they are used and the approved usage of the language. (Code Civ. Proc, § 16.) The Department determined that it was necessary to refrain "from giving [them] a narrow or restrictive meaning if such construction would result in an evasion of the evident purpose of the [MFA] when a broader meaning would prevent the evasion and carry out that purpose." (*Levitt v. Faber et al.* (1937) 20 Cal.App.2d Supp. 758, 762 (*Levitt*).) The Department also determined that it is necessary to define the term "payment order" in subdivision (a) because that term is used in the subdivision's definition of "payment processing services."

To help businesses determine their registration requirements under the MFA, the Department determined that it was necessary to clarify in subdivision (b)(1) of Regulation 1684.5 that on and after October 1, 2019, a marketplace facilitator shall be considered the seller and retailer for each sale facilitated through its marketplace for purposes of determining whether the marketplace facilitator is required to register for a seller's permit or Certificate of Registration — Use Tax. The Department determined that it was necessary to clarify in subdivision (b)(1) that on and after October 1, 2019, a marketplace facilitator is required to include the sales it facilitates for marketplace sellers for purposes of determining whether it is a retailer engaged in business in this state under RTC section 6203, subdivision (c)(4), regardless of whether the sales are taxable. The Department also determined that it was necessary to include an example in subdivision (b)(1) of a marketplace facilitator that was a retailer engaged in business in this state under RTC section 6203, subdivision (c)(4), and required to register with the Department for a Certificate of Registration — Use Tax and collect and remit use tax beginning October 1, 2019, based on its sales on its own behalf and its sales facilitated for a marketplace seller.

In addition, the Department determined that it was necessary to clarify in subdivision (b)(2) of Regulation 1684.5 that on and after October 1, 2019, a marketplace seller is the seller and the retailer for retail sales made on its own behalf and not facilitated through a registered marketplace facilitator for purposes of determining whether the marketplace seller is required to register for a seller's permit or Certificate of Registration — Use Tax. The Department determined that it was necessary to clarify in subdivision (b)(2) of the regulation that on and after October 1, 2019, a marketplace seller is not required to register with the Department for a seller's permit if it does not make any sales of tangible personal property in this state, except for sales facilitated by marketplace facilitators who are the sellers and retailers for purposes of those sales pursuant to subdivision (c) of the regulation. The Department also determined that it was necessary to clarify in subdivision (b)(2) of the regulation that on and after October 1, 2019, a marketplace seller is not required to register with the Department for a Certificate of Registration — Use Tax under RTC section 6226 if it does not make any sales of tangible personal property for storage, use, or other consumption in this state, except for sales facilitated by marketplace facilitators who are the sellers and retailers for purposes of those sales pursuant to subdivision (c) of the regulation.

Furthermore, the Department determined that it was necessary to clarify in subdivision (b)(2) of the regulation that on and after October 1, 2019, a marketplace seller is required to include its sales facilitated through any marketplace facilitator's marketplace when determining whether it is a retailer engaged in business in this state under RTC section 6203, subdivision (c)(4), regardless of whether the sales are taxable. The Department determined that it was necessary to include an example in subdivision (b)(2) of the regulation to clarify when an out–of–state marketplace seller is engaged in business in this state because its total combined sales of tangible personal property for delivery in this state exceed the $500,000 threshold in RTC section 6203, subdivision (c)(4), and required to register with the Department for a Certificate of Registration — Use Tax and collect and remit use tax. The Department also determined that it was necessary to include a second example in subdivision (b)(2) of the regulation to further clarify that a marketplace seller with a physical presence in this state is not required

to register for a seller's permit or a Certificate of Registration — Use Tax if it only makes sales of tangible merchandise in California or for delivery in California that are facilitated by marketplace facilitators who are the sellers and retailers for purposes of those sales.

To help businesses determine who is the retailer in a marketplace transaction under the MFA, the Department determined that it was necessary to clarify in subdivision (c) of Regulation 1684.5 that any marketplace facilitator that is registered or required to be registered with the Department for a seller's permit or Certificate of Registration — Use Tax and who facilitates a retail sale of tangible personal property by a marketplace seller on or after October 1, 2019, is the retailer selling or making the sale of the tangible personal property sold through its marketplace. The Department determined that it was necessary to clarify in subdivision (c) that when a marketplace facilitator is the retailer for a sale of tangible merchandise under that provision, the marketplace facilitator is responsible for paying sales tax or collecting and remitting use tax on that sale and the marketplace seller is not the retailer responsible for paying sales tax or collecting and remitting use tax on that sale, unless the marketplace facilitator qualifies for relief from liability for the tax on that sale pursuant to RTC section 6046 (discussed above). The Department also determined that it was necessary to include two examples in subdivision (c) to further clarify when a marketplace facilitator or a marketplace seller is the retailer responsible for paying or collecting tax on a sale the marketplace facilitator facilitated for the marketplace seller through its marketplace on or after October 1, 2019.

To help businesses understand how the advertising exclusion in RTC section 6041.1 works with RTC sections 6042 and 6043, the Department determined that it was necessary to clarify in subdivision (d) of Regulation 1684.5 that when the advertising exclusion applies to a sale, the person publishing the advertisement is not considered the seller and retailer for the sale for purposes of determining whether the person is required to register with the Department under RTC section 6042 and the person is not the retailer selling or making the sale of the tangible personal property sold through the advertisement under RTC section 6043. Subdivision (d) also clarifies that this is true regardless of whether the person is a marketplace facilitator, the seller is a marketplace seller, the tangible personal property is advertised in a marketplace, or the advertisement contains an offer to sell tangible personal property. Subdivision (d) includes an example illustrating how the advertising exclusion in RTC section 6041.1 applies to a company that provides internet access and digital television services, two examples illustrating how the advertising exclusion applies to a marketplace facilitator that advertises tangible merchandise for sale in its marketplace, but does not participate further in the sale, and two examples illustrating that the advertising exclusion does not apply when a marketplace facilitator participates further in the sale of the advertised merchandise, such as by taking orders or providing payment processing services.

Finally, the Department determined that it was necessary to prescribe the requirements for a delivery network company to elect to be deemed a marketplace facilitator and retain such an election in subdivision (e) of Regulation 1684.5. The Department determined that it was necessary to provide in subdivision (e) that, to elect to be a marketplace facilitator, a delivery network company must register with the Department for a seller's permit or a Certificate of Registration — Use Tax, whichever is applicable, unless the delivery network company is already registered, and submit a written or electronic statement signed by an authorized representative that includes an election to be deemed a marketplace facilitator and a voluntary agreement to remain registered with the Department while its election is effective. The Department determined that it was necessary to provide in subdivision (e) that an election is effective at the beginning of the next reporting period starting after the date the election is received by the Department and remains in effect until the beginning of the next reporting period starting after the date the Department receives a written or electronic statement from the delivery network company that it is cancelling its election, which is signed by an authorized representative. The Department also determined that it was necessary to clarify in subdivision (e) that a delivery network company that makes such an election and facilitates a retail sale of tangible personal property by a marketplace seller through its marketplace for delivery in California while its election is effective shall be the retailer selling or making the sale of the tangible personal property and the retailer responsible for paying sales tax or collecting and remitting use tax on that sale. The Department did not determine that it was necessary to duplicate or otherwise expressly incorporate the MFA's relief provisions in Regulation 1684.5. (Gov. Code, §§ 11349, 11349.1.)

The Department anticipates that the adoption of Regulation 1684.5 through the regular rulemaking process will promote fairness and benefit the Department and taxpayers, including marketplace facilitators, marketplace sellers, delivery network companies, and businesses that sell advertising for tangible merchandise, by clarifying the meaning of terms and phrases used in the MFA, clarifying the MFA's registration requirements, clarifying when a marketplace facilitator is a retailer under the MFA, clarifying when the MFA's advertising exclusion applies, and providing procedures for a delivery network company to elect to be a marketplace facilitator.

The Department has performed an evaluation of whether Regulation 1684.5 is inconsistent or incompatible with existing state regulations and determined that the proposed regulation is not inconsistent or incompatible with existing state regulations because it is the only regulation that implements, interprets, or makes specific the provisions of the MFA. Also, the Department has determined that there is no existing federal regulation or statute that is comparable to Regulation 1684.5.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the adoption of proposed Regulation 1684.5 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

ONE–TIME COST TO THE DEPARTMENT, BUT NO OTHER COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Department has determined that the adoption of proposed Regulation 1684.5 will result in an absorbable $484 one–time cost for the Department to update its website after the proposed regulatory action is completed. The Department has determined that the adoption of proposed Regulation 1684.5 will not result in any other direct or indirect cost or savings to any state agency, no cost to 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, no other non–discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the adoption of proposed Regulation 1684.5 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.

The adoption of proposed Regulation 1684.5 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Department 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, SUBDIVISION (b)

The Department assessed the economic impact of proposed Regulation 1684.5 on California businesses and individuals and determined that the proposed 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, the Department prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. In the economic impact assessment, the Department determined that the adoption of proposed Regulation 1684.5 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California. Furthermore, the Department determined that the adoption of proposed Regulation 1684.5 will not affect the benefits of the regulation to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of proposed Regulation 1684.5 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Department must determine that no reasonable alternative considered by it or that has otherwise been 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 policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of proposed Regulation 1684.5 should be directed to Robert Prasad, by telephone at (916) 309–5296, by e–mail at Robert.Prasad@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Robert Prasad, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279–0050.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Kim DeArte, Regulations Coordinator, by telephone at (916) 309–5227, by fax at (916) 322–2958, by e–mail at CDTFARegulations@cdtfa.ca.gov or by mail at California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC:50, 450 N Street, P.O. Box 942879, Sacramento, CA 94279–0050. Kim DeArte is the designated backup contact person to Robert Prasad.

WRITTEN COMMENT PERIOD

The written comment period ends on January 2, 2023. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to adopt proposed Regulation 1684.5. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted during the day of and at the public hearing and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted during the day of or at the public hearing before the Department decides whether to adopt proposed Regulation 1684.5.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared copies of the text of proposed Regulation 1684.5 illustrating the express terms of the proposed action. The amendments to emergency Regulation 1684.5 are illustrated in strikeout and underline format.

The Department has also prepared an initial statement of reasons for the adoption of proposed Regulation 1684.5, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulation is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of proposed Regulation 1684.5 and the initial statement of reasons are also available on the Department's website at *www.cdtfa.ca.gov*.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the proposed adoption of proposed Regulation 1684.5. However, any interested person or their authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Department may adopt proposed Regulation 1684.5 with changes that are non–substantial 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, the Department will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Kim DeArte. The Department will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Department adopts proposed Regulation 1684.5, the Department will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Department's website at *www.cdtfa.ca.gov*.

TITLE 22. DEPARTMENT OF SOCIAL SERVICES

AMEND CONFLICT–OF–INTEREST CODE

NOTICE IS HEREBY GIVEN that the **California Department of Social Services (CDSS),** pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its conflict–of–interest code. A comment period has been established commencing on November 18, 2022 and closing on January 3, 2023. All inquiries should be directed to the contact listed below.

The **CDSS** proposes to amend its conflict–of–interest code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

Changes to the conflict–of–interest code include:

- Adding new positions that make or participate in the making of governmental decisions,
- Removing positions that were deemed as not making or participating in the making of governmental decisions,
- Adding new divisions,
- and also makes other technical changes.

The proposed amendment and explanation of the reasons can be obtained from the agency's contact.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than January 3, 2023 or at the conclusion of the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than *December 9, 2022.*

The **CDSS** has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are 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 costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: MJ Johnson at ConflictofInterest@dss.ca.gov

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH THE 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.

Board of Parole Hearings
File # 2022–0926–06
Proceedings Conducted In Person and by Videoconference

This certificate of compliance rulemaking action by the Board of Parole Hearings makes permanent, with modifications, regulations originally adopted in emergency action Number 2021–0917–01, and modified in action Number 2022–0317–01, and readopted in 2022–0617–02EE, to establish procedures for conducting parole hearings and other proceedings by videoconference pursuant to Penal Code section 3041.6.

Title 15
Adopt: 2050, 2057, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064
Filed 11/07/2022
Effective 11/07/2022
Agency Contact: Mina Y. Choi (916) 322–6729

Department of Cannabis Control
File # 2022–0926–02
Medicinal and Adult–Use Commercial Cannabis Regulations

Assembly Bill 141 (Stats. 2021, Chapter 70) consolidated the three former cannabis licensing programs within the Bureau of Cannabis Control, Department of Food & Agriculture, and Department of Public Health into a single new department within the Business, Consumer Services, and Housing Agency called the Department of Cannabis Control (DCC). This action makes permanent emergency rulemaking action no. 2021–0915–01E (readopted by emergency action no. 2022–0317–02EE), which was adopted by DCC to consolidate, clarify and make consistent licensing and

enforcement criteria for all commercial cannabis businesses, including cultivators, manufacturers, distributors, retailers, microbusinesses, testing laboratories, and temporary cannabis events. The emergency regulations being made permanent also inform applicants for licensure of the applicable meaning of key statutory terms, identify documents and supplemental information required in an application for licensure, and provide specific terms, prohibitions, and conditions for compliance with the Medicinal and Adult–Use Cannabis Regulatory and Safety Act (MAUCRSA).

Title 04
Adopt: 15000.1, 15000.2, 15000.3, 15000.4, 15000.5, 15000.6, 15000.7, 15001.1, 15001.2, 15001.3, 15001.4, 15002.1, 15004.1, 15040.2, 15041.2, 15041.3, 15041.4, 15041.5, 15041.6, 15041.7, 15042.1, 15047.1, 15047.2, 15048.1, 15048.2, 15048.3, 15048.4, 15048.5, 15049.1, 15049.2, 15052, 15603.1, 16308, 16309, 16310, 16311, 17202.1, 17206.1, 17211.1, 17217, 17218, 17219, 17220, 17221, 17227, 17302.1, 17303.1, 17398, 17399, 17400, 17800, 17801, 17801.1, 17801.5, 17802, 17803, 17804, 17805, 17806, 17807, 17808, 17809, 17810, 17813, 17814, 17815, 17816, 17817, 17900, 17901, 17902, 17903, 17904, 17905
Amend: 15000, 15001, 15002, 15003, 15004, 15005, 15006, 15007, 15010, 15011, 15012, 15013, 15014, 15015, 15017, 15018, 15020, 15021, 15023, 15024, 15024.1, 15025, 15027, 15034, 15035, 15036, 15037, 15038, 15039, 15040, 15040.1, 15041.1, 15042, 15043, 15044, 15045, 15046, 15047, 15048, 15049, 15050, 15051, 15052.1, 15300, 15301, 15302, 15303, 15303.1, 15304, 15305, 15306, 15307, 15307.1, 15307.2, 15308, 15309, 15311, 15312, 15313, 15314, 15315, 15402, 15405, 15406, 15407, 15408, 15410, 15411, 15413, 15414, 15415, 15417, 15418, 15419, 15420, 15427, 15500, 15600, 15601, 15602, 15604, 15700, 15701, 15702, 15703, 15704, 15705, 15706, 15709, 15710, 15711, 15713, 15714, 15717, 15718, 15719, 15720, 15721, 15722, 15723, 15724, 15725, 15726, 15727, 15728, 15729, 15730, 15731, 15732, 15733, 15734, 15735, 15736, 15737, 15738, 16201, 16202, 16209, 16300, 16301, 16302, 16303, 16304, 16305, 16306, 16307, 17006, 17009, 17117, 17124, 17126, 17127, 17128, 17203, 17204, 17205, 17206, 17207, 17208, 17209, 17210, 17211, 17212, 17213, 17214, 17215, 17216, 17223, 17225, 17226, 17300, 17301, 17302, 17303, 17304, 17305, 17401, 17402, 17403, 17404, 17405, 17406, 17407, 17408, 17409, 17410, 17411, 17412
Repeal: 15007.2, 15008, 15010.1, 15010.2, 15010.3, 15022, 15026, 15028, 15030, 15031, 15032, 15033, 15052, 15053, 15054, 15310, 15426, 15501, 15502, 15503, 15504, 15505, 15506, 15506.1, 15507, 15715, 15739, 15800, 15801, 15802, 15803, 15804, 15805, 15806, 15807, 15808, 15809, 15810, 15811, 15812, 15813, 15814, 15815, 15900, 15901, 15902, 15903, 15904, 15905, 16000, 16100, 16101, 16102, 16103, 16104, 16105, 16106, 16107, 16108, 16109, 16110, 16112, 16113, 16114, 16115, 16200, 16203, 16204, 16205, 16206, 16207, 16208, 16210, 16211, 16212, 16213, 16214, 16215, 16216, 16308, 16400, 16401, 16402, 16403, 16404, 16405, 16406, 16408, 16409, 16500, 16501, 16600, 16601, 16602, 16603, 16604, 16605, 16606, 16607, 16608, 16609, 17000, 17001, 17002, 17003, 17004, 17005, 17100, 17101, 17102, 17103, 17104, 17105, 17106, 17107, 17108, 17109, 17110, 17111, 17113, 17114, 17115, 17116, 17118, 17119, 17120, 17121, 17122, 17123, 17125, 17200, 17201, 17202, 17217, 17218, 17219, 17220, 17221, 17222, 17224, 17400, 17500, 17501, 17502, 17503, 17504, 17505, 17506, 17507, 17508, 17509, 17510
Filed 11/07/2022
Effective 11/07/2022
Agency Contact: Kaila Fayne (916) 251–4544

Department of Social Services
File # 2022–0921–04
Annual Redeterminations — AB79 2020

This certificate of compliance action by the Department of Social Services (Department) makes permanent the emergency changes made in OAL File Nos. 2021–1223–01EFP and 2022–0620–04EFP. In those actions, the Department amended Division 40 and Division 44 of the Manual of Policies and Procedures to update the annual CalWorks eligibility redetermination procedure to require the use of the SAWS 2 Plus/Statement of Facts, require recipients to provide information on income received during the 30 days prior to submission of the annual redetermination, and add additional personal contact options for county welfare departments to utilize when attempting to contact recipients regarding the annual redetermination.

Title MPP
Amend: 40–103, 40–181, 44–113
Filed 11/02/2022
Effective 01/01/2023
Agency Contact:
Kenneth Jennings (916) 651–8862

California Pollution Control Financing Authority
File # 2022–1024–01
California Capital Access Program for Small Businesses

This emergency rulemaking action adopts a new regulation to specify the State Small Business Credit Initiative Program requirements for loans enrolled in the Capital Access Loan Program so as to conform

to U.S. Treasury Department requirements for utilization of federal funds.

Title 04
Amend: 8078.1
Filed 11/03/2022
Effective 11/03/2022
Agency Contact: Kamika McGill (916) 653–0289

Department of Social Services
File # 2022–1028–02
CCL Adult and Senior Care Facilities: Infection Control Requirements

This emergency readopt action by the Department of Social Services adopts and amends requirements for licensed community care facilities to have a specific infection control plan to be included in their plan of operation that will be approved by the Community Care Licensing (CCL) Division of CDSS. The infection control plan shall include training requirements, designated staff lead for infection control, and documentation requirements.

Title MPP, 22
Adopt: 81095.5, 82095.5, 85092.7, 85095.5, 87470, 87895.5
Amend: 80022, 80065, 80092, 81001, 81022, 81065, 81092. 7, 82001, 82022, 82065, 82092.7, 85022, 85075.1, 85090 renumbered to 85096, 85090.1 renumbered to 85096.1, 85090.2 renumbered to 85096.2, 85091 renumbered 85097, 85091.1 renumbered to 85097.1, 85091.2 renumbered to 85097.2, 85091.3 renumbered to 85097.3, 85091.4 renumbered to 85097.4, 85092 renumbered to 85098, 85093 renumbered to 85099, 87101, 87208, 87411, 87465, 87629, 87822, 87865
Repeal: 80092.7
Filed 11/07/2022
Effective 11/07/2022
Agency Contact: Everardo Vaca (916) 657–2363

State Allocation Board
File # 2022–1026–01
Leroy F. Greene School Facilities Act of 1998; Direct Apportionments

To take advantage of a $1.3 billion one–time General Fund appropriation from Assembly Bill 181, Chapter 52, Statutes of 2022, this emergency resubmittal shortens the direct Apportionment process to make it align with the priority funding process and amends the Grant Agreement to align to the direct Apportionment process.

Title 02
Amend: 1859.2, 1859.90, 1859.90.2
Filed 11/07/2022
Effective 11/07/2022
Agency Contact: Lisa Jones (279) 946–8459

State Controller's Office
File # 2022–0923–02
EFT Payment

This non–substantive action by the State Controller's Office amends two sections to update the threshold amount for electronic funds transfer (EFT), consistent with changes to Code of Civil Procedure section 1532.

Title 02
Amend: 1155.150, 1155.200
Filed 11/03/2022
Agency Contact: Ethan Jaffe (916) 327–1041

Board of Governors, California Community Colleges
File # 2022–1104–02
Distance Education

The Board of Governors of the California Community Colleges (Board) submitted this action dealing with distance education to OAL as a print only file. Pursuant to Education Code section 70901.5, this action was filed with the Secretary of State by the Board on November 4, 2022, is exempt from the Administrative Procedure Act and OAL review, and was submitted to OAL only for the purpose of publishing the regulations in the California Code of Regulations.

Title 05
Amend: 55204
Filed 11/04/2022
Effective 12/04/2022
Agency Contact: Tanya Bosch (916) 445–1997

Commission on Teacher Credentialing
File # 2022–0926–04
Teaching Performance Assessment

This action is adopting a rule that permits candidates seeking multiple teaching credentials to only have to pass one teaching performance under the specified conditions.

Title 05
Adopt: 80095
Filed 11/07/2022
Effective 01/01/2023
Agency Contact: Lynette Roby (916) 324–3668

Department of Corrections and Rehabilitation
File # 2022–0923–03
Standardized Testing for Assessing Adult Literacy

This action by the Department of Corrections and Rehabilitation amends standardized testing requirements for assessing adult literacy to remove references to specific test vendors.

Title 15
Amend: 3000, 3040.3, 3378.2
Filed 11/04/2022
Effective 01/01/2023
Agency Contact: Rosie Ruiz (916) 445–2244

Occupational Safety and Health Standards Board
File # 2022–0524–03
Fire Fighters' Personal Protective Clothing and Equipment — AB 2146 (2014)

This action updates standards for fire fighters' personal protective clothing and equipment in response to Assembly Bill 2146 (Stats. 2014, chapter 811).

Title 08
Adopt: 3402.1, 3402.2, 3402.3, 3410.1
Amend: 3401, 3402, 3403, 3404, 3405, 3406, 3047, 3408, 3409, 3410, 3411
Filed 11/07/2022
Effective 01/01/2023
Agency Contact: Christina Shupe (916) 274–5721

State Water Resources Control Board
File # 2022–0922–02
Improvement and Clarification and Waste Discharge Prohibition Language

On February 18, 2022, the Central Coast Regional Water Quality Control Board adopted Resolution Number R3–2022–0001 amending the Water Quality Control Plan for the Central Coastal Basin by establishing additional prohibitions on specific unauthorized discharges in all waters of the State within the geographic boundaries of the Central Coast Region, revising the existing land disturbance prohibition, removing existing exemptions for specific agricultural soil disturbance activities, and making non–substantive editorial changes. On June 7, 2022, the State Water Resources Control Board approved the Basin Plan amendment under Resolution Number 2022–0022.

Title 23
Adopt: 3929.20
Filed 11/02/2022
Effective 11/02/2022
Agency Contact: Mary Hamilton (805) 542–4768

Commission on Peace Officer Standards and Training
File # 2022–0923–01
Peace Officer Background Investigations — SB 2

In this resubmitted rulemaking action, the Commission amends its regulation to require verification of qualification for peace officer appointment. The amendment incorporates by reference the Verification of Qualification for Peace Officer Appointment form POST 2–55 (Rev. 03/2022) which provides a list of information that must be verified before a candidate can qualify for employment as a peace officer.

Title 11
Amend: 1953
Filed 11/03/2022
Effective 01/01/2023
Agency Contact: Michelle Weiler (916) 227–4870

Commission on Peace Officer Standards and Training
File # 2022–0926–01
SB 2 Amendments to Commission Regulation 1003

When certain personnel actions regarding a peace officer occur, current POST regulations require the employing department to notify the Commission on Peace Officer Standards and Training ("POST") of the action within 30 days. Statutory amendments made in Senate Bill 2 (2021–2022 Reg. Sess.) now require these notifications to be made within 10 days. In this regular rulemaking, POST is amending regulations to align with these statutory amendments, as well as making changes to the process for providing notification to POST.

Title 11
Amend: 1003
Filed 11/03/2022
Effective 01/01/2023
Agency Contact: Michelle Weiler (916) 227–4870

Commission on Peace Officer Standards and Training
File # 2022–1003–02
Removal of NOAT from Regulation 1015

In this regular rulemaking action the Commission on Peace Officer Standards and Trainings updates requirements for submitting notices of appointment (NOAT) to the Commission.

Title 11
Amend: 1015
Filed 11/03/2022
Effective 01/01/2023
Agency Contact: Michelle Weiler (916) 227–4870

Office of the State Fire Marshal
File # 2022–0927–01
Flame Retardant Fee Increase

This action amends fees and the application process for the Flame Retardant Chemicals and Fabrics Program.

Title 19
Adopt: 1179.1, 1179.2, 1179.3
Amend: 1179
Filed 11/08/2022
Effective 11/08/2022
Agency Contact: Eireann Flannery (916) 531–7650

PRIOR REGULATORY DECISIONS AND CCR CHANGES FILED WITH THE SECRETARY OF STATE

A quarterly index of regulatory decisions by the Office of Administrative Law (OAL) is provided in the California Regulatory Notice Register in the volume published by the second Friday in January, April, July, and October following the end of the preceding quarter. For additional information on actions taken by OAL, please visit oal.ca.gov.